Police Power in the Italian Communes, 1228–1326

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To my parents

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A Note on Usage

The standards for dates, currencies, and measures varied from town to town in medieval Italy. In many cities, the calendar year began on 25 March, but in Bologna it began on Christmas (25 December). I have adjusted dates as necessary to match the Gregorian calendar. Despite local variations in coinage, public courts across northern Italy assessed fines according to the standard monies of account: the lira (*libra* or pound), soldo (*solidus* or shilling), and denaro (*denarius* or penny). I use these denominations accordingly, without attempting to determine their actual economic value in a given context. Their ratios were fixed as follows: 1 lira = 20 soldi = 240 denari. Most measures of length derived from the Roman duodecimal system based on the *pes* or foot (29.6 cm), but their actual length deviated from the Roman standard depending on the city. Wherever measures of length figure into cases, I provide them as given in the source, without attempting a conversion. Common measures included the *piede* (foot), *braccio* (arm's-length), *pertica* (rod), and *millia* (mile). In some contexts, the *piede* was divided into *palmi* (palms) and *digiti* (digits) according to a Greek system, where 1 *piede* = 4 *palmi* = 16 *digiti*. For more detailed information on Bolognese measures, see Franco Bergonzoni, "Note sulle unità di misura bolognesi," in *I portici di Bologna e l'edilizia civile medievale*, ed. Francesca Bocchi (Casalecchio di Reno: Grafis, 1990), 161–70. As for personal names, I have converted the Latin names in the sources to modern Italian except in a few cases where individuals hailed from beyond the peninsula. I give their names in the appropriate modern vernacular.

Abbreviations

ASB	Archivio di Stato di Bologna
Accusationes	Curia del podestà, Giudici ad maleficia, Accusationes
Cartacea	Riformagioni e provvigioni, serie cartacea
Corone	Curia del podestà, Ufficio corone ed armi
Fango	Curia del podestà, Ufficio delle acque, strade, ponti, calanchi, selciate e fango
Giudici	Capitano del popolo, Giudici del capitano del popolo
Inquisitiones	Curia del podestà, Giudici ad maleficia, Libri inquisitionum et testium
Provvigioni	Governo, Provvigioni dei consigli minori
Riformagioni	Riformagioni del Consiglio del Popolo
Sindacato	Curia del podestà, Ufficio del giudice al sindacato
Tesoreria	Camera del comune, Tesoreria e contrallatore di tesoreria
Vigne	Curia del podestà, Ufficio per la custodia delle vigne, palancati e broili
ASO	Archivio di Stato di Orvieto
Podestà	Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni
ASP	Archivio di Stato di Perugia
Capitano	Capitano del popolo, Processi e sentenze della curia
ASS	Archivio di Stato di Siena
Malefizi	Podestà, Malefizi
<i>Costituto</i>	<i>Il Costituto del comune di Siena, volgarizzato nel MCCCIX-MCCCX. Siena: Tip. e Lit. Sordmuti di L. Lazzeri, 1903.</i>
<i>Statuti 1245</i>	<i>Statuti di Bologna dall'anno 1245 all'anno 1267. Edited by Luigi Frati. 3 vols. Bologna: Regia Tipografia, 1869-77.</i>
<i>Statuti 1288</i>	<i>Statuti di Bologna dell'anno 1288. Edited by Gina Fasoli and Pietro Sella. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937-39.</i>
<i>Statuto 1279</i>	<i>Statuto del comune di Perugia del 1279. Edited by Severino Caprioli. 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.</i>

Introduction

One Saturday in August 1286, the podestà of Bologna—the city’s chief magistrate—dispatched some of his retainers to investigate a suspected gambling house not far from the piazza. They quietly surrounded the building, positioning four men at its rear escapes and three at its front door. From the doorstep they heard voices inside calling out bets, all but confirming their suspicion that the house was the site of illicit gaming. The podestà’s men ordered whomever was inside to open up at once. One of the alleged gamblers came to the front door but, seeing it was the podestà’s men, alerted his companions in the back. Pandemonium erupted as the suspects scattered. Some fled through windows and over the rooftops of neighboring houses, while others hid under beds. But the podestà’s men gave chase. Despite having to break down two doors to get inside, they managed to arrest nine fugitives before the dust settled. In the ensuing trial, the podestà’s judge found all nine suspects and one other individual guilty of illicit gaming, and sentenced each to the statutory fine of 25 lire.¹

Conventional wisdom holds that police are an invention of modernity. In today’s usage, “police” typically refers to the government entity responsible for civil order and law enforcement; “to police” is to perform the functions of a police department, namely to prevent and detect crime and bring criminals into custody. Social scientists and historians alike generally conceive of the police, along with the military, as the main instruments of the modern state’s claim to a monopoly on the legitimate use of violence within its territory.² According to a popular Anglo-American narrative, modern policing did not exist until 1829, when Sir Robert Peel founded London’s Metropolitan Police. As the story goes, the “bobbies” were a new kind of police, defined by their bureaucratic organization and preventive function. They were full-time, salaried public employees, unlike the part-time, parish-based watchmen who came before them. And their regular street patrols served to deter crime and maintain order, not merely detect crime and apprehend criminals after the fact.³ Granted, Continental Europe had an older and more expansive concept of police. As discussed later in the Introduction, the “police science” of the seventeenth century meant something more like “public policy,” and encompassed virtually any rule or regulation instated with the public interest in mind. But by most accounts even that kind of police did not exist until the early modern period. In the Middle Ages, criminal offenses were redressed by members of the community, not punished by the authorities of a centralized state.⁴

Yet even by today’s narrow definition, the above raid on a gambling house—described in Bologna’s thirteenth-century court records—looks remarkably like “modern” policing. The tactics on display will be familiar to anyone who has watched a television crime drama. Like modern law enforcement officers, the podestà’s men surrounded the

¹ ASB, Corone 1, 1286II, 12r–v. Massimo Vallerani first presented this case in “Giochi di posizione,” 33.

² Tilly, *Coercion*; Ruff, *Violence*, 87–92; Barzel, *A Theory of the State*.

³ For a textbook example, see Dempsey and Forst, *An Introduction to Policing*, 8. For more nuanced histories, see Finnane, “The Origins of ‘Modern’ Policing”; Barrie, “Policing Before the Police”; Emsley, *The Great British Bobby*; Reynolds, *Before the Bobbies*. On preventive police, see Reith, “Preventive Principle of Police.” The foundational texts are Chadwick, “Preventive Police”; Colquhoun, *A Treatise on the Police of the Metropolis*.

⁴ Lenman and Parker, “The State, the Community, and the Criminal Law.”

building, broke down the doors, and attempted to take their suspects by surprise. Called *berrovarii* in the sources (*berrovieri* in Italian), the podestà's men were in fact paid by the city government to serve as public law enforcement officers. It would still be a stretch to call them "policemen" or "police officers," since they were a kind of mercenary and policing was not yet a distinct profession with its own standards and specialized training.⁵ But the *berrovarii* patrolled the city streets on a full-time basis and booked or arrested men they found violating the statutes, especially those concerning gambling, curfew, and the bearing of arms. Furthermore, the *berrovarii* belonged to the podestà's "household" (*familia*), the retinue of judges, notaries, and armed retainers that all podestà employed to help execute their official duties. By statute, all *familiars* had to be foreigners like the podestà, so that they would (in theory) enforce the statutes impartially, removed from the prejudices of local politics. Although police officers today are not required to be foreign, the principle of employing neutral public officials to exercise legal authority is classically modern. In the raid above, the theory appears to have worked in practice: three of the convicted gamblers were notaries, who received no special legal treatment even though the notaries' guild dominated Bologna's government at the time.⁶

The appearance of ostensibly "modern" policing in medieval Italy raises two major questions for historians. First, what role did police power play in public justice in the communes? The podestà's *familia* appears to have used physical and legal coercion to enforce the commune's laws on a routine basis. Yet much of the current literature views medieval justice through the lens of dispute resolution, emphasizing negotiation and peacemaking over discipline and punishment. According to one influential reading, the role of public courts was not to enforce the statutes and deliver decisive verdicts so much as to mediate between parties in conflict and restore social harmony. The public trial was merely one step in a longer process of negotiation that also made use of "extrajudicial" institutions, such as peace agreements.⁷ This functionalist approach has provided a valuable corrective to earlier scholarship, which generally assumed that medieval justice systems, like those of the modern state, aimed to discipline and punish.⁸ In the old narrative, medieval governments were "weak" insofar as they lacked the coercive capacity to enforce their laws, and inadequate police power contributed to the lawlessness and disorder that

⁵ Cf. Bowsky, "The Medieval Commune." On the functional overlap of early police and military forces, see Nippel, *Public Order*, 1; Bayley, "The Police." This was especially true in early modern France; Emsley, *Policing*, 9–33. For the case of Italy, see Antonielli and Donati, eds., *Corpi armati*.

⁶ The notaries were Giovanni da Paglia, Venedico Aimeri, and Paolo di Ventura. On the notaries' guild in Bologna, see Tamba, *Una corporazione*; Tamba, ed., *Rolandino e l'ars notaria*. More generally, see Bartoli Langelì, *Notai*.

