Violence and Justice in Bologna

1250–1700

Edited by Sarah Rubin Blanshei

LEXINGTON BOOKS
Lanham • Boulder • New York • London
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Chapter Two

Criminal Court Procedure in Late Medieval Bologna

Cultural and Social Contexts

Massimo Vallerani

In the middle of the thirteenth-century Bologna was a city in full socio-economic development, with continuous demographic growth that brought its population to approximately 50,000 in the early years of the Trecento. During these decades (1250–1320) its political institutions were transformed profoundly, with approximately 15,000–18,000 men participating in various roles (communal councils, public offices, societies of the popolo); a figure possibly equivalent to all male adults able to bear arms and participate in public life. During the same period the judicial administration of the commune was able to treat in its tribunals approximately 1,600–2,000 cases per year, divided between trials conducted by accusatory procedure and inquisitio ex officio, with thousands of persons involved as litigants, procuratores (lawyers), and witnesses; and this figure includes only those in the penal sector because no data for the civil courts have survived. Yet Bolognese criminal court procedures can be better understood in a framework removed from these rough quantitative estimates for the very reason that no other public institution demonstrated an equal capacity to control and involve the population both before and after these decades.

Indeed, the interrelationship between participation in public life of such a great number of people and the development of an equally broad judicial system is clear: communal justice was not only a means of controlling urban conflicts; it also was a true instrument at the disposal of the commune for governing the population. Public justice meant, in the first place, recourse to a trial—a form of confrontation regulated according to a procedure devel-
oped by judges and judges in the twelfth century, on the basis of Roman models adopted to the demands of large urban communities. It is from procedure and its function in the construction of public justice that we must take our point of departure.

To be sure, at times procedure may seem to project a sense of distance from "real" things and persons, a perception nourished by its linguistic difference (Latin), by the complexity of its theoretical apparatus, and by the intrusive presence of law professionals who act on behalf of litigants. But are these reasons sufficient to categorize procedure as an object remote from people and their lives? Is it conceivable that societies, such as those of the medieval cities, that had assigned great space to conflict and to the jurisdictional dimension of public life, could have elaborated a procedure so far from reality and incomprehensible to the parties involved? Clearly we need a new perspective in order to understand the functionality of procedure and the trial in the construction of a public system for the containment of conflicts.

Procedure is a direct reflection of the logic that rules social ties and the relations of power. For the jurists of the ancien régime, who in the absence of civil codes, founded their treatises essentially on the jurisdictional acts of the tribunals, the trial was a great "theater of the world," a collective representation of the reality constructed by a chorus of judges, litigants, advocates, and rulers. Each had a particular design, a characteristic vision of reality and of the interests to be defended. The instruments for reconstructing and imposing this vision were defined by procedure. The final image was indeed due to interactions among the individual actors. We need to ask first of all what was the logic by which these images were able to be reconstructed and then to verify, in the judicial acts of the communal tribunal (the accusations and inquisitions) the picture that emerges.

THE ORIGIN OF BOLOGNESE PROCEDURE AND JURIDICAL CULTURE

I first address the cultural and political context from which the new processual models arose during the course of the twelfth century. The elaboration of procedure in the High Middle Ages, commonly called Romano-canonical, occurred in a very varied cultural context, often outside of the Bolognese law schools where above all judges and advocates, deeply employed in practice, invented the new procedure, reconstructed from Romanist materials long included in the proceedings in use at ecclesiastical courts. The first ordines were, in fact, redacted by jurists of the Church, such as the first ordo written by Bulgarus for the pontifical chancellor Aimerico (1123–41); a collaboration between civilists and canonists in the matter of procedure, which remained active until the beginning of the Duecento, at least to Roffredo who
treated civil and canonical trials jointly, or to Riccardo Anglico, an English canonist who wrote his manual on procedure in 1197 at Bologna. Although toward the end of the twelfth century the signs of a greater autonomy of the canonists becomes evident—for example, the texts on canonical procedure tend not to cite Roman law, depending only on decretals—nevertheless a model of a public trial was established and relatively shared in the civil and ecclesiastical tribunals of the late twelfth century, one based on procedure of an accusatory type.

It was a trial that anticipated at least four large phases: the accusation, with the choice of a juridically relevant fact, one that expressed a violation of a law for which the person (actor) sought reparation; a series of citations, which called into court the accused (reus); the formal commitment of the litigants to prosecute the trial (litis contestatio) and a probative phase, which divided the tasks in a symmetrical manner between the actor who had to present witnesses and the reus who could present witnesses in his or her defense; both parties had to furnish a list of the subjects on which the questioning of the witnesses would be made (intentiones). The equalization of the parties and the selection of the rational arguments to be proven with witnesses (and documents) were not the fruit of an open and “democratic” political system; they were first of all a response to the need of the Church to find a valid judicial instrument for internal use, one guaranteeing equality before the law, in which all the parties were subject to the same obligations (as occurred between the members of the same institution). It also needed to constrain its own enemies, often lay aristocrats who based their pretexts on their power and recognition of a customary “state of fact”; to find and accept valid legal rules for everyone (for example, on the issue of possession). The ordines, in short, served to diffuse a new type of trial that offered a more general and logical legal “order,” a useful instrument of governance for those who sought to construct a new form of political community in which internal conflicts were regulated and the litigants of external ones were compelled to follow a shared program to resolution.

The Collective Elaboration of Procedure at Bologna

This practical dimension of the trial remained very much alive during the early years of the twelfth century. Indeed, the range of its diffusion and the circulation of texts relative to procedure were even further amplified. A second generation of ordines indiciarii, this time written at Bologna, often by non-Italian authors, proves the existence of the twofold development of juridical culture; on the one hand Bologna became the center of the production of professional knowledge in the processual field; on the other hand procedure became an object necessary and shared by a great part of European
culture—English, German, and French professors were all active in the spread of the new model of the trial in local courts.

Furthermore, and this is a specificity particular to Bologna, the acts of procedure were fixed in written formularies inserted in notarial manuals, called artes notarie. The most important of these were redacted by masters of the Bolognese studium, first by Raineri da Perugia (ca. 1230) and then by the most renowned of all at the European-wide level—Rolandino Passagieri. These great notaries did not limit themselves to proposing models of acts, but also furnished examples of procedure, that is to say, they organized the individual acts within a framework of procedural logic. The masters understood that procedure was a sequence of coherent acts and that the validity of the trial depended on the correctness of each individual act, with particular attention to certain apparently secondary passages, such as the citation of the accused person, the threat of the ban in case of failure to present oneself in court, and the hearing of witnesses: three very sensitive passages that often caused the annulment of the trial if executed in an irregular manner.

To this work of collective elaboration were added of course the jurists. The masters of the university of Bologna, from the 1260s and 1270s, employed themselves directly in the redaction of numerous quaestiones relative to the trial, above all in points relative to the law and to the duties of the procuratores and surety guarantors (fidelissiores) in their activities representing the accused, and also paid considerable attention to the ban, a processual instrument hardly regulated by the law, which led to numerous discussions relative to its legitimacy. We shall see that discussions were not limited to the schools, since the topics of the quaestiones often were taken up in actual proceedings and often resolved with consilia by these same jurists.

Finally, procedure was included in the communal statutes of Bologna, especially in the redaction of 1288, which contains a complete exposition of the acts and temporal terms to be fulfilled by the litigants. The rubric considers all the logical nodes of procedure that are also present in the manuals on procedure: qualifications for becoming an accuser; absolute freedom to accuse (not to be constricted to the accuser); economic obligations for one who accepts the trial (commitments and monetary sureties); specific and predetermined terms for the unfolding of the trial.

Duecento Bologna: The Trial as an Instrument of Government

The circulation of procedural models was extensive because procedure interested diverse social actors and especially because the ordered carrying out of the trial had by now become an indispensable instrument of communal government for regulating the collective life of the city. By the mid-Duecento the communal courts were able to accept and execute hundreds of trials, involving thousands of Bolognese citizens as litigants, fidelissiores, advo-
cates, and witnesses. This public and shared aspect of the trial must be emphasized because it is absolutely central to understanding the social function of public justice as an instrument of the city’s governance.

The Model in Action: Its Serial Character and the Coherence of Procedure

The convergence of so many cultural actors in the execution of procedure produced a model of the accusatory trial that was coherent and stable over time. Appearing in the earliest surviving judicial registers, which go back to 1256, the trial unfolds according to phases very similar to those described in the Artes notarie. The libellus of the accusation is located at the center of the folio, with the names of the accuser and the accused, a brief description of the fact and the request for punishment (unde peto eum punire secundum formam iuris et statut). On the left side are written the acts of the accusation: the appearance of the accused and oath of innocence, the promise to present oneself; on the right side the acts of the accuser: oath of truthfulness, promise to continue to prosecute and fulfill the term of eight days for the presentation of proofs.

After giving the libellus, the accuser has to swear to tell the truth (non animo calumniandi). The formula is exactly that described by Rolandino in his Summa. After the oath comes the first assignatio terminum: five days for prosecuting the trial and three for defending oneself in case of a voluntary interruption. The appearance of the accused is the minimal condition for starting a trial. The formula is synthetic, but contains three different acts: denial, equivalent to the litis contestatio (Comparuit predictus accusatus et lecta sibi dicta accusa per seriem negavit omnia que in ea continet); a promise to present oneself in response to the precepts of the podestà (et cavit de presentando se); and a promise to pay the penalty in case of condemnation (vel de solvendo condempnationem sub pena in statutis contenta); all of which is guaranteed, yet again, by one or more fideiusiores.

Thirty years later the model is similar, but more complex, above all because of the obligations undertaken by the accuser. In the registers of 1286, when the more complete surviving series of trials begins, the accuser must promise not only to continue the accusation, but must also present a fideius sor who commits himself on behalf of the accused to continue the trial and not to present false witnesses. The accused is the recipient of three acts: the citatio prima, secunda crida e citatio cum tuba ad videndum ordinari terminum, with the greatest attention to the modality of the citation which has become the first cause for nullification of trials. Then follows the presentation of the accused, his or her oath de veritate, and surety. After the assignment of temporal terms, the witnesses are called and also they must take an oath to tell the truth and give fideiusiores for the very large sum of 300 lire.
All these formulas served to certify the wish of the parties to stand in judgment and to discourage the use of instrumentalist and frivolously motivated accusations.

Once these initial obligations were fulfilled, the duration of the trial in general was very rapid. The accusatory trial was relatively swift-moving because the procedure had prefixed terms, which in general were respected: once the parties presented themselves they had eight days in which to bring forward their proofs; the promises and sureties were concentrated within two days; the entire procedure lasted on average twenty days (at least this was true for the trials of the 1280s—during the 1290s the average length of trials expanded to approximately thirty days).

Since the appearance of the accused indeed signified the acceptance of the trial, it should be noted that this was maintained at a relatively high level throughout the Duecento: on average 70 percent of the accused presented themselves with their fideiussores. The second aspect that emerges in a macroscopic manner from the registers is the increase in the number of intermediaries in the trial—by the late thirteenth century procuratores and fideiussores crowded the tribunals and their presence had become indispensable for the functioning of public justice. Without them the trials could not even begin.

**Intermediators and Initiation of the Trial**

Between 1256 and 1286, as noted above, procedure remained more or less the same, while the number of processual intermediaries was augmented very notably. This element is a particularity of the Bolognese trial: on average for every trial more than ten such persons were involved—trustees (curatores), procuratores, and fideiussores, but there are cases where just the fideiussores alone come to more than ten to fifteen persons. The principal circumstances calling for intermediaries were three: a trustee was needed when the accuser was a woman, a minor, or a child (pupillus), or if the accuser were absent at that moment from the city; a fideiussor to secure the monetary guarantees of the accuser and accused so that the trial could go forward; and a fideiussor also when witnesses were present. While the curatores are found in approximately 40 percent of the trials (this datum is based on a sample from 1285–88), the fideiussores are always present, at least in all the trials in which the imputed presented themselves.¹¹

In effect, fideiussores had become the hinge of the system and their guarantees served everyone.¹² But who were these persons who offered themselves as guarantors, exposing themselves to the risk of paying very high sums? In contrast to the procuratores, who were always notaries and who often exchanged roles with the trustees and notarial redactors of documents, the fideiussores present a less clearly defined picture. On the one
hand, they appear often in various trials, a sign that they formed a group of professional intermediaries in the processual setting, acting on behalf of both parties (accusers and accused). On the other hand, similarly often, the fideiussores were the relatives or friends of one of the parties, who effectively played a role in support of one of the two litigants. The network of intermediaries, whether professionals or family/friends, rendered possible the confrontation in court, because it assured not only the full juridical capacity of the persons who defected (with their procuratores), but also the minimum necessary guarantee of “recognizability” to the litigants, by their demonstration of their ability to find guarantors of their cases who would obligate themselves in person with a disbursement of money.

In the urban culture of the communal era, this search for the guarantee of persons was a vital requirement, necessary precisely to render individuals recognizable as socially and economically trustworthy subjects. Numerous passages of public life called, in fact, for the presence of fideiussores: from the election to public offices to the assignment of particular administrative posts. In every case, the guarantee played a fundamental role in guaranteeing that the person was known and merited the financial help of other persons. The fact that such a high number of guarantees was obligatory to carry forward a judicial case confirms the determination of the commune to reserve the accusatory trial to persons selected on the basis of their recognizability and trustworthiness. The trial served in certain ways to define and to give legitimacy to one’s personal identity. It is also from this perspective that we need to examine the functioning and function of the trial in Bolognese society of the late Duecento.

Litigants and the Reconstruction of the Fact

Consideration of some quantitative data, already noted, is needed in order to understand the conflictual dynamics and role of the trial. The 1280s and early 1290s experienced the greatest development of the accusatory public trial with the highest number of cases, at least according to the data available for medieval cities—from 800 to 1,200 per semester (data confirmed also by registers of acquittals). The explosive expansion of the number of trials seems to have been initiated early, and shows clearly the great capacity of the commune to manage a large number of judicial cases brought by citizens. During the same years, however, the commune put into effect an extremely extensive system of control over persons banned for political reasons, with the compilation of lists of philoghibelline enemies (the Lambertazzi); redesign of the boundaries of citizenship with the urban estimo of 1280 and the contado estimi in 1282, and experimentation with a new institutional system under corporative leadership, with the anziani (elders), elected by the guilds and arms societies, initiating periodic verifications of all the lists that
contained and certified the various memberships in urban public life. With all
the limitations that can be found in this system, these are the years of the
greatest expansion and greatest involvement of the urban population in all
sectors of the system of governance. The quantitative expansion of the accu-
satory trial was very probably connected to this communal-podestarial insti-
tutional system, with its nature still relatively open, formed by the councils of
the commune and popolo, the ministrales of the popular societies, the anziani
e consoli, and other magistrates of exigency (balie).

Another element also confirms the vitality of the judicial system: the high
level of acceptance that continued to characterize the accusatory trial. During
the 1280s, as noted, between 70 and 80 percent of the accused presented
themselves in response to the accusation, bringing with them at least two
fideiussores. The responses of the citizens to the summons of private accusa-
tion is in essence positive: the trial was still viewed as an arena of confronta-
tion worthy to be frequented.