⁷ For the Italian communes, the key works are: Vallerani, *Medieval Public Justice*; Wickham, *Courts and Conflict*; Kuehn, *Law, Family & Women*. The literature on dispute resolution in medieval Europe is vast, but highlights include Esmark et al., eds., *Disputing Strategies*; Tuten and Billado, eds., *Feud, Violence and Practice*; White, ed., *Feuding and Peace-Making*; Brown and Górecki, eds., *Conflict in Medieval Europe*; Hyams, *Rancor and Reconciliation in Medieval England*; *Le règlement des conflits*; Miller, *Bloodtaking and Peacemaking*; Davies and Fouracre, eds., *The Settlement of Disputes*; Bossy, ed., *Disputes and Settlements*. For a recent retrospective, see Jordan, "Rethinking Disputes." For the literature on peacemaking in Italy, see Chapter 5.

⁸ For the functionalist orientation of this literature, see Netterstrøm, "The Study of Feud."

supposedly defined the Middle Ages.⁹ Revisionist readings have shown to the contrary how premodern institutions, including public courts, “worked” to maintain social order without recourse to punishment. Yet they have done little to alter the perception that medieval governments lacked police power.¹⁰ Archival records of police interventions like the one above suggest that a closer examination of communal governments’ capacity for coercion is in order.

Second, how and why did communal governments come to exercise greater police power over their citizens? After all, it was not always the case that the government strictly regulated dice games and the bearing of arms in the city streets. The question is especially intriguing given the political context. For the towns of northern Italy, the thirteenth century was a moment of unprecedented experimentation in self-government, as urban elites developed new institutions free of interference from pope or emperor. In many communes, the thirteenth century was also a moment of growing participation in politics. In the first half of the century, a political coalition of bankers, merchants, artisans, lawyers, and notaries—as well as allied nobles—calling themselves the *popolo* wrested constitutional power from the noble families who had long dominated local politics. They established republican systems of government with rotating offices and relatively large representative bodies.¹¹ For example, around the turn of the fourteenth century, roughly 15,000-18,000 men out of a total population of 50,000 participated in politics in Bologna. By 1282, Bologna had a Council of 4,000 (among others) that voted to determine which citizens would hold administrative offices, and its main legislative council, the Council of the *Popolo*, boasted as many as 1400 members per semester.¹² And yet, as the example of the notaries caught in the police raid above suggests, this expanded political elite used their autonomy, at least in part, to hire foreign police forces to discipline their own behavior. This apparent paradox of self-repression begs for explanation. It is not at all obvious why self-governing citizens would amplify government police power seemingly at their own expense.¹³

This question of historical change can also be posed more generally in the language of state formation. To borrow Douglass North, John Joseph Wallis, and Barry Weingast’s definition, the state is best understood as an “organization of organizations,” wherein the government is a public organization whose purpose is to coordinate and enforce rules.¹⁴ As noted above, government police power is usually assumed to be a manifestation of the state’s claim to a monopoly on the legitimate use of violence. Yet in the Italian communes, the government enjoyed no such monopoly. The right to use violence and coercion was diffuse, shared and contested among the multiple power centers that made up the

⁹ Emblematic is Bernard Guenée’s discussion of “impotent justice” in late medieval Senlis; see *Tribunaux et gens de justice*, 280–303. For a survey of this tendency, see Smail, *The Consumption of Justice*, 168–70. For the Middle Ages as the age of violence par excellence, see Gauvard, *De grace especial*, 1:1–2.

¹⁰ For recent statements on the Italian communes’ limited police power, see Carraway, “Contumacy,” 103; Blanshei, *Politics and Justice*, 339; Lansing, *Passion and Order*, 34.

¹¹ Chapter 3 will discuss the literature on the *popolo* in more detail. For general overviews of the period, see Waley and Dean, *The Italian City-Republics*; Ascheri, *Le città-stato*; Milani, *I comuni italiani*.

¹² Blanshei, *Politics and Justice*, 84, 113; Vallerani, “Criminal Court Procedure,” 27.

¹³ Carol Lansing explores this paradox of self-repression in her study of funeral law enforcement, *Passion and Order*. However, the paradox is much broader than funeral law.

¹⁴ North, Wallis, and Weingast, *Violence and Social Orders*, 31; Wallis, “Rules, Organizations, and Governments.” North, Wallis, and Weingast define an organization as a group of individuals who act in a coordinated manner to pursue both common and individual goals; see *Violence and Social Orders*, 15.

communal state.¹⁵ In this context, it is not obvious why elites, who already enjoyed the capacity and right to coerce, would cede any portion of that right to a government. The conceptual framework behind this observation is discussed in more detail below, but the rise of police power in the communes provides an opportunity to explore the basic question of how the institutions of the modern state might arise from the logic of a premodern social order.

Thus, this book seeks to explain why government police power grew in the city-republics of thirteenth-century Italy, and what it means for our understanding of medieval justice and state formation. The records of Bologna's Office of "Crowns and Arms" (*corone ed armi*) provide an unparalleled opportunity to explore these questions.¹⁶ The office fell under the podestà's jurisdiction and was overseen by one of the notaries in his *famiglia*. By statute, this notary was responsible for enforcing Bologna's sumptuary laws, which forbade (among other things) women from wearing tiaras or "crowns"—whence the first half of the office's name.¹⁷ In practice, this same notary also recorded the trials of individuals denounced by the *famiglia*, mostly for violations of the curfew, gambling, and arms-bearing laws—whence the second half of its name. The Crowns and Arms registers thus provide a concentrated record of police activity in medieval Bologna. Through witness testimony in particular, they also offer an exceptional window into the experience of police power in a medieval commune. As primary sources, witness depositions present a number of well-known challenges to the historian: they are constrained by the judge's questioning and procedural norms; performative in nature; and translated from the vernacular (and potentially redacted) by an intermediary (i.e., a notary).¹⁸ Yet even as they present unique challenges, the statements individuals were willing to make in court offer valuable insights into everyday life in the commune, including the role of policing. The series survives in varying degrees of completeness from 1285 to 1381. Following the precedent of other studies, this book takes 1326 as its terminus. In the following year, Bologna would grant lordship of the city to a papal legate, formally ending the communal era of republican self-governance.¹⁹

Of course, the Crowns and Arms series alone does not suffice for a study of policing in Bologna, let alone other Italian communes. Hence this study draws extensively on Bologna's other judicial and legislative acts—council resolutions, inquisitions, legal sentences, records of payment, public proclamations, and so forth—to put the growth of policing in context. It takes 1228, the year of the *popolo*'s founding revolt in Bologna, as its approximate starting point, with Bologna's judicial records providing evidence as far back as 1226.²⁰ The study also draws on the archives of Siena, Perugia, and Orvieto to show that the case of Bologna is in fact representative of the northern Italian communes. Siena, Perugia, and Orvieto were all "popular" republics like Bologna in the late thirteenth and

¹⁵ Patrick Lantschner emphasizes the "polycentric" order of medieval cities in *Logic of Political Conflict*.

¹⁶ On the Crowns and Arms series, see Tamba and Zanni Rosiello, eds., "Archivio di Stato di Bologna," 572; Vallerani, "Giustizia e documentazione," 301–2. For studies that draw on the Crowns and Arms series, see Lansing, *Passion and Order*; Vallerani, "Giochi di posizione."

¹⁷ *Statuti 1288*, 1:26–27.

¹⁸ For the methodological issues raised by inquisitorial records, see Bruschi, *The Wandering Heretics*, 11–49.

¹⁹ Both Vallerani, *Medieval Public Justice* and Blanshei, *Politics and Justice* use 1326 as a terminus. For Vallerani's reasoning, see 123, 172.

²⁰ On the events of 1228, see Milani, "From One Conflict to Another," 242–43; Wandruszka, "Die Revolte."

early fourteenth century, and they shared a legal-political culture defined in part by the circulation of foreign magistrates (both *podestà* and *capitani del popolo*) and their *familiaries*. Although the archives of these communes have no analogue to Bologna's Crowns and Arms series, their judicial acts amply attest the police activity of their foreign magistrates. Even in cities that never experienced a republican moment under a popular regime, such as signorial Ferrara, municipal laws and law enforcement were more alike than not (see Chapter 3). Thus, despite important constitutional differences among communes, this study contends that the development of policing followed the same basic trajectory across northern Italy.

This book, based on these rich archival sources, is both the first full-length study of government police power in medieval Italy and the first to examine it through the lens of criminal trials. If the perception that medieval governments lacked police power has proved enduring, it is in part because scholars have devoted little attention to it. Since William Bowsky's pioneering work five decades ago, there have been only a handful of articles and chapter-length studies dedicated to the communes' police forces, and these have focused more on the organization of policing than the role of police power in communal life.²¹ Studies of negotiated justice—based in community membership, defined by custom and informal norms, and oriented toward reparations and agreements—have proliferated, but the rise of hegemonic justice—based in subjection to authority, defined by written law, and oriented toward punishment of the guilty—has received lighter treatment. And yet, as Mario Sbriccoli argued, the societal shift from negotiated to hegemonic justice—of which the growth of government police power was a part—was one of the most important developments of the later Middle Ages.²² By illuminating police power in the communes, I hope this book will encourage scholars to focus once more on explaining this historical change.