Also, as a third structural element of Bolognese conflictuality indicates,
the majority of conflicts of a violent nature occurred between persons who
probably did not know each other or live in the same quarter of the city. For
the period 1285–94 only a minority of the conflicts happened within the
same parish (cappella): 25 percent in 1285 (and that is the highest percen-
tage); in the other years the figure oscillates between 15 and 20 percent of the
crimes denounced within the city (13.7 percent in 1286—25 of 156 crimes);
and 15.8 percent in 1287; 21.9 percent in 1298. These data indicate that in
the majority of cases the infrajudicial mechanisms for the containment of
conflicts among neighbors were not able to function. The communal tribunal
served, instead, as the principal arena for resolution of those clashes, and the
rules of confrontation, inasmuch as they were rigid and apparently formal,
were considered acceptable by a significant part of the Bolognese population.

To do what? To obtain justice from an efficient system of public punish-
ment? Or to put an enemy into a difficult situation or annoy an adversary?
The question has been raised for the medieval era by various scholars, who
have noted the contrast between the high number of accusations ("input" of
the system) and the low number of trials that ended with a sentence or with a
sentence of condemnation. Many trials, for example, at Marseilles (but in the
civil sector), remained without sentences. In other cases, as I have estab-
lished for Perugia and Bologna, the majority terminated with an acquittal for
lack of proof or for interruption of the case, that is to say, that the accuser did
not terminate the iter and the case ended before the probatory phase. Some
scholars have hence hypothesized that public justice exhausted itself in an
enervating play of accusations and counter-accusations in order to inflict the
maximum damage on one's counterpart; or to display an atavistic and uncon-
trollable hatred, according to a theory that explains actions as reflexes of
neuronal emotions refined by humans since the Neolithic age. This openly
reductionist vision of the value of the trial even renders superfluous the reading of the sources, since the judicial writings would seem to be no more than the transcription of a series of spiteful acts (tit for tat) that the parties commit in the course of the confrontation. An alternative interpretive key must be found that restores social significance to the recourse of such a great number of people to the public tribunal. For this purpose I shall examine two particular aspects of the communal processual system of Bologna in the Duecento.

In the first aspect I seek to deepen our understanding of what actually happened within the trial. While a strategy of attack on the adversarial figure was ingrained in the processual encounter, it is true that many accusations focused sharply on the identity of the other party, portraying him or her as a possible criminal, guilty of acts against the law in addition to the charge in the accusation. To receive an accusation necessarily compelled one to the defense of one's personal reputation. For this reason the trial became an important act: not so much as an episodic demonstration of an emotion determined by our neuronal structure, but as a pragmatic construction of one's social identity, carried out within the trial. It is necessary to understand with what materials and model of reference this was accomplished.

In the second aspect I investigate the material dimension of conflicts that has yet to be brought to light. It is true that the majority of clashes were violent, but to concentrate only on violence as a constitutive element of conflicts risks creating a tautological circuit: people use violence because they are violent. Reading between the lines of many criminal court writings, one can understand that in reality the use of violence arose from a strong motive: a serried struggle for the possession of goods and properties, of money (loans), for the payment of wages or with respect to contractual relations, all determining components in human life. In short, my aim is to take a series of trials and read them according to an internal logic defined by procedure that translates conflicts into regulated claims over the objects and goods contested by the citizens of Bologna.

Reconstructions of the Fact and Identities of the Persons

As shown above, procedure permitted not only the intervention of more actors, but also a confrontation between more versions of the fact, or rather, between diverse versions of the conflict. The phases of definitions of the fact/crime that procedure provided corresponded, in fact, to the different images reflected in a broader clash. In the accusation, the choice was determined by the selection of the elements that were useful for indicating a crime: selected was the element of the fact that was penologically significant—a physical or verbal aggression, the removal of an object. In the positiones (phrases that reconstructed the clash into brief sequences), the spectrum of the conflict was
enlarged: the fact was reinserted into the weave of the relations between the two persons and very frequently, in this phase, a substantial movement of the center of interest of the conflict occurred—from the crime to the person. In the *intentiones*, instead, the elements that one party wanted to prove (called *capitula*) rewrote the fact into simple phrases, often very remote from the fact presented in the accusation. In this phase, in fact, the shift of focus of the trial, from the crime to the person who had committed it, had by now taken place. The accuser concentrated further on the negative characteristics of the putative criminal. But the contrary also occurred: the defense of the accused could emphasize the negative aspects of the accuser rather than the details of the crime imputed to him or her. Finally, the chapters of the *intentiones* became direct questions (*quaestiones*) to be submitted to the witnesses of the counter-party in a true cross-examination. It clearly comprised questions prepared with the help of *procuratores*, animated by the explicit wish to render it difficult for the witnesses to prove a fact without uncertainties; but it remained, or rather it consolidated, attention further toward the person rather than toward the facts.

The possibility of reformulating the true object of the conflict is therefore one of the most important elements for understanding the actual function of the trial and it is "Roman" procedure itself that permits it. Nevertheless, it is necessary to utilize an accessory documentation relatively infrequently present in the trial records and rarely studied by historians: above all the *intentiones* and the lists of questions (*quaestiones*) to be asked of the witnesses, which have survived as unbound folios sometimes attached to the *libri accusationum* or inserted in the registers of testimony in the series of *inquisitiones*. Only by broadening (and not by reducing) the documentary spectrum will we succeed in reconstructing the logic of the trial. This logic meant that the parties often found themselves in combat over their own identities and above all over their own good (or bad) *fama* according to the social models circulating widely in the medieval city. We shall see how many and which models were taken up and readapted to particular cases by the parties and how this adherence influenced the trial.

In the first case, a certain Mattiolo Bonacatti accuses Donna Margherita, wife of Francesco of Prato, of having insulted him before the judge with "bad words": "You are the son of a usurer and thief and if I were a man instead of the woman who I am, I would strike you with a knife in your chest." Margherita, however, was a foreign woman, a vulnerable status in a city that had drawn many immigrants from the *contado* without yet integrating them into a stable network of cognizance. Mattiolo Bonacatti in his *intentiones* (which have not survived) probably insinuated that Margherita was a prostitute and owner of a bordello. The focus of the trial thus moved completely from the initial fact (an offense of *verba injuriosa* before the judge), to a seemingly accessory issue, that is, the trustworthiness of the woman. Mar-
gherita had, in fact, to defend herself from a second defamatory accusation (prostitution), and in the intentiones of her defense had to have recourse to models of the good woman of family in order to save and establish her own personal identity:

[Domina Margherita] intends to prove in her defense that said Francesco holds Margherita as his wife and she holds him as her husband;

*Item* that said Margherita has three children by said Francesco;

*Item* that she is a person of good reputation and opinion and the same is true of Francesco;

*Item* that she and her husband live in that house;

*Item* that it is not true that she maintains prostitutes and other infamous persons.

In the next phase of the trial, the same elements become questions to be put to the witnesses, naturally with the intention of having them deny the accusation of prostitution. Thus, the witnesses presented by Mattiolo are asked: How did they know that Margherita was a prostitute, where was the house in which she lived located, in which part of the house had they seen prostitutes, what were their names, when had they seen them, and so on, and so on.

There is an analogous attention to the identity and reputation of the parties involved in a trial from 1286, a trial brought by Giacomo Avvocati against Biondo di Giacomo di Torre concerning the possession of a church in the Modenese territory.\(^{21}\) The accuser maintains that Biondo did not hold the church by a just title because he was a layman; the logic of the intentiones of both parties revolves around the lay and clerical status of Biondo, as often happened in communal tribunals. The accusation, therefore, had to construct an image of Biondo as a layman; to prove that Biondo had been walking about as a layman for more than two years; that he wore a layman’s clothes for more than two years; that he went every day to a tavern as did other laymen and with other laymen; that he had always resided at Bologna and that he publicly practiced the craft of a goldsmith as a layman.

On his part, Biondo had to defend himself from this portrayal of him as a layman and in his intentiones he sought to prove that he was really a cleric and conversus of the church of San Nazario. In his questions for the witnesses the encounter centered on what a cleric could or could not do in order not to be confused with a layman; a pure sequence of models of behavior, completely untied from the object of the contest—namely, the possession of the church of San Nazario. To the witnesses of his opponent Biondo asked: what have you seen that leads you to say that Biondo has the gait of a layman; where have you seen him walk like a layman, with whom and how many times; how does a layman walk and how does a conversus; and did not conversi walk with laymen and have conversations with them. Naturally,
there were always questions relative to the fact, but the significance of the fact depended upon the condition of the person who committed it.\textsuperscript{22}

The Material Basis of Conflicts: Lawsuits and Contracts

The importance of establishing personal conditions according to current social models depended certainly on the natural tendency of the persons in conflict to discredit their adversaries or to present themselves as a \textit{bonus civis}; but it is explained also by the necessity of representing oneself in tribunal as a trustworthy person who advances a claim based on law or on an asset that belongs to him or her legitimately. Although the court was dedicated to penal crimes (\textit{de maleficitis}), many conflicts were also tied to the possession of goods and properties, to money given in loan, to work to be remunerated. In other words, both the spirit of revenge (\textit{vendetta}) which had given origin to the trial, as well as the surplus of violence generated by the trial (called \textit{odium litis} by medieval jurists), did not annul motives that were concrete, material, and sometimes openly economic and often at the origin of the lawsuit.\textsuperscript{23} Numerous signs present in various phases of the trial enable one to trace the violent acts of the clash back to a context of economic and work-related relationships which were often formalized with a contract.

The long lawsuit between Margherita and Mattiolo Bonacatti derived from an initial denunciation made by Mattiolo who had accused the woman of having rebuked him as the son of a usurer and a thief and of not being able to make a profit, which had probably occurred in a civil court in which the two had had a case for debts. The accusation of Giacomino Avvocati against Biondo, centered on his allegedly lay status, stemmed from contested rights over a church in the Modenese territory. In other cases as well the material dimension or aspects relating to the economic relations between persons emerge between the lines. In a series of questions to be given to the witnesses in a lawsuit brought forward by Pietro Struccha against two brothers, Martino and Benedetto, sons of Pietro Roagnani, accused of assault, the \textit{procurator} of the two accused, after many other questions, referred to a lawsuit concerning unpaid work:

\textit{Item}: we affirm that if Martino and Benedetto had accused said Pietro Strunca because of the loss of earnings that Pietro was usually to collect for his work, it is asked how they come to know of it, where they heard this idea circulate, who had put it in circulation and from where it had originated.\textsuperscript{24}

Thus, a broader examination of the procedural acts permits us to have a more refined picture of the function of the trial and of urban conflictuality other than that revealed by a simple reading of the initial acts of the accusation. As stated at the beginning of this chapter, accusatory procedure was not artificial and remote from reality, but allowed, at least in two aspects, the reinsertion
of data from the real conflict that had provoked the trial. Furthermore, the processual encounter permitted and in certain cases sought to redefine the personal condition of the litigants, initiating a complex dialectical clash concerning their *fama*. Finally, in better documented cases there emerges a substratum of economic relations that already had been “contractualized” at the origin of the often violent disputes (loans, work contracts, tithes). One also finds a disequilibrium between the persons who attacked and better used the contracts and others, often accused, who apparently were less strong in defending their rights.

The trial functioned therefore also as an arena of clashes between segments of the population with different levels of access to resources, and also to the civic resources necessary to defend their rights in an urban context of rapid development. It is possible, in other words, that those who turned to the tribunals were that part of the population no longer subjugated by the violent emotions of hatred, but rather those who were involved in a network of economic and contractual relations of goods and properties and work services that justified a defense through a process open but costly in terms of time and money. The accusatory trial was based on the *voluntas* of the parties to prosecute the trial and their capacity to rely on a network of intermediaries who rendered them credible and recognizable before the court, permitting them in this sense to conduct a regulated encounter.

THE INQUISITORIAL SPHERE OF ACTION

Of course accusation was not the only system for administering justice in the city. Around the 1230s and 1240s one finds the earliest and rare evidence in the Italian communes of trials *ex officio* or *per inquisitionem*—trials initiated by the civic authority (the podesta) after becoming aware of a collective *rumor* relative to a crime. Even if the guilty person were not known, the simple existence of a crime pushed the public authority to intervene because “crimes should not remain unpunished.” This initial formula of the inquisitorial trial immediately reveals its origin—the ecclesiastical *inquisitio* formalized by Innocent III in canon 8 of the Fourth Lateran Council of 1215.\(^5\)

Origin and Models

A literal renewal of the canonical text characterizes the first lay manual that inserted the inquisition firmly among the procedures at the disposal of the communal tribunals: the *Tractatus de maleficis* of Albertus Gandinus, a judge and jurist of importance, who served many times in Bologna, Perugia, and other large Italian communes.\(^6\) Actually, Gandinus was not able to do otherwise than adopt the text of the canon *Qualiter et quando* because he did not have other models available. Only the ecclesiastical *ex officio* trial of-
ferred him a procedural plan and a solid ideological justification: public authority had to concern itself with crimes and hence was able (or had to) to do so without an accusation by a party because punishment was in the interest of that authority. Moreover, in the decretal *Licet heli* (which is found in canon 8), *fama publica* took the place of accusation, because it rendered public a scandal provoked by the behavior of a person.

Nevertheless, we must take account of two elements. The first is that this *inquisitio* should not be confused with that in use against heretics. The Innocentian model was born as a "discreet" (or in part secret) procedure against crimes committed by members of the clergy. The pope wanted to achieve a twofold purpose: to verify the consistency of the *rumores* against a given person (a secret inquest before an actual trial) and, if the *fama* were well-founded, to open a formal *inquisitio* against the person, which preserved, at that point, the right of the defense to a proper trial. In short, the pope wanted a filter for selecting which accusations were with foundation and above all which should be followed by a trial and which were better to drop.

Against heretics the trial model was distinctly more severe, because its point of departure was the conviction that to be a heretic was *per se* a crime that allowed only abjuration or punishment; the search for the truth, in other words, coincided with the extirpation of the truth from the body of the guilty person. The most diffused technique for doing so was, as is well-known, violent interrogation and the administration of torture during the proceedings. In the late Duecento, when Gandinus wrote, this model was by then codified into numerous treaties and legitimated by pontifical decretals which, among others, had to be inserted within communal statutes.\(^\text{27}\) The connection between ecclesiastical and lay models was therefore direct, but the transfer to lay tribunals of techniques so diverse from the procedures in use in ordinary cases (accusatory trials) could not be direct and painless.

Even Gandinus obviously struggled when he had to justify the superiority of the inquisitorial over the accusatorial trial. To be sure, only inquisition permitted the discovery and punishment of crimes, but it was equally difficult for communal governments to accept the total subordination to the judge of the will of the accuser: to constrain the principle that a trial could be initiated only by the will of the injured party was not something easy to accept for everyone. There was another problem, often neglected by historians of criminal justice: inquisitorial power gave, or was supposed to end by giving, immense power to the judge and the podestà, to two foreign magistrates, from outside the city—an arbitrary power that the governing citizens were not always willing to leave completely in the hands of foreign functionaries. In sum, the theoretical apparatus of Gandinus, adapted in good measure from the Innocentian model and tainted with anti-heretical methods in the chapters on torture, met considerable difficulties once applied in a great
commune such as Bologna. Next I will review some aspects of this complex process of the adaptation of *ex officio* procedures.