Police as a Mode of Governance

It may seem anachronistic to write a history of police power from sources that have no word for “police.” The communes' judicial records refer to the “policemen” in this study as the *podestà's* (or *capitano del popolo's*) *berrovarii* or *familiaries* or collectively as his *familia*. Similarly, the sources call their patrols *inquisitiones* (investigations) and the crimes they denounce *inventiones* (discoveries). However, the exercise of police power can be said to predate the word itself. Building on Michel Foucault's seminal work on early modern police, Markus Dubber has argued that state police power derives from the paterfamilias' practically limitless power to govern his household. His authority encompasses both the people and resources that make up his household, and he governs them not merely to

²¹ The seminal study remains Bowsky, “The Medieval Commune.” Bowsky further elaborated on these themes in Bowsky, *A Medieval Italian Commune*, 117–58. One of the few other studies to focus narrowly on police forces in the commune is Manikowska, “Polizia e servizi d'ordine.” Other studies that cover policing in the communes, though their scope is broader, include Graziotti, *Giustizia penale*; Dean and Lowe, eds., *Crime, Society, and the Law*; Stern, *The Criminal Law System*; Vallerani, *Il sistema giudiziario*; Zorzi, “Contrôle social”; Manikowska, “Il controllo sulle città”; Manikowska, “‘Accorr'uomo’”; Crouzet-Pavan, “Potere politico e spazio sociale”; Crouzet-Pavan, “Recherches sur la nuit vénitienne”; Ruggiero, *Violence in Early Renaissance Venice*. Also important is the contribution by Sbriccoli, “Polizia (diritto intermedio).”

²² Sbriccoli, “Giustizia negoziata, giustizia egemonica”; Sbriccoli, “Justice négociée, justice hégémonique.” See also the commentary by Zorzi, “L'egemonia del penale.” Juridical hegemony is an important theme in Gamberini, *The Clash of Legitimacies*.

ensure their survival but to maximize their collective welfare. In this conception, police is a mode of governance, and states exercise police power insofar as the sovereign governs his realm as his household. For Foucault, the absolute monarchies of early modern Europe provided the paradigmatic examples of this kind of governance, but republics, like those of medieval Italy, also exercise police power through the collective body of citizens entitled to participate in government.²³ As a mode of governance, then, police is arguably as old as civilization.

Indeed, for most of the word's history, "police" signified a mode of governance, not merely the government's internal security organ. From the time the word appeared in French in the fourteenth century as a translation of the Latin *politia*, it signified both the good ordering of the polity and the public measures ensuring that order. On the European continent, early modern states sought to provide for their populations' "good police" (*gute Policey* in German) through police ordinances (*Polizeiordnung*) that encompassed commerce, urban planning, public safety, public health, public morals, and so forth.²⁴ By the eighteenth century, the administration of internal order in Germany had developed into the academic discipline of "police science" (*Polizeiwissenschaft*). In the words of one Parisian police *commissaire*, police was nothing less than the "science of governing men."²⁵ European governments also institutionalized their police power through police departments manned by police officers. It was only in the nineteenth century that the word "police" principally came to signify these law enforcement officers rather than an all-encompassing function of governance.²⁶

Dubber highlights several characteristics of police as an ideal type of governance that are pertinent to this study. First and foremost, the purpose of police is to maximize the welfare of the household or polity. Thus, the touchstone of good police is its benefit to the entire body politic, not the individuals who comprise it. The other characteristics derive from police's collective, population-level orientation. Police is also heteronomous, meaning it governs "others" as subjects of the policer's authority. In this respect it stands in tension with the autonomy of citizens, especially in republics where otherwise equal citizens place themselves under the rule of an executive with police power for the sake of the common good. Third, police is radically discretionary and indefinite in scope. The head of household or executive determines what is expedient to maximize the welfare of his household or polity; though there may be practical limitations on his ability to act on his determinations, his discretion in making them is essentially unchecked. Here again, police power stands in

²³ Dubber, *The Police Power*. Foucault first developed his concept of police in his 1977–1978 Collège de France lectures, now translated in *Security, Territory, Population*. He further developed the concept in the essays "'Omnes et Singulatim'" (1979) and "The Political Technology of Individuals" (1982), both published in *Power*. Valuable commentaries on Foucault's work include Pasquino, "Theatrum Politicum" and Valverde, "Police, Sovereignty, and Law." For another Foucauldian approach, see Campesi, *A Genealogy of Public Security*.

²⁴ The literature is vast, but important works include Härter, "Security and 'Gute Policey'"; Iseli, *Gute Policey*; Simon, *Gute Policey*; Stolleis, *Geschichte des öffentlichen Rechts*; Raeff, *The Well-Ordered Police State*; Maier, *Die ältere deutsche Staats- und Verwaltungslehre*. For a concise overview, see Pohl-Zucker, *Making Manslaughter*, 11–15. On the role of "good police" in political theory, see Pasquino, "Spiritual Police and Earthly Police."

²⁵ Le Maire, "La police de Paris," 28. For more on Le Maire's concept of police, see Kaplan, "Note sur les commissaires de police." On German police science, see the note above but also Unruh, "Polizei, Polizeiwissenschaft und Kameralistik."

²⁶ Reynolds, *Before the Bobbies*, 1.

tension with the autonomy of individual householders to govern their households as they see fit, especially in republics. Fourth, police is preventive in nature. It is fundamentally forward-looking, seeking to remove or mitigate threats of harm rather than punish harms committed. For example, police measures may criminalize the possession of certain weapons in order to prevent assaults or homicides with those weapons. In the case of such “police offenses,” neither a criminal act (*actus reus*) nor malicious intent or forethought (*mens rea*) is required for guilt; the mere act of disobedience is enough to merit discipline.²⁷ Finally, in Dubber’s terminology police is “ahuman,” meaning it treats both people and things as objects to be managed for the good of the household. To this end, “[t]he job of the policer is to classify everyone and everything properly, and to treat each object according to its classification.”²⁸ For example, police ordinances might classify vagabonds, stray livestock, and obstructed roadways alike as public nuisances in need of correction or removal. In this respect, police has much in common with James C. Scott’s concept of “legibility.” At the level of the state, police aims to make society more “legible,” which is to say more comprehensible and therefore more controllable.²⁹

In the thirteenth century, the Italian communes developed institutions that exhibited all these hallmarks of police governance. Statutes proliferated as citizens passed a host of new disciplinary and regulatory measures to provide for public safety, public health, and good commerce. Many of these statutes were preventive in nature. They criminalized common behaviors like bearing arms and betting on dice games because these behaviors could lead to real crimes against persons and property. There were virtually no limits to what citizens would attempt to govern through statute, from the length of women’s dresses to how many priests could preside at a funeral service. Furthermore, statutes classified people into legal categories so as to better manage them. Magnates were subject to more severe penalties because of their alleged propensity to act violently, while public gamblers, beggars, and taverners (among others) were singled out for special police attention as threats to public order. The communes’ citizen-legislators also hired foreign police forces to patrol their streets on a full-time basis to prevent crime and deter threats. In practice, there were few real checks on the discretionary power of these third-party enforcers to arrest anyone who *seemed* to be breaking the law within the commune’s jurisdiction. Finally, lawmakers justified these preventive rules and enforcers by appealing to the common good (*bonum commune* or *utilitas publica*), or alternatively to the good state (*bonum statum*) or good governance (*bonum regimen*) of the commune. In all these ways, the Italian communes developed institutions that prefigured the *Policey* of the early modern period. Importantly, the net outcome of these innovations was a loss of personal autonomy for citizens vis-à-vis the government. Paradoxically, the podestà exercised police power over the self-governing citizens who employed him as if they were his subjects. Thus, Foucault’s concept of police—well-grounded in the word’s historical usage—

²⁷ “Police offenses” are police measures that employ criminal sanctions; other police measures, such as quarantines and licensing schemes, do not entail such sanctions. Police offenses are also called regulatory offenses, public welfare offenses, public order offenses, and *mala prohibita*. However, because these categories are notoriously imprecise and difficult to define—not to mention anachronistic for medieval Europe—I have eschewed using them in this study. Dubber and Valverde, “Introduction,” 12.

²⁸ Dubber, *The Police Power*, 179.

²⁹ Scott, *Seeing Like a State*.

provides a valuable tool for describing the nature and scope of police power in the communes.³⁰

Police and Impersonal Rules

Explaining the rise of police power in the communes, however, requires a closer analysis of its political and social context. This study uses the conceptual framework developed by North, Wallis, and Weingast (NWW) to interpret institutional change.³¹ NWW define institutions as the “rules of the game”: the written laws and formal and informal norms—as well as the means of enforcement—that constrain individuals’ behavior. Institutions tend to follow one of two basic logics: they can be based on social identity, meaning they apply differently to different people, or based on impersonality, meaning they apply to everyone equally.³² A prime example of an identity rule from medieval Bologna was the privilege of certain political elites to have their accusations believed in court without the need for witnesses (see Chapter 2). Here, the standard of proof hinged entirely on the social identity of the accuser. The commune’s prohibition on gambling outside of designated public areas, by contrast, applied to everyone. Of course, many institutions exist on a spectrum between identity rules and impersonal rules. A law might proscribe everyone from carrying a lance in a public street, for example, while prescribing different fines according to the social status of the lawbreaker. That said, most societies in human history have been governed primarily by identity rules, and the Italian communes were no exception. NWW call these societies “limited access orders,” because they are predicated on exclusion from the governing elite. In this default social arrangement, a dominant coalition of elites agrees to allocate political, economic, and social privileges (or rents, to use the term favored by economists) among its members, in rough proportion to what each brings to the coalition. The benefits of membership in the coalition—as well as the simple fact that even the most powerful individual is never more powerful than the coalition of his peers—help to organize and control violence, which is the fundamental aim of all social orders. However, limited access orders are prone to cycles of political and economic upheaval, because the social order depends on the personalities of individual elites and the agreements they make with each other, which are relatively unstable.

As hinted above, there is a fundamental question as to why elites in a limited access order would ever move toward a system of impersonal rules, since elites, by definition, derive numerous benefits from identity rules. For NWW, this is one of the fundamental problems of economic development. Only a handful of societies—all within the last two centuries—have established systems capable of enforcing impersonal rules, and these societies have enjoyed political stability and sustained economic growth well beyond the historical mean. NWW call these societies “open access orders” because elites have opened up political, economic, and social organizations to non-elites. In other words, elites have

³⁰ Without recourse to Foucault, Giustiniano degli Azzi argued at the turn of the last century that “police” was a prominent feature of communal statute collections, despite the word’s absence; see *Della polizia*, 7.

³¹ What follows summarizes some of the key ideas in North, Wallis, and Weingast, *Violence and Social Orders*; Wallis and North, “Coordination and Coercion”; Wallis, “Institutions, Organizations, Impersonality, and Interests.” Thank you to Professor Wallis for granting permission to cite the working paper. For the limitations of their framework, see Bardhan, “State and Development”; Bates, “A Review.”

³² For this definition of institutions, see North, *Institutions*, 3–4. For impersonal rules and identity rules, see Lamoreaux and Wallis, “Introduction,” 9–10; Wallis, “Rules, Organizations, and Governments,” 76–77.

agreed to abide by rules that (at least to a significant extent) treat everyone equally, which, it turns out, is good for society as a whole. NWW therefore seek to understand how societies transition from limited access to open access orders.

NWW's conceptual framework is not a theory of state development; it does not explain how social orders transition from limited to open access, from identity-based to impersonal institutions. However, it does provide a valuable toolkit for case studies, not only of societies that have made the transition, but of institutional change in general.³³ Their central insight is that institutional change must occur within the logic of the existing social order. In the context of the Italian communes, that means the growth of police power cannot be explained simply as a byproduct of the state's natural extension of its monopoly on the legitimate use of violence. Rather, the explanation must lie in the dynamics of competition among elites who alter the "rules of the game" to suit their interests, not to change the social order itself. Because it hinges on elite interests, institutional change tends to proceed in fits and starts rather than sweeping transformations, and its outcome is never a foregone conclusion.

This book describes the growth of police power in the Italian communes as a shift toward more impersonal institutions. As such, it is part of a long historiographical tradition that identifies the transition from personal to impersonal justice—often framed in terms of a transition from *accusatio* to *inquisitio* procedure—as a hallmark of modern state formation.³⁴ In the context of medieval Italy, Massimo Vallerani and others have rightly criticized the teleology of earlier scholarship in this tradition and shown that the transition from *accusatio* to *inquisitio* procedure was hardly linear.³⁵ But as Sarah Blanshei and others have argued, the transition to *inquisitio* procedure did ultimately take place between the thirteenth and fifteenth centuries as the government increased its control over public justice, making it more efficient and repressive.³⁶ The growth of policing was a part of the same overarching trend. To be sure, the communes remained limited access orders throughout the period of this study, governed by identity rules and an exclusive coalition of elites. Yet by instituting third-party policing, citizens subjected themselves (and non-citizens) to their government to an unprecedented degree. They criminalized common behaviors, such as carrying a knife or playing dice in a tavern, that caused no obvious harm to persons or property. Although the statutes did not treat everyone equally, these rules applied (at least initially) to everyone in the commune, and third-party policing greatly increased the likelihood that elites would be disciplined for violating them. Thus, public justice was increasingly less a matter for citizens to negotiate according to their social status and relationships, and more the responsibility of a central authority tasked with prosecuting and punishing offenders according to the law.

³³ For case studies that utilize NWW's framework, see Lamoreaux and Wallis, eds., *Organizations*; North et al., eds., *In the Shadow of Violence*.

³⁴ For a classic example, see Pertile, *Storia del diritto italiano*. More recently, the development of impersonal institutions is a central question of Francis Fukuyama's two-volume history of the modern state: *The Origins of Political Order* and *Political Order and Political Decay*.

³⁵ Vallerani, *Medieval Public Justice*; Zorzi, *L'amministrazione*, 78–79.

³⁶ Blanshei, "Bolognese Criminal Justice." See also Cucini, "Législation statutaire," 1:95–96, 1:337–48; Dean, *Crime and Justice*, 37; Dean, "Criminal Justice," 17. Joanna Carraway Vitiello found less than one percent of trials were initiated by *accusatio* in late fourteenth-century Reggio Emilia but argues, like Vallerani, that *inquisitio* adopted many of *accusatio*'s features; see *Public Justice*, 79–80.

In keeping with NWW's framework, this book explains this shift in terms of intra-elite competition, as a product of expanding political access in the communes. As popular coalitions rose to power in the thirteenth century, they sought to consolidate their constitutional gains and level the playing field with the old elite. For this expanded coalition, impersonal, preventive rules were essential to keep powerful individuals in check—both internal and external to their coalition—and third-party policing became an important vehicle for coordinating and enforcing such rules. Thus, the thirteenth-century communes offer an intriguing case study of why political elites might agree to cede some of their coercive potential to a government or, more broadly, how “modern” institutions might emerge from the logic of a premodern society.

The Plan of the Book

Roughly speaking, this book seeks to answer in turn the “what,” the “why,” and the “so what” of police power in the communes. The first two chapters deal with the “what.” Chapter 1 describes the police functions of the podestà's *familia* and the procedures they followed in pursuing and prosecuting alleged lawbreakers, using Bologna as the primary example. It then presents case samples of curfew, arms-bearing, and gambling offenses discovered by police patrols in Bologna, Perugia, Siena, and Orvieto. The evidence shows that foreign magistrates' *familiars* were effective at forcing locals to stand trial for these offenses, and greatly enhanced the government's capacity for hegemonic justice. Chapter 2 addresses the question of impersonality in policing. It describes the significant discretion enjoyed by the podestà's *familia* to interpret the statutes in the street and compel locals to appear in court. Further, it shows that the *familia* regularly denounced political elites to the court. By enforcing the law as impersonally as the statutes allowed, the *familia* infringed significantly on the personal autonomy of elites and non-elites alike.

The next three chapters seek to explain the rise of third-party policing in the context of the Italian communes. Chapter 3 explores how the logic of the communal social order led citizen-legislators to enhance the police power of their government. It unpacks the political-legal rhetoric used to justify third-party policing to show how the expansion of political access fueled its growth. Chapter 4 explores how policing addressed perceived external threats to the governing regime. It shows how the policing of gambling, arms-bearing, and curfew served to counter threats from “real” criminals and out-groups—not only thieves, assassins, and highway robbers, but political rebels, vagabonds, con men, and the like. By forcing hundreds of minor offenders into court each year, the *familia*'s patrols helped judges root out and punish threats to the established order. Chapter 5 turns to the question of internal threats, especially feud-related violence.³⁷ It shows how the policing of arms-bearing allowed the *familia* to discipline and prevent violence between feuding locals through routine interventions. The *familia* also policed behaviors, like gambling and playing music at night, that could create enmity between locals and therefore posed a threat to the commune's political stability.

³⁷ As Trevor Dean points out, the Latin word for “feud” (*faida*) does not appear in the sources for medieval Italy. However, I follow Andrea Zorzi in using the term more loosely to refer to a conflict between personal enemies, which the sources usually indicate by reference to enmity (*inimicitia*), hatred (*odium*), or war (*guerra*). None of these should be confused with “vendetta” (*vindicta*), which refers to a specific act of vengeance within a feud. See Dean, *Crime and Justice*, 124; Zorzi, *La trasformazione*, 131.

Finally, Chapter 6 examines the impact of third-party policing on communal society. The core legacy of the *familia*'s patrols was to make government coercion a routine feature of urban life. They gave the commune's laws teeth and inspired fear of punishment in locals, who now had to weigh the possibility of government prosecution in their behavioral calculus. The *familia*'s policing also reinforced the value of legal literacy, since defendants who knew the statutes and their procedural rights enjoyed an advantage in the public courts. In these ways, the growth of police altered the "rules of the game" in the communes. However, third-party policing did not transform the ground rules of communal society, which continued to hinge on social identity. Relationships of amity and enmity still governed the social order in large part, and the podestà's *familiars*, insofar as they were susceptible to corruption and abuses of power, proved no exception. Increasingly, the same political elites who had designed third-party policing to enforce impersonal rules shielded themselves from impersonal enforcement through legal privileges. On the one hand, it was a testament to the efficacy of the *familia*'s enforcement and the new ascendancy of written law that the kinds of privileges customarily enjoyed by elites now had to be enshrined in legislation. On the other hand, the proliferation of privilege and closure of political access undermined the growth of impersonality in public justice. The government's police power increasingly became a tool of repression for narrow factional interests.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna
Curia del podestà, Ufficio corone ed armi

PUBLISHED PRIMARY SOURCES

- Chadwick, Edwin. "Preventive Police." *London Review* 1 (1829): 252–308.
- Colquhoun, Patrick. *A Treatise on the Police of the Metropolis*. London: H. Fry, 1796.
- Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.
- Le Maire, Jean Baptiste Charles. "La police de Paris en 1770: mémoire inédit." In *Mémoires de la Société de l'histoire de Paris et de l'Ile-de-France*, 5:1–131. Paris: H. Champion, 1878.