**The Spheres of *ex officio* Procedure at Bologna**

From a technical point of view, it is not correct to speak of a single inquisitorial procedure counterposed to the accusatorial. The confrontation-clash between accusatorial and inquisitorial procedures, taken up by many historians, does not take into account a fact that only research into the registers of a great archive permits us to see: the existence not of one, but of multiple procedures of an inquisitorial type, a group of proceedings at the basis of practices in the communal cities. In this sense, the communes already used *inquisito* before adapting ecclesiastical models, although only in the central decades of the Duecento did they establish a model in use in ordinary criminal justice. But also in this sector, it was never a question of a single model. At Bologna, for example, there existed at least three typologies of trials *ex officio*.

First, collective inquests (called *inquisiciones generales*), in which all the *ministrales* of the urban parishes were interrogated from a list of predetermined crimes: it was a form of collective inquest similar, in certain aspects, to that of the inquisitors of heretical depravity in the villages that they visited periodically (and also similar to episcopal inquests). Despite the great deployment of money and men, from these inquisitions almost no crimes were uncovered; their efficacy was very minimal, but evidently the rituality of the public reading of the list of crimes and the filing past of the *ministrales* who responded out loud before the judge of the podestà were elements of public theater more important than the actual results obtained; they reaffirmed that the commune had responsibility for periodically “purifying” the city of the more serious crimes (heresy, homicide, prostitution, gambling).

A second type of inquisition was that relative to crimes committed in the *contado*, called the *malefici novi*. Denunciations were presented by officials of the *contado* for crimes committed in various villages in the city’s territories, possibly a sign that control by the city was penetrating more deeply into the *contado*, and perhaps intentionally so on the part of those governing, but also in this case the results were relatively modest. To be sure, crimes were brought to light, but almost never was the guilty person identified, and when in rare cases, the name of a possible criminal was found, such persons never presented themselves in court and were placed under a ban and condemned in contumacy. Despite the low level of punishment, these inquisitions served, however, to gather denunciations of extra-urban crimes, demonstrating to everyone the existence of an authority responsible for receiving notifications of crimes. Again, rather than to punitive efficacy, it is necessary to pay
attention to the symbolic function of confirming the presence of a civic jurisdictional system.

The third type of trial was a true inquisition ex officio for a crime committed in the city for which it was necessary to discover the culprit. In appearance, this trial followed closely the Innocentian model: a vox reached the podestà, often already with indication of who the guilty person was; he or she was cited three times and if they presented themselves at court the trial continued according to a path in part similar to that for an accusation (promised surety, witnesses in favor); if instead the imputed did not present themselves after three citations, they were placed in ban and, if the crime were one with effusion of blood, a mortal ban, which meant condemnation to death in case they were captured.

The outline of actions was thus a simple one, but hid a more complex one. As I have noted elsewhere, inquisitorial procedure could change according to who the protagonists were. Some procedural mechanisms functioned only under certain conditions: if the imputed presented themselves with fideissorès, for example, and there were no negative elements that prejudged in an obvious manner their credibility, in general they were not imprisoned and were granted a suitable period for their defense. Testimony was gathered in the same way as in accusatorial trials, with cross-examination of the witnesses. To be sure, the procedural picture remained more severe, the rules more constricted, but this did not cancel certain guarantees that integrated citizens enjoyed.

This pattern is found in many of the trials conducted by Albertus Gandinus, discussed above, who was a judge at Bologna in 1289 and again in 1294. Gandinus was a severe judge; in 1289 he had already written the first draft of his Tractatus and in Perugia had put into practice the inquisitorial procedure that he had so praised. At Bologna he applied it with particular scrupulousness against delinquentes who rendered the city insecure. He had prostitutes arrested and expelled from the city if they were found within 30 braccia of the cathedral, as called for in the statutes (after having ordered the notaries to measure the distance with the pertica, a special pole of measurement). Having had one of these women tortured, he then had her hair shaved. He showed himself to be inflexible with those who committed theft in shops, an act that constituted a direct threat to the class of mercantile shop owners to whom he promised law and order. He was also very skillful in discovering plots to use false accusation to strike an adversary, a crime that he detested and which he punished with severity. When, however, he found himself facing someone of good fama and testimony in the person’s favor, even if they seemed suspect, he was unable to do otherwise than yield to the evidence and free the presumed criminals. On 11 May 1289 Gandinus received a notification against a certain Tonsolo and Nicolaao who were accused of having committed a theft in a house in the rural commune of Castel Britoni.
The two imputed presented themselves on 16 May, in time to avoid being banned, and promised to appear in court and provided two fideissusores. They were not imprisoned. Everything depended on the testimony of witnesses: many confirmed that there existed a vox in the village that these two men had committed the theft, but they also attested to the good personal fama of the two imputed. The distinction between fama of the fact (the theft) and fama of the criminal (good) is extremely clear and ultimately won the imputed victory. The next trial shows instead how the inquest could depart immediately from the fama of the person. On 16 May Gandinus opened a proceeding against Pagnone, son of Aleotto the tavern keeper, who was accused of having knocked off the hat and struck a certain Filippo. The formulary initiating the trial is explicit concerning the object to be investigated and it is the fama of the imputed:

Item June 1 the said judge intends to make an inquiry against said Pagnone who is said to be a public and famous thief and also a man of bad fama and condition and infamous for other various and diverse bad deeds.

In other words a condition was the object of the trial, not a crime. When Pagnone presented himself he was immediately arrested and taken to the lower chamber, as usually happened in such cases. On 22 May, however, he was freed, having provided a surety, a sign that he had succeeded in finding guarantors and thereby avoided further imprisonment. Acquittal at this point was probable. More frequent, however, were the cases that were never truly tried because of the absence of the imputed; to be sure, the imputed was placed under ban as a confessed criminal and anyone could kill him or her, but the inquisitorial machinery had not been truly put into operation.

It is difficult to extend these data and compile statistics over time; the data change from year to year, without therefore yielding a true evolution of the forms of justice. Much depended on the judge and the quantity of crimes committed between persons able to present themselves and sustain a trial. Constant, however, remained the “global” dimension of the trials: an average number of approximately 200 cases per year. It could happen that in some years this threshold was passed, but not by much. There were structural limitations that conditioned the activities of the judges ad maleficia. In the first place their numbers: two judges and four notaries who were personally responsible for carrying out all the procedural steps, such as citing the imputed, interrogating them, transcribing the acts, finding and interrogating witnesses, and finally determining the sentence. Even an indefatigable worker like Gandinus could not complete more than 100 cases per semester. It is true that in the following years the number of berroerii (proto-urban police) was increased, but the investigative apparatus remained limited to two judges and a few notaries. Even the quantitative data of the Trecento, while indicat-
ing a certain superiority in the number of cases *ex officio* over those accusatorial, do not seem to present a great discontinuity on average of this range.\textsuperscript{36}

In my opinion, however, this is not the principal issue. Of greater importance for portraying the function of *ex officio* procedures is the flexibility of the pathways of public justice. Even inquisitorial procedure permitted, as noted above, a plurality of possible effects dependent on the power relations and conditions of the persons involved. In particular, the inquisitorial module can be divided into three possible types of trial: first, an abbreviated trial (the anti-heretical module) of persons already declared suspect and subjected to torture and then, in case of confession, to corporal punishment or a capital sentence. Second, a series of trials never truly initiated that were terminated immediately with banning of the imputed who had never presented himself or herself. Third, a complete trial, with presentation of the imputed, a defense, and cross-examination of the witnesses, whose outcome was not at all foreseen or predetermined.

These three forms reflect the three diverse functions of public justice: first, to eliminate immediately the rejected, the dangerous persons, guilty only of the life they led and their appearance; second, to put to flight those who were unable to sustain a trial and who accepted living under a ban; and third to grant a trial, relatively impartial, to suspect persons who, however, could post sureties and prove their good *fama*. In these last cases, testimony assumed the opposite function it had served in the attacks on the imputed: in the defense they served, in the first place, to prove the good *fama* of the imputed person, showing that he or she could not have (or probably was not likely to have) committed that crime. In this interwoven verification (of the fact and of the person who had committed it), the procedural picture was more severe than in accusations. For example, torture was foreseen and sometimes applied in doubtful cases, although this happened in only a few cases each year. But apart from the quantitative problem, what emerges is that every case had its own history: a pathway tied to the gravity of the crime, to the personality of the individual, to the office that decided if torture was to be applied. Torture was a known instrument, but applied with discretion, adapted to circumstances, and was not automatic.

At the center of the diverse types of inquisition existed a sector where, however, torture was always applied, with regularity—in the case of clearly suspicious persons or banned persons who were captured and condemned to death. Some registers of capital condemnations have survived, with confessions of the guilty who had confessed under torture not only to a particular crime, but to an entire life of crime, confirming the totally antisocial and irredeemable nature of such condemned persons.\textsuperscript{37} The long list of admissions made before the judges went beyond the effects of torture: it is obvious that the persons confessed to many more crimes than those which the judges had knowledge of or expected to hear. These sentences, all in all, are limited
cases that confirm the necessity of punishment and demonstrate symbolically the capacity of the judicial system to eliminate the worst malefactors through their self-purgation.

It was a function that Albertus Gandinus, in his *Tractatus de maleficis*, had explicitly assigned to the judge, taking up the maxim of Roman law according to which the *pretor* (magistrate) had to cleanse the city of *delinquentes*. But above all Gandinus had put in the hands of the judges the most powerful judicial tool at his disposal: the capacity to make *fama*—even without direct witnesses of the fact—valid evidence for imposing torture, thanks to an exquisitely ideological rationale: “he who has sinned in the past may also do so in the future.” With their reprehensible behavior nailed to their inherently evil nature, the “usual suspects” had to be periodically eliminated from the city without a trial or—with a very reduced probatory process, in order to mark the distance from normal trials regulated by norms written for *cives*.

It is difficult to determine whether or not to label this system of justice as efficacious. If efficacy is based on the number of condemnations, then the response, if not negative, is at least in doubt. In the course of the Duecento and even in the century’s final years, the number of sentences and trials carried to term was not very high; those in which proofs were found during the proceedings (hence excluding trials that ended in bans) lowers the figure further. It does not seem that the figures from samples studied for the Trecento radically modify this picture. But above all one should address the underlying premise of this issue: to measure the efficacy of justice from the sentences assumes that the entire judicial system was governed by judges and the public apparatus, but that was not the case.

As noted above, the trials, whether by accusation or inquisition, depended in the first place on the presence of the accused/imputed and on their capacity to meet the confrontation, that is, the challenge of *fama* and the amount of help needed from one’s network of social relations; and in the second place on the possible actions of the (foreign) judges who had broad discretionary powers, but nevertheless were bound by certain limitations. For example, the intervention of jurists and *procuratores*, which carved out ample space for modifying the trial, before and after the sentencing; or the provisions of the political authorities (the *consiglio del popolo* or the *anzianti*) who could—and toward the end of the Duecento did do so often—issue new norms that supplemented or modified the *arbitrium* (discretionary power) of the podestà, or order special inquisitions, suspend admonitions, and direct public justice toward new political objectives. Two factors must now be considered that would at first seem exogenous to the judicial system.
EXTERNAL CONDITIONS:
THE POLITICAL ELITE AND THE TRIAL

The broad participation of procuratores in trials has already indicated how important and vital the role of juridical personnel was in the functioning of public justice. If, however, the entire arc of the procedural iter (accusatory and inquisitorial) is considered, one finds that the typologies of interference and manipulation of the trial were even more numerous. The procuratores (who in general were notaries or iudices) were able to write “exceptions” (objections) on behalf of those they represented and, if these were accepted, the judge of the podestà asked for a consilium sapientis from a jurist or doctor legum.

Jurists, Advocates, and the Consilium

The system of exceptions-consilia, as has been amply demonstrated, represents one of the most incisive forms of interference by local jurists in the administration of justice entrusted to foreign magistrates. This dialectic between foreign and citizen jurists is to be emphasized because in effect the formal monopoly of penal justice in the hands of foreign magistrates generated continuous tensions with the local elites. At Bologna, the consilium was a means of bringing, at least in part, penal justice back under the control of the jurists (themselves part of the Bolognese Guelf aristocracy), at least while it was permitted to the jurists to intervene by means of a consilium. To be sure, the years between 1256 and approximately the beginning of the Trecento comprised a golden age for processual consultations. Already in the 1250s, in fact, an aggressive nucleus, formed by the greatest Bolognese jurists for giving consilia, was active in legitimizing the issuance and management of bans for the responsible administrative office of the podestà. Odofredo, Rolandino de Romanzi, and others wrote numerous consilia of this type, almost always choosing annulment of the bans in which they found lacking certain formal normative requirements, above all at the point of citation (such as the absence of witnesses of the neighborhood at the moment of the reading of the ban). The topic remained a sensitive one in subsequent years: the consilia for annulment of bans were numerous throughout the Duecento. To be sure, the protagonists changed: in the 1280s the generation of the “moderns” came into the limelight. These were men who were already authors of famous quaestiones relative to the trial and active supporters of the rights to a defense of citizens involved in trials. Particularly rich in anecdotes on these topics is the Tractatus of Gandinus, who, when he served as a judge in Bologna, clashed many times with prestigious local jurists over arguments of the defense. The reasons at the bottom of the discord were for Gandinus obvious: multiplying the ranks of
representatives with procuratores and advocates distanced the judge from
direct contact with the imputed and therefore hindered the possibility of
finding the truth (that is to say, of obtaining a confession).\textsuperscript{45} Furthermore,
Gandinus shielded himself behind a prohibition imposed by Roman law of
representing a person in criminal trials, opening with jurists (above all those
who were Bolognese) a conflict that was not merely technical. In the aca-
demic disputes (quaestiones), and above all in the consilia, the Bolognese
jurists attacked this prohibition from every angle. Odofredo wrote that the
procuratores were able to intervene or present exceptions and requests for
delays in the terms assigned. He, along with Guido da Suzara “et ali doc-
tores” also maintained that a person imprisoned for homicide could name a
procurator for presentation of witnesses for his or her defense.\textsuperscript{46} In another
questio de facto que quotidie occursit it was asked if, before being tortured, a
culprit could ask to make a defense; Lambertino Ramponi, doctor legum of
the highest level at Bologna, had given a negative response, in the form of a
consilium, to Gandinus himself: “On this issue at Bologna, I, Lambertino
Ramponi, counseled, that according to the law, [a period to make a] defense
was to be granted before [the administration of torture].”\textsuperscript{47} Other thorny
cases follow in the Tractatus, drawn from Gandinus’s actual experiences. If
the culprit wanted to appoint a procurator in his absence, how ought he to
conduct himself? Here also a solution is given by means of a consilium: Dino
del Mugello thought that it was possible to appoint a procurator, and af-
firmed this in a legal consultation requested by the podestà of Reggio Emilia,
a sign that the case was an urgent one and needed a definitive learned opinion
(evidence in itself that Bologna was the capital of consultations made at a
distance).\textsuperscript{48}