SECONDARY SOURCES

- Antonielli, Livio, and Claudio Donati, eds. *Corpi armati e ordine pubblico in Italia (XVI–XIX sec.): Seminario di studi, Castello Visconti di San Vito, Somma Lombardo, 10–11 novembre 2000*. Soveria Mannelli: Rubbettino, 2003.
- Ascheri, Mario. *Le città-stato*. Bologna: Il Mulino, 2006.
- Azzi, Giustiniano degli. *Della polizia negli statuti dei comuni italiani del medio evo: Prolegomeni*. Perugia: Unione tipografica cooperativa, 1900.
- Bardhan, Pranab. "State and Development: The Need for a Reappraisal of the Current Literature." *Journal of Economic Literature* 54 (2016): 862–92.
- Barrie, David G. "Policing Before the Police in the Eighteenth Century: British Perspectives in a European Context." In *The Oxford Handbook of the History of Crime and Criminal Justice*, edited by Paul Knepper and Anja Johansen, 435–55. New York: Oxford University Press, 2016.
- Bartoli Langeli, Attilio. *Notai: scrivere documenti nell'Italia medievale*. Rome: Viella, 2006.
- Barzel, Yoram. *A Theory of the State: Economic Rights, Legal Rights, and the Scope of the State*. Cambridge: Cambridge University Press, 2002.
- Bates, Robert. "A Review of Douglass C. North, John Joseph Wallis, and Barry R. Weingast's *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*." *Journal of Economic Literature* 48 (2010): 752–56.
- Bayley, David. "The Police and Political Development in Europe." In *The Formation of National States in Western Europe*, edited by Charles Tilly, 328–79. Princeton: Princeton University Press, 1975.
- Blanshei, Sarah Rubin. "Bolognese Criminal Justice: From Medieval Commune to Renaissance Signoria." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 55–82. Lanham, MD: Lexington Books, 2018.
- . *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.

- Bossy, John, ed. *Disputes and Settlements: Law and Human Relations in the West*. New York: Cambridge University Press, 1983.
- Bowsky, William M. "The Medieval Commune and Internal Violence: Police Power and Public Safety in Siena, 1287-1355." *The American Historical Review* 73 (1967): 1-17.
- . *A Medieval Italian Commune: Siena Under the Nine, 1287-1355*. Berkeley: University of California Press, 1981.
- Brown, Warren, and Piotr Górecki, eds. *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*. Burlington, VT: Ashgate, 2003.
- Bruschi, Caterina. *The Wandering Heretics of Languedoc*. Cambridge: Cambridge University Press, 2009.
- Campesi, Giuseppe. *A Genealogy of Public Security: The Theory and History of Modern Police Powers*. Translated by Filippo Valente. New York: Routledge, 2016.
- Carraway, Joanna. "Contumacy, Defense Strategy, and Criminal Law in Late Medieval Italy." *Law and History Review* 29 (2011): 99-132.
- Crouzet-Pavan, Elisabeth. "Potere politico e spazio sociale: il controllo della notte a Venezia nei secoli XIII-XV." In *La notte. Ordine, sicurezza e disciplinamento in età moderna*, edited by Mario Sbriccoli, 46-66. Florence: Ponte alle grazie, 1991.
- . "Recherches sur la nuit vénitienne à la fin du Moyen Age." *Journal of Medieval History* 7 (1981): 339-56.
- Cucini, Sara. *Législation statutaire et gouvernement pontifical en Italie centrale. Le cas de l'administration de la justice criminelle à Bologne. Deuxième moitié du XVe siècle*. PhD diss. Université Paul-Valéry-Montpellier 3 and Università di Bologna, 2014.
- Davies, Wendy, and Paul Fouracre, eds. *The Settlement of Disputes in Early Medieval Europe*. Cambridge: Cambridge University Press, 1986.
- Dean, Trevor. *Crime and Justice in Late Medieval Italy*. New York: Cambridge University Press, 2007.
- . "Criminal Justice in Mid-Fifteenth Century Bologna." In *Crime, Society, and the Law in Renaissance Italy*, edited by Trevor Dean and K.J.P. Lowe, 16-39. Cambridge: Cambridge University Press, 1994.
- Dean, Trevor, and K.J.P. Lowe, eds. *Crime, Society, and the Law in Renaissance Italy*. Cambridge: Cambridge University Press, 1994.
- Dempsey, John S., and Linda S. Forst. *An Introduction to Policing*. 7th ed. Clifton Park, NY: Delmar Cengage Learning, 2014.
- Dubber, Markus. *The Police Power: Patriarchy and the Foundations of American Government*. New York: Columbia University Press, 2005.
- Dubber, Markus, and Mariana Valverde. "Introduction: Perspectives on the Power and Science of Police." In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus Dirk Dubber and Mariana Valverde, 1-16. Stanford: Stanford University Press, 2006.
- Emsley, Clive. *The Great British Bobby: A History of British Policing from 18th Century to the Present*. London: Quercus, 2009.
- . *Policing and Its Context, 1750-1870*. New York: Schocken Books, 1984.
- Esmark, Kim, Lars Hermanson, Hans Jacob Orning, and Helle Vogt, eds. *Disputing Strategies in Medieval Scandinavia*. Leiden: Brill, 2013.

- Finnane, Mark. "The Origins of 'Modern' Policing." In *The Oxford Handbook of the History of Crime and Criminal Justice*, edited by Paul Knepper and Anja Johansen, 435–55. New York: Oxford University Press, 2016.
- Foucault, Michel. *Power*. Edited by James D. Faubion. Translated by Robert Hurley. New York: New Press, 2000.
- . *Security, Territory, Population: Lectures at the Collège de France, 1977–78*. Edited by Michel Senellart. Translated by Graham Burchell. Basingstoke; New York: Palgrave Macmillan; République Française, 2007.
- Fukuyama, Francis. *The Origins of Political Order: From Prehuman Times to the French Revolution*. New York: Farrar, Straus and Giroux, 2011.
- . *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus and Giroux, 2014.
- Gamberini, Andrea. *The Clash of Legitimacies: The State-Building Process in Late Medieval Lombardy*. New York: Oxford University Press, 2018.
- Gauvard, Claude. *"De grace especial": crime, état et société en France à la fin du Moyen Age*. 2 vols. Paris: Publications de la Sorbonne, 1991.
- Graziotti, Tamara. *Giustizia penale a San Gimignano (1300–1350)*. Florence: Leo S. Olschki Editore, 2015.
- Guenée, Bernard. *Tribunaux et gens de justice dans le bailliage de Senlis à la fin du Moyen Age (vers 1380–vers 1550)*. Paris: Les Belles Lettres, 1963.
- Härter, Karl. "Security and 'Gute Policey' in Early Modern Europe: Concepts, Laws, and Instruments." *Historical Social Research* 35 (2010): 41–65.
- Hyams, Paul R. *Rancor and Reconciliation in Medieval England*. Ithaca: Cornell University Press, 2003.
- Iseli, Andrea. *Gute Policey: Öffentliche Ordnung in der Frühen Neuzeit*. Stuttgart: Ulmer, 2009.
- Jordan, John. "Rethinking Disputes and Settlements: How Historians Can Use Legal Anthropology." In *Cultures of Conflict Resolution in Early Modern Europe*, edited by Stephen Cummins and Laura Kounine, 17–50. Burlington, VT: Ashgate, 2016.
- Kaplan, Steven L. "Note sur les commissaires de police de Paris au XVIIIe siècle." *Revue d'Histoire Moderne & Contemporaine* 28 (1981): 669–86.
- Kuehn, Thomas. *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy*. Chicago: University of Chicago Press, 1991.
- Lamoreaux, Naomi R., and John Joseph Wallis. "Introduction." In *Organizations, Civil Society, and the Roots of Development*, edited by Naomi R. Lamoreaux and John Joseph Wallis, 1–21. Chicago: University of Chicago Press, 2017.
- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Lantschner, Patrick. *The Logic of Political Conflict in Medieval Cities: Italy and the Southern Low Countries, 1370–1440*. Oxford: Oxford University Press, 2015.
- Lenman, Bruce, and Geoffrey Parker. "The State, the Community, and the Criminal Law in Early Modern Europe." In *Crime and the Law: The Social History of Crime in Western Europe Since 1500*, edited by Vic Gatrell, Bruce Lenman, and Geoffrey Parker, 11–48. London: Europa Publications, 1980.
- Maier, Hans. *Die ältere deutsche Staats- und Verwaltungslehre*. 2nd ed. Munich: C.H. Beck, 1980.