The fact is that the Bolognese jurists found in the issue of processual
representation a justification for their doctrinal and professional activity. The
possibility of intervention by a defender, just like that of a consultant in cases
of doubt, needed broad guarantees in theory. Thus, the quaestiones of the
masters amply acknowledge the elementary necessity of a pettifogging prac-
tice that had a deep-seated ideological foundation—the defense of the pro-
cessional ordo.\textsuperscript{49} This can be seen clearly in another quaestio taken up by
Gandinus, relative to the possibility of blocking a trial in case the victim of
the crime were a person under ban, and therefore not protected by communal
law. It was asked, in particular, whether or not the request for suspension of
the trial presented by the procurator of the accused blocked the litis contesta-
tio. Lambertino Ramponi and Iacopo di Arena were of a negative opinion:
according to them the trial had to continue because a peremptory exception
could not block the iter.\textsuperscript{50} But the stronger argument that shines through the
allegations of Lambertino is of a more general nature: he, like other doctores,
wanted to apply the guarantees of the civil trial to the criminal trial.\textsuperscript{51} There-
fore it was imperative to respect the provision of the *ordo iudiciarius* that it was not possible to cancel the entire trial.\textsuperscript{52}

Other *consilia* found in the registers of accusations and inquisitions fully confirm this datum with respect to procedure and hence to the formality of the acts. The *consilia* insist often on the correctness of the documents of the accuser, on the presence of the *procurator* (always confirmed), or the suitability of the guarantees presented by the accuser.\textsuperscript{53} This can be seen even better in the political trials against the Lambertazzi carried out by the *capitano del popolo*.\textsuperscript{54} These cases, often initiated by a party or by an anonymous denunciation, preserve in large measure the characteristics of an accusatorial trial, but in some cases give access to procedural breaches that are far removed from the *ordo*. Concerning these topics the jurists intervened decisively, reaffirming not only respect for the procedural phases on a formal level, but also the correspondence to the *ordo* of the collection of proofs. Twice Lambertino Ramponi centered his *consilia* on the correct modes of gathering witnesses even in political trials, abrogating two trials about which there were doubts.\textsuperscript{55} To this topic, in the same year, also turned Tommaso di Guidoni Ubaldini, when he not only admitted the possibility that two *confiniti* (Lambertazzi who were confined to specific territories) could select a defender (again in response to a problem raised by Gandinus), but established as a general principle that also in political cases it was “more fair” to admit a defender than to condemn a person who was absent and “undefended.”

This political dimension is of special interest: a method of control existed on the merits of political trials exercised by a class of jurists who, on the one hand, collaborated with the political authorities (the Guelf regime), but, on the other hand, limited or sought to limit its most evident excesses. Emblematic of this two-faced function is the figure of Pace de Pacibus. He was a *doctor legum* (author of numerous *quaesitiones*) who had led principal moments in the transformation of Bolognese politics, from the new *estimo* of 1281 (which remained in vigor with some additions to 1296), to the commission on the properties of those banned after the expulsions of the Lambertazzi of 1274 and 1282. Pace was ultra-Guelph in family and conviction; he supported the more radical regimes up to the beginning of the Trecento and succeeded in controlling *de facto* the trials on the assignment of the properties of the banned for the entire twenty years of that activity, furnishing numerous *consilia* to the judges of the *capitano del popolo*; perhaps also rendering almost obligatory the recourse to a *sapiens* (legal consultant) in trials relative to the patrimonial rights of citizens.\textsuperscript{54} This use of the *consilium* is a characteristic often undervalued by the historians of Bologna, but if in penal cases the intervention of consultants was irregular, in trials that had property possession as their objective the *consilium* is always present—when property ownership and patrimonial assets of citizens were at play, control
passed directly into the hands of local jurists. In these consilia the defense of the property rights of the families of banned persons always prevailed. It was they, in fact, who often presented complaints against the awards made by the office that managed the properties of rebels. The jurists, if they verified that a certain property ought not to have been included in the list of properties given out in contract as a penalty for rebellion, arranged in the consilium for the restitution of that property to its legitimate owner. Naturally, in this as in other cases mentioned earlier, it was not only a question of an abstract defense of justice and of the law against abuses; rather it was a political choice by a professional class that was “inside” the regime, yet was tied to its own more influential leaders and to more contested decisions.58

The Communal Regimes and Justice: Experiments and Attempts of Control

Public justice moved within a complex political system, but one that was fragile in its load-bearing political structures. The communal regime was supported, in fact, by a delicate balance of institutions: podestà and foreign judges held a monopoly over criminal cases; an external procedure carried out and defended by a class of experts, with relative equality of citizens in front of the tribunal. But these parameters were not stable; they were subjected to a profound and prolonged restructuring from the early years of the Trecento. It is the achievement of Sarah Blanshe to have brought to light the nature of these changes and the tight interrelationship between “politics” and “justice”; to have shown the gradual ascent into communal institutions of a popolare oligarchy of great merchants and bankers who entered into all the societates and sought to condition the actions of the popolo government. It was a closure that made itself felt especially on the level, quite sensitive, of political justice—both within the trials against political enemies, identified each time with ad hoc provisions, and with a series of normative interventions that had the double effect, on the one hand, of protecting popolani from the justice of foreign magistrates, and on the other hand, of making harsher the sanctions against political enemies. A rapid succession of expulsions and readmissions took place between 1303 and 1306, when two different factions of Guelfs alternated in control of the government. In both moments, the victors ordered new inquests against their enemies, labeled the opposition families as “Ghibellines” or “magnates” (even if they were Guelfs and popolani) and granted to their own members special immunities from the ordinary tribunals. It was a chain-effect mechanism (penal construction of the enemy-ban-privilege) that could not help but have disruptive effects on ordinary justice.

This can be seen with greater clarity between 1310 and 1315, when the signs of a crisis in the system of ordinary public justice multiplied. On the
political level accusations against enemy nobles and magnates increased; in fact, in the accusation registers, political trials appear more frequently, but in a context of the drastic reduction of the volume of accusations; from 800–1,000 each semester to only a few hundred per year.\(^5^9\) At the same time, the instrument of privilege, first used with generosity but on a limited group of persons, was applied en masse: in 1310 the consiglio del popolo ordered a census of the newly privileged which amounted to the incredible number of more than 5,000 persons, who were virtually removed from the jurisdiction of the podestà since they could not be tried for most crimes.\(^6^0\) Even the few trials that were initiated often ended prematurely, due to an increase in the number of withdrawals of the accusation on the part of accusers—a practice earlier very limited but by now greatly expanded, perhaps because of the increasing role of informal accords taken outside of the official trial.

All of this did not result, however, in an increase in the number of inquisitorial trials, or did so only in part. To be sure, in proportion to accusations, the ex officio trials did increase (with respect to the ratio of the 1280s), but in absolute terms it does not seem that inquisitions increased greatly with respect to preceding years.\(^6^1\) If anything, trials did become more complex, longer, and were often tied to political exigencies of the moment, such as inquests into conspiracies and political crimes. Nevertheless, the significant datum from this restructuring of the judicial system seems to me to lie elsewhere, and again it has been brought into relief by the research of Sarah Blasheki: more than the substitution of one procedural method by another (inquisition over accusation), one finds a multiplication of diverse judicial instruments, not coordinated, but which added up to a tenacious attempt to take control of the requests for justice by the institutional bodies of the popolo (the consiglio del popolo and the anziani). Thus, the appearance of the querela, an original instrument for seeking justice put forward by an individual to the consiglio del popolo, in which a person could even be denounced for a given crime.\(^6^2\) Development of the querela took place particularly during the 1320s, which together with secret denunciations became a potent weapon in the hands of more radical popolani.

Nevertheless, this increase in exceptional instruments did not coincide with construction of a strong and centralized system of justice. Rather, a phase of continuous political and institutional experimentation opened up that also led to the “suspension” of the commune under the regime of Bertrand du Pouget, papal legate and nephew of John XXII. It was during his governance that the supplication presented to the legate, “merciful father” of Bologna, emerged as a new instrument of judicial action. The practice received further development under the regime of Taddeo Pepoli (1337–47), when the practice of the supplication (and of the pardon, if it were granted), not only was superimposed on the ordinary judicial system, penal and civil, constituting a new jurisdictional level, supervised by a vicar. The signorial
tribunal, as a result of the pardon, could re-examine or annul trials conducted by the ordinary civic courts. It was a partial execution of the design, for long unfulfilled, of creating a judicial system entirely controlled by political power. To be sure, trials continued to be conducted, to varying degrees, throughout the century, but the social-cultural function of the public trial that had unfolded in the mid-Duecento as the great filter of interpersonal conflictuality involving thousands of citizens of diverse status, no longer rested on the solid ground vital for its continued development.

NOTES

1. Coss, "Introduction."
3. Fowler Magerl, "Ordo judiciarius vel ordo iudiciarius." The first manual, an anonymous *De Actionum varietae*, goes back to the end of the eleventh century or the beginning of the twelfth; the *Quodiamorum desideris* dates from 1135, then passes to the more mature *Cum esse Mantue* of Piacentinus, from 1160. On the models of accusation see Cortese, *Il rinascimento giuridico*.
6. Bellomo, Quaestiones in iure civilis disputate; Vallerani, "Il diritto in questione."
7. Milan, "Prime note su disciplina."
9. Vallerani, "Giustizia e documentazione."
10. "Cui assignatus est terminus V dierum prosequi diictum accusam, et trium dierum si non prosequatur, ad suam defensionem."
12. There were at least four types of sureties in trials: 1) the guarantee of the accuser after the oath of veritate for 20 soldi; 2) the guarantee of the accused when they presented themselves—at a rate significantly higher, depending on the severity of the crime—which was guaranteed by at least two persons, but the number often rose to four or six *fideiustores*; 3) the guarantee of the accuser when promising not to present false witnesses, usually comprising two persons; 4) the guarantee of the witnesses before their depositions, from two to four persons.
15. For the data, see Vallerani, *Medieval Public Justice*, 135–36.
17. See the tables in Vallerani, *Medieval Public Justice*, 157 and 160; Dinges, "Usi della giustizia."
19. For the early medieval period this reading in terms of the history of the emotions of justice has brought forward a drastic redimensioning of the significance of the processual sources. For example, in his analysis of the processual documentation of Marseilles, Small, "Aspects of Procedural Documentation," 150–51, synthesizes well this historiographical interpretation, today undoubtedly prevalent in English-language scholarship: "Like the dust kicked up by a vigorous fist-fight, the writing was no more than a by-product of the emotional gambit."
20. ASB, Carte di Corredo (1286), unbound folio.
21. ASB, Carte di Corredo (1286), unbound folio.
22. In general, see Vallerani, "Justice publique."
23. It may seem banal to note this, but it is important to insist upon a fundamental interpretive datum: violence is not a feeling that stands alone, but depends on the situations of real competition for material and symbolic resources. For a criticism of the parameter of violence as an end (and not as a means) of the judicial system, see Menzinger and Vallerani, "Giuristi e città."
24. ASB, Carte di Corredo (1286), unbound folio: "Item si dixerunt quod fama est quod predicti Martinus et Benedictus accusaverunt dictum Petrum Struncia occasione ut admitteret lucr a quo solitus erat percepere occasione sui laborerii, queratur quoniam si(s)cum est ut et ubi est dicta fama et per quod et unde habuit horribilis dicta fama."
25. Fraher, "The Theoretical Justification." For the early diffusion of the canon, see Fraher, "Tancred’s ‘Summula’"; Kery, "Inquisitio-denunciatio-exceptio"; on precedents see Trasen, "Der Inquisitionprozess."
27. Padovani, "L’inquisizione del podestà."
28. Striccoli, "‘Vidi communiter observavi.’"
29. See for a more complete portrayal of the forms of inquest in the medieval world, Gauvard, L’enquête.
30. Vallerani, Medieval Public Justice, 106–09.
31. ASB, Inquisitiones, Mazzo 16, Register 2, fol. 25r, 1289: there are more trials that arose from the same inquest made by the notary charged with measuring the distance of the piazza. On 18 April Gandinus personally ordered the custodian of the prison to tonsure and beat Flora, one of the women arrested.
32. The trial, from 1289, is transcribed in Kantorowicz, Albertus Gandinus, 1:204–06. A similar case is found in the trial against Gracianus di Camugnano, ASB, Inquisitiones, Mazzo 16, Register 1, fol. 42v, who had been accused of homicide and had been banned in earlier years. He was captured 24 May 1289 and after his confession was condemned to death. The same happened to Balzano di Bindo di Sienna, accused of having stolen a skirt. He was captured, confessed to the theft and after a term of three days for his defense, was condemned to the blinding of one eye.
34. ASB, Inquisitiones, Mazzo 16, 1289, Register 1, fol. 35r.
35. ASB, Inquisitiones, Mazzo 16, 1289, Register 1, fol. 40r.
36. See the chapter by Blanshei in this volume.
39. Vallerani, "Il giudice e le sue fonti."
40. Todeschini, Visibilità crudeli, 56–60.
41. See the chapter by Blanshei in this volume.
42. Kirshner, "Consilia as Authority"; Ascheri, "Le fonti e la flessibilità"; Idem, "I consilia dei giuristi." For Bologna, see Rossi, Consilium sapientis iudicale.
43. The series is published in Chartularium Studii Bononensis, 107–59.
44. Vallerani, "The Generation of the Moderni."
45. Kantorowicz, Albertus Gandinus, 2:112, with reference to C. 9.2.6.1 and to Riccardo Malomba; the same passage is found again in paragraph 13: "cum meius noscat veritatem quam ipsi procurator, et illa ratione quia dum de rei veritate queritur debet principalis persona venire."
46. Kantorowicz, Albertus Gandinus, 2:114: "Domini Odofredus et Guido et alii doctores dicunt quod procurator ad predicta possit constitu, cum hoc concedatur in civilibus nec in criminalibus videatur esse prohibitur."
47. Kantorowicz, Albertus Gandinus, 2:165: "Et super hoc consuluit Bononie dominus Lambertinus Ramponi, per legem: defensio prius sit danda." The question had been: "Domine antequam me ad tormenta ponatis, placeat vobis primi mihi dare terminum defensionis," and the
response in the *consilium* of Lambertino Ramponi was: “Dicatis quod defensio prius sit danda maxime quando tale quid allegatur probari quo probato iste Titius non debet ad tormenta ponit. Et super hoc ita mihi consultit Bononie dominus Lambertinus Ramponi.”


49. Vallerani, “Il diritto in questione.”


51. This must be the sense of the question “quomodo arguis de civilibus questionis ad criminales? Respondeo legis auctoritate” with reference to “D 48 19 5” and “D 48 3 2 2.” Kantorowicz, *Albertus Gandinus*, 2:122.


57. For this practice in Milan, see Padoa-Schioppa, “La giustizia milanese,” for a norm of 1330 that made recourse to a *consilium* obligatory if one of the two parties requested it.

58. See Menzinger, “Consilia sapientium.”

59. The data given by Blanshei in her chapter in this volume remain in this same range.


61. Here I would be less optimistic than Blanshei regarding the possibility of *inquisitio* becoming an ordinary trial. See Blanshei’s chapter in this volume.