- Manikowska, Halina. "‘Accorr’uomo’. Il popolo nell’amministrazione della giustizia a Firenze durante il XIV secolo." *Ricerche storiche* 18 (1988): 523–50.
- . "Il controllo sulle città. Le istituzioni dell’ordine pubblico nelle città italiane dei secoli XIV e XV." In *Città e servizi sociali nell’Italia dei secoli XII–XV: 12o Convegno di studi: Pistoia, 9–12 ottobre 1987*, edited by Emilio Cristiani and Enrica Salvatori, 481–511. Pistoia: Centro italiano di studi di storia e d’arte, 1990.
- . "Polizia e servizi d’ordine a Firenze nella seconda metà del XIV secolo." *Ricerche storiche* 16 (1986): 17–38.
- Milani, Giuliano. *I comuni italiani: secoli XII–XIV*. Rome: Laterza, 2005.
- . "From One Conflict to Another (13th–14th Centuries)." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 239–59. Leiden: Brill, 2018.
- Miller, William Ian. *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland*. Chicago: University of Chicago Press, 1990.
- Netterstrøm, Jeppe Büchert. "The Study of Feud in Medieval and Early Modern History." In *Feud in Medieval and Early Modern Europe*, edited by Jeppe Büchert Netterstrøm and Bjørn Poulsen, 9–67. Aarhus: Aarhus University Press, 2007.
- Nippel, Wilfried. *Public Order in Ancient Rome*. New York: Cambridge University Press, 1995.
- North, Douglass C. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press, 1990.
- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Rev. ed. Cambridge: Cambridge University Press, 2013.
- North, Douglass C., John Joseph Wallis, Steven Benjamin Webb, and Barry R. Weingast, eds. *In the Shadow of Violence: Politics, Economics, and the Problem of Development*. Cambridge: Cambridge University Press, 2013.
- Pasquino, Pasquale. "Spiritual Police and Earthly Police: Theories of the State in Early Modern Europe." In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus Dirk Dubber and Mariana Valverde, 42–72. Stanford: Stanford University Press, 2006.
- . "Theatrum Politicum: The Genealogy of Capital—Police and the State of Prosperity." In *The Foucault Effect: Studies in Governmentality*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 105–18. Chicago: University of Chicago Press, 1991.
- Pertile, Antonio. *Storia del diritto italiano, dalla caduta dell’Impero romano alla codificazione*. 2nd ed. Vol. 5, *Storia del diritto penale*. Turin: Unione tipografico-editrice, 1892.
- Pohl-Zucker, Susanne. *Making Manslaughter: Process, Punishment, and Restitution in Württemberg and Zurich, 1376–1700*. Leiden: Brill, 2017.
- Raeff, Marc. *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600–1800*. New Haven: Yale University Press, 1983.
- Le règlement des conflits au Moyen Âge. Actes des congrès de la Société des historiens médiévistes de l’enseignement supérieur public, 31^e congrès, Angers, 2000*. Paris: Publications de la Sorbonne, 2001.

- Reith, Charles. "Preventive Principle of Police." *Journal of Criminal Law and Criminology* 34 (1943): 206–9.
- Reynolds, Elaine A. *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830*. Stanford: Stanford University Press, 1998.
- Ruff, Julius R. *Violence in Early Modern Europe, 1500–1800*. Cambridge: Cambridge University Press, 2001.
- Ruggiero, Guido. *Violence in Early Renaissance Venice*. New Brunswick, NJ: Rutgers University Press, 1980.
- Sbriccoli, Mario. "Giustizia negoziata, giustizia egemonica. Riflessioni su una nuova fase degli studi di storia della giustizia criminale." In *Criminalità e giustizia in Germania e in Italia pratiche giudiziarie e linguaggi giuridici tra tardo Medioevo ed età moderna. Atti del convegno tenuto a Trento nei giorni 21–23 ottobre 1999*, edited by Marco Bellabarba, Gerd Schwerhoff, and Andrea Zorzi, 345–64. Bologna; Berlin: Il Mulino; Duncker & Humblot, 2001.
- . "Justice négociée, justice hégémonique : L'émergence du pénal public dans les villes italiennes des xiii^e et xiv^e siècles." In *Pratiques sociales et politiques judiciaires dans les villes de l'Occident à la fin du Moyen Âge*, edited by Jacques Chiffolleau, Claude Gauvard, and Andrea Zorzi, 389–421. Rome: Publications de l'École française de Rome, 2007.
- . "Polizia (diritto intermedio)." *Enciclopedia del diritto*. Milan: A. Giuffrè, 1985.
- Scott, James C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press, 1998.
- Simon, Thomas. *"Gute Policy": Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit*. Frankfurt: Klostermann, 2004.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- Stern, Laura Ikins. *The Criminal Law System of Medieval and Renaissance Florence*. Baltimore: Johns Hopkins University Press, 1994.
- Stolleis, Michael. *Geschichte des öffentlichen Rechts in Deutschland*. Vol. 1, *Reichspublizistik und Policywissenschaft 1600 bis 1800*. Munich: Beck, 1988.
- Tamba, Giorgio, ed. *Rolandino e l'ars notaria da Bologna all'Europa: atti del convegno internazionale di studi storici sulla figura e l'opera di Rolandino: Bologna, città europea della cultura, 9–10 ottobre 2000*. Milan: A. Giuffrè, 2002.
- . *Una corporazione per il potere: il notariato a Bologna in età comunale*. Bologna: CLUEB, 1998.
- Tamba, Giorgio, and Isabella Zanni Rosiello, eds. "Archivio di Stato di Bologna." In *Guida generale degli archivi di Stato italiani*, 1:549–645. Rome: Ministero per i beni culturali e ambientali, 1981.
- Tilly, Charles. *Coercion, Capital, and European States, 990–1992*. Rev. ed. Cambridge, Mass.: Blackwell, 1992.
- Tuten, Belle S., and Tracey L. Billado, eds. *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White*. Burlington, VT: Ashgate, 2010.
- Unruh, Georg-Christoph von. "Polizei, Polizeiwissenschaft und Kameralistik." In *Deutsche Verwaltungsgeschichte*, edited by Kurt G.A. Jeserich, Hans Pohl, and Georg-Christoph von Unruh, 1:388–427. Stuttgart: Deutsche Verlags-Anstalt, 1983.

- Vallerani, Massimo. "Criminal Court Procedure in Late Medieval Bologna: Cultural and Social Contexts." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 27–54. Lanham, MD: Lexington Books, 2018.
- . "Giochi di posizione tra definizioni legali e pratiche sociali nelle fonti giudiziarie bolognesi del XIII secolo." In *Gioco e giustizia nell'Italia di comune*, edited by Gherardo Ortalli, 13–34. Rome: Viella, 1993.
- . "Giustizia e documentazione a Bologna in età comunale (secoli XIII–XIV)." In *La documentazione degli organi giudiziari nell'Italia tardomedievale e moderna, Atti del convegno di studi, Siena, Archivio di Stato. 15–17 settembre 2008*, 275–314. Rome: Pubblicazioni degli Archivi di Stato, 2012.
- . *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- . *Il sistema giudiziario del comune di Perugia: conflitti, reati e processi nella seconda metà del XIII secolo*. Perugia: Deputazione di storia patria per l'Umbria, 1991.
- Valverde, Mariana. "Police, Sovereignty, and Law: Foucaultian Reflections." In *Police and the Liberal State*, edited by Markus Dubber and Mariana Valverde, 15–33. Stanford: Stanford University Press, 2008.
- Vitiello, Joanna Carraway. *Public Justice and the Criminal Trial in Late Medieval Italy: Reggio Emilia in the Visconti Age*. Leiden: Brill, 2016.
- Waley, Daniel, and Trevor Dean. *The Italian City-Republics*. 4th ed. Harlow: Longman, 2010.
- Wallis, John Joseph. "Institutions, Organizations, Impersonality, and Interests: The Dynamics of Institutions." *Journal of Economic Behavior & Organization* 79 (2011): 48–64.
- . "Rules, Organizations, and Governments." *Atlantic Economic Journal* 43 (March 2015): 69–86.
- Wallis, John Joseph, and Douglass C. North. "Coordination and Coercion: The Nature of Rules, Governments, States, and Social Dynamics." Working Paper, 2013.
- Wandruszka, Nikolai. "Die Revolte des Popolo von 1228 in Bologna." In *Bene vivere in communitate: Beiträge zum italienischen und deutschen Mittelalter: Hagen Keller zum 60. Geburtstag überreicht von seinen Schülerinnen und Schülern*, edited by Thomas Scharff and Thomas Behrmann, 49–63. Münster: Waxmann, 1997.
- White, Stephen D., ed. *Feuding and Peace-Making in Eleventh-Century France*. Burlington, VT: Ashgate, 2005.
- Wickham, Chris. *Courts and Conflict in Twelfth-Century Tuscany*. Oxford: Oxford University Press, 2003.
- Zorzi, Andrea. *L'amministrazione della giustizia penale nella Repubblica fiorentina: aspetti e problemi*. Florence: L.S. Olschki, 1988.
- . "Contrôle social, ordre public et répression judiciaire à Florence à l'époque communale: éléments et problèmes." *Annales. Économies, Sociétés, Civilisations* 45 (1990): 1169–88.
- . "L'egemonia del penale in Mario Sbriccoli." In *Penale giustizia potere: metodi, ricerche, storiografie: per ricordare Mario Sbriccoli*, edited by Luigi Lacchè, Carlotta Latini, Paolo Marchetti, and Massimo Meccarelli, 155–78. Macerata: EUM, 2007.
- . *La trasformazione di un quadro politico*. Florence: Firenze University Press, 2008.

Chapter 1: Police Power in the Italian Communes

In April 1287, a resident of Bologna named Franco di Rodulfino stood trial for physically and verbally abusing a *berrovarius* of the podestà during a weapons search. The assaulted officer, Bernardino, and his patrol partner each told the same story in court: when Bernardino tried to search him for illegal weapons, Franco grabbed him by the shoulders, pulled him forcefully toward himself, and said “horrid and injurious words” to him, namely, “Are you a bugger?” (*buzironus*).¹ Considering that Bologna’s statutes prescribed immolation as the punishment for sodomy, “bugger” was a horrible insult indeed.² Franco did not dispute their story under oath but claimed he had not recognized Bernardino as a *berrovarius* since he was “almost drunk.” He also offered a slightly different version of what he had said to Bernardino, which translates roughly as: “What are you, a bugger, touching me that way?”³ Franco, it appears, was initially convicted and spent a few days in jail, though the judge ultimately acquitted him.

Franco’s case is fascinating in its own right for his apparent use of a homophobic slur in reaction to the *familia*’s weapons search. He seems to have viewed their attempt to pat him down as a threat to his masculinity. But his case is also emblematic of what occurred routinely in the city streets on a much larger scale. The podestà’s *familia* patrolled the city streets on a daily (or near-daily) basis, looking for men bearing illegal arms or wearing armor without a permit. Each year, the *familia* forced scores of men to stand trial for illicit arms-bearing and subjected countless others to pat-downs before releasing them to go about their business. These encounters involved a temporary detention and in some cases an invasive search under the suspect’s clothing. In today’s terminology, one might say that Bologna had a stop-and-frisk program some seven centuries before this police tactic became the subject of controversy in American cities. If Franco’s case is any indicator, this kind of policing was not welcome on a personal level. Yet, paradoxically, the commune’s citizen-legislators had no one to blame for this but themselves.

The underlying question of why a newly coercive form of policing arose in Italian cities at a time of increased political autonomy will be taken up in later chapters. This first chapter establishes the nature and extent of police power in the Italian communes, starting with the richly documented case of Bologna. It opens by describing the officials who policed the city and the patrols they undertook on a regular basis. The chapter then describes the procedures they followed on patrol and the legal process triggered by the *familia*’s denunciation. Finally, it concludes with an analysis of case samples from Bologna and three other communes: Perugia, Siena, and Orvieto.

The evidence suggests that, in late thirteenth-century Bologna, the *familia* compelled roughly 300 individuals to stand trial on curfew, weapons, and gambling charges each year. Police patrols brought comparable numbers, in proportion to total population, to

¹ ASB, Inquisitiones 10, reg. 8, 11v: “Dum volebat ipsum cercare pro armis rimandis, cepit ipse Franchus dictum Bernardinum super spatulas cum manibus et traxit ipsum fortiter sub se, dicendo sibi verba orrida et iniuriosa scilicet, ‘Es tu buzironus?’”

² *Statuti 1288*, 1:196; *Statuti 1245*, 3:409. On the crime of sodomy more generally, see Dean, *Crime in Medieval Europe*, 57–61; Goodich, “Sodomy.”

³ ASB, Inquisitiones 10, reg. 8, 12r: “Dixit sibi, ‘Es ne buzironus quia ita me stringis?’ [...] Et predicta dixit se dixisse et fecisse ingnorans dictum Bernardinum esse beroarium domini potestatis et quaxi ebrius existens.”

trial in Perugia, Siena, and Orvieto as well. In contrast to other kinds of criminal trials, the contumacy rate—meaning the number of cases where the imputed refused to appear in court—was close to zero in trials initiated by the *familia*'s denunciation. Moreover, once the *familia* had made a denunciation, the legal burden was on the accused to prove his or her innocence in court. By law judges were to lend credence to denunciations by *familiars* and acquit suspects only if they could proffer a legitimate excuse. Thus, when it came to curfew, arms-bearing, and gambling offenses, the statutes inverted the presumption of innocence that usually guided criminal procedure in the communes, resulting in relatively high conviction rates.⁴

In sum, judicial records show that Italy's communes wielded significant police power. By compelling hundreds of people to stand trial against their will every year, the podestà's *familia* proved itself an effective arm of government coercion. Whether this coercion was effective in reducing crime and disorder is a question for later chapters, as is the question of whom exactly the *familia* policed. For now, the salient point is that these medieval governments were not nearly so lacking in police power as is commonly assumed. An older generation of historians saw this presumed lack as a deficiency that allowed lawlessness and violence to prevail in medieval communities. More recent scholarship has retreated from viewing the absence of police power as problematic, arguing that medieval justice systems sought negotiation and compromise instead of strict enforcement and punishment. The evidence below, however, suggests that historians have not painted a balanced portrait of public justice in medieval Italy to date.⁵

The Podestà's Household

Before delving into the praxis of policing, a description of the officials involved is in order. In Bologna, the podestà was responsible for policing the city and its territory. Across northern Italy, the office of the podestà originated as a solution to the factional disputes of local elites. The commune's leading citizens would invite a knight (*miles*)—preferably with some legal training—from a friendly city to govern for a fixed period of time, usually six months or a year. During this time, he was to keep the peace and uphold the statutes impartially. Communes began experimenting with this outsourcing model in the mid-twelfth century; Bologna was among its first adopters in 1151. By the early thirteenth century, the podestà was a fixture of communal government, and by the end of the century, his role as a kind of chief justice with police powers—rather than a ruler or governor (*rector*) per se—was largely cemented.⁶ In effect, this meant that someone new was in charge of policing the commune every six months.

To police the city, the podestà relied on his "household" (*familia*), a retinue comprising judges, knights (*milites*), notaries, "policemen" (*berrovarii*), and attendants (*domicelli, scutiferi*). Witnesses tend to refer to the *familia* as a collective entity in the trial records; that is, they speak of the *familia* itself—rather than individual *familiars*—patrolling and arresting people. The *familia* served the same limited term of office as the

⁴ On the presumption of innocence in medieval criminal law, see Quintard-Morénas, "The Presumption of Innocence"; Pennington, "Innocent Until Proven Guilty"; Fraher, "Ut nullus describatur reus."

⁵ For this literature, see the Introduction.

⁶ Grillo, "Podestà dell'Italia comunale"; Maire Vigueur, "L'ufficiale forestiero"; Maire Vigueur, ed., *I podestà*; Franchini, *Saggio di ricerche*; Hanauer, "Das Berufspodestat." For the evolution of institutions in the early Bolognese commune, see Tamba, "Civic Institutions."

podestà and, in Bologna, lived with him in the “old palace” (*palatium vetus*) overlooking the commune’s piazza (today’s Piazza Maggiore).⁷ Bologna’s statutes required *familiars* to come from the podestà’s home territory and avoid socializing with city residents, so as to ensure their political neutrality.⁸ In addition to these general requirements for *familiars*, Bologna’s statutes expressly forbade the *berrovarii* from entering any tavern, brothel, or home in the city—except when exercising their office—under penalty of a 10-lire fine. Even when searching for weapons or gamblers, one of the podestà’s judges or knights had to be present for them to enter a building.⁹ The podestà paid his *familiars* regular salaries out of his own, which the statutes fixed at 350 lire per month.¹⁰ Bologna’s capitano del popolo had a *famiglia* as well, but they were not responsible for the kind of policing that is the subject of this study. This stands in contrast to Perugia, where the criminal jurisdictions of the podestà and capitano del popolo seem to have overlapped or changed frequently. Siena had no less than five foreign police forces by the 1330s, and their jurisdictions generally overlapped.¹¹ These differences remind us that the communes, though they shared a common political and legal culture, varied endlessly in the particulars of their statutory and constitutional arrangements.

According to statute, one of the podestà’s knights or judges had to be present on patrol for the *berrovarii*’s denunciations to carry legal weight.¹² Usually a knight served as patrol captain. The 1288 statutes called for the podestà to employ three knights in his *famiglia*, but by April 1300 their number had increased to four.¹³ Knights were the right-hand men of the podestà—his associates (*socii*) or partners (*collaterales*), in the words of the sources—serving both military and judicial functions.¹⁴ As military captains, the podestà’s knights led missions against enemies of the commune—for instance, to raze the home of a convicted felon or hunt down a notorious outlaw (see Chapter 3). By the 1300s, knights also served as public executioners, a role that had previously fallen to the commune’s jailers.¹⁵ At the same time, knights could preside over judicial proceedings and conduct interrogations. Presumably it was because of these legal roles that Bologna’s statutes required knights to be at least forty years of age.¹⁶ On patrol, the knight combined his military and judicial functions. He worked to deliver suspects to the criminal court, by force if necessary; at the same time, he conducted the initial interrogation of suspects,

⁷ Called the Palazzo del Podestà today, the “old” palace was thus named to distinguish it from the “new” palaces—the Palazzo Re Enzo and Palazzo del Capitano del Popolo—constructed next door in the mid-thirteenth century. Together these palaces formed a complex that served as the seat of government; Smurra, “The Palatium Communis Bononie.”

⁸ *Statuti 1288*, 1:10–11, 28. By contrast, Sienese law stipulated that *berrovarii* could not be from the same town as the podestà, likely to ensure their loyalty to Siena’s government; see Bowsky, “The Medieval Commune,” 11.

⁹ *Statuti 1288*, 1:235. Siena’s statutes made similar prohibitions; see *Costituto*, 1:272, 355.

¹⁰ *Statuti 1288*, 1:10–11.

¹¹ For the jurisdictions of Bologna’s courts, see Blanshei, *Politics and Justice*, 511–25. For Perugia’s, see Vallerani, *Il sistema giudiziario*. On Siena, see Bowsky, “The Medieval Commune,” 8–10.

¹² *Statuti 1288*, 1:224, 226. For Perugia, see *Statuto 1279*, 1:334.

¹³ ASB, Corone 11, 1300 (82 fols.), 1v.

¹⁴ Both terms are used in ASB, Corone 9, 1298 (28 fols.), 1r.

¹⁵ For one example, see ASB, Corone 13, 1302II (152 fols.), 76r. On jailers playing the role of executioner, see Geltner, *The Medieval Prison*, 25.

¹⁶ *Statuti 1288*, 1:8, 11. For an example of a *miles* presiding at a defendant’s arraignment, see ASB, Corone 6, 1294I (118 fols.), 61v–62r.

acting like a judge in the street. A knight of the podestà was thus a remarkably versatile official, a warrior and magistrate rolled into one.

The judge of the criminal court (*ad maleficia*)—one of five judges in the podestà's household—was also known to captain police patrols. The practice, common in the mid-thirteenth century, became rare by the fourteenth century, likely the result of burgeoning caseloads in the courts.¹⁷ In Bologna, the practice is attested as late as 1298, when the *professor legum* Fulchino de' Stretti discovered someone carrying an illicit knife on a patrol.¹⁸ Perugia's judges led police patrols as well, indicating this practice was not exclusive to Bologna.¹⁹ Practically speaking, this meant that the same man who oversaw the arrest of a suspect on patrol later tried him in court.

One of the podestà's notaries accompanied the judge or knight on patrol. Beginning in the 1280s, this duty fell to the "crowns" notary, one of seven (later, 12) in the podestà's retinue, who headed the Office of Crowns and Arms.²⁰ Bologna's lawmakers created this office to oversee the enforcement of the new sumptuary and funeral laws.²¹ Early mentions of this official thus call him "the notary of trains and crowns" (meaning the trains of women's dresses) or "the notary presiding over the office of crowns, trains, and the deceased."²² The statutes did not explicitly place curfew, gambling, and arms cases under his jurisdiction, but the court records show that the crowns notary busied himself recording and sometimes participating in trials for these offenses. In this spirit, the crowns notary in the first semester of 1291 identified himself as the notary in charge of sumptuary and funeral matters and "whatever other things the commune of Bologna forbids."²³ On patrol, the crowns notary's job was to book each suspect, writing down his name, provenance, and alleged crime. This recordkeeping was essential to the ensuing trial and the *familia*'s case against the defendant.

Together, the judges, knights, and notaries comprised what we might call the ranking officials of the podestà's household. But the "policemen" (*berrovarii*) at the heart of this study were the podestà's armed retinue, who may well have originated as his personal guard.²⁴ Even after they took on police duties in the thirteenth century, they never lost this role. As palace guards, the *berrovarii* protected the podestà and the ruling regime itself, providing crowd control and suppressing riots when they erupted. Besides conducting police patrols (described below), *berrovarii* might accompany criers attempting to detain

¹⁷ In the earliest record of a patrol by the *familia* in Bologna, from April 1242, both the podestà's judge and knight were present; see ASB, Inquisitiones 1, reg. 1, 3v. For other examples of judges on patrol, see ASB, Corone 1, 1264, 1r; 1284, 5v; 1285II (70 fols.), 1v; 1287I (16 fols.), 9v; Corone 2, 1288II, 2r. For the overwhelming caseload handled by Bologna's criminal court, see Blanshei, "Bolognese Criminal Justice," 68.

¹⁸ ASB, Corone 9, 1298 (28 fols.), 1r.

¹⁹ ASP, Capitano 4, reg. 5, 11v; 5b, reg. 8, 15v and passim; 7b, reg. 7, 2r-8v.

²⁰ For the seven notaries of the podestà's household, see *Statuti 1288*, 1:11. Twelve are listed in ASB, Corone 11, 1300 (82 fols.), 1v.

²¹ The Crowns and Arms office is sometimes called a "court," but the crowns notary actually brought charges to the criminal court. Cf. Blanshei, *Politics and Justice*, 512.

²² ASB, Sindacato 3, 1286II, 82r, 96v.

²³ ASB, Corone 3, 1291I, 1r: "Notarium ipsius domini potestatis ad officium coronarum et ad mortuorum et exsequia et nuptiarum convivia et ad allia [sic] quamplura vetita comunis Bononie deputatum."

²⁴ According to Aldo Settia, the *berrovarius* was originally a light cavalryman. How this appellation came to be used for the podestà's armed retainers is unclear; see *Comuni in guerra*, 71-89.

the goods of debtors.²⁵ Bologna's podestà usually had 20 *berrovarii*, but their ranks could be increased whenever the citizens deemed necessary, namely in times of war and unrest. Thus, when the commune was preparing for war with Ferrara in 1295, Bologna's council doubled the number of *berrovarii* to 40, and in the wake of a political conspiracy in 1306, they stipulated that the new podestà have 50 *berrovarii* on foot plus 25 mounted.²⁶

It bears emphasizing that the *berrovarii* were not professional policemen in the modern sense. Indeed, Europe was still centuries away from having "police" as a distinct profession. Rather, the *berrovarii* were soldiers who performed police functions, much like the urban cohorts of ancient Rome.²⁷ On occasion the trial records even call them soldiers (*soldaterii*, *masnade*, or *fanti*).²⁸ Hermann Kantorowicz's appellation "police-soldiers" (*Polizeisoldaten*) is therefore apt.²⁹ The podestà's *berrovarii* shared the burden of policing with various other foreign officials, mercenaries, and local guards (described below), which meant that their most distinguishing characteristic was their membership in the podestà's household. If witness testimony is any indication, city residents thought of the *berrovarii* as the podestà's men or even his "muscle," as opposed to impartial public officials (see Chapter 6).

That said, the *berrovarii* were still "men of the court" (*illi de corte*), as one town resident characterized them in March 1294.³⁰ Like other officials of the commune, they swore a sacred oath of office, and when they patrolled they were exercising an *officium*.³¹ Bologna paid the *berrovarii* a regular salary of 2 soldi per day and generally prohibited them from receiving a cut of any fines they generated, an incentive provided for other denouncers of crime, including watchmen. However, lawmakers did experiment with incentive-based pay for the *berrovarii* from time to time.³² Presumably lawmakers feared an incentive-based system would encourage *familiares* to abuse their office, but in times of heightened insecurity, they deemed this risk worth taking.

The social background of the *berrovarii* is an open question, because the historical record provides nothing more than their names. Their names alone suggest that cohorts of *berrovarii* represented a cross section of society. A number of *berrovarii* seem to have practiced trades; they are identified as swineherds, cobblers, barbers, farriers, and the like with some frequency.³³ Some were identified by family name, suggesting a respectable

²⁵ Smail, *Legal Plunder*, 183, 260, 265–66.

²⁶ *Statuti 1288*, 1:581–82; ASB, Cartacea 218, reg. 19, 20r. For the political conspiracy of 1306, see Vitale, *Il dominio*, 98–105.

²⁷ On Rome's urban cohorts, see Ménard, *Maintenir l'ordre*; Sablayrolles, *Libertinus miles*; Purpura, "Polizia (diritto romano)"; Freis, *Die cohortes urbanae*.

²⁸ ASB, Corone 9, 1298–1299 (48 fols.), 2r: "Soldaterius." ASB, Corone 6, 1294I (84 fols.), 8r–v: "Masnada." ASB, Corone 4, 1292I (46 fols.), 16v–17r: "fante."

²⁹ Kantorowicz, *Albertus Gandinus*, 1:61.

³⁰ ASB, Corone 6, 1294I (84 fols.), 29v–30r.

³¹ For *berrovarii* swearing an oath of office, see ASB, Corone 20, 1313II (33 fols.), 1r–2v. For the *familia* "faciendo officium suum" on patrol, see ASB, Corone 2, 1287II, 21v, 23r.

³² For monthly salary payments to *berrovarii*, see ASB, Sindacato 3, 1286II, 38v, 53v. For reward payments of 1 lira for every weapon the *berrovarii* confiscated, see ASB, Corone 13, 1302II (152 fols.), 6r, 72r.

³³ For swineherds, see ASB, Corone 1, 1287I (34 fols.), 20r; ASB, Cartacea 217, reg. 16, 37r–v. For a cobbler, see ASB, Cartacea 217, reg. 14, 18r. For barbers, see ASB, Corone 6, 1294II (28 fols.), 7r; ASB, Corone 13, 1302II (102 fols.), 79r. For a farrier, see ASB, Corone 21, 1315I (102 fols.), 64r–66r.

pedigree, but *berrovarii* named Bastardo or Bastardino also appear with some frequency.³⁴ Others were known for their origins outside of Italy: there was Azzolino the African, one known simply as “the Greek,” and another as the Burgundian.³⁵ Yet others were known by descriptive or perhaps ironic names. Toro the Ox and Materassa (“Mattress”) of Florence were probably large men, while Fustuccio (“Little Club”) of Artimino was perhaps stocky in build.³⁶ Maltaglia (“Badly Cut”) was probably not a handsome man, while Ribaldo (“Rascal”) and Spigliato (“Easy”) were likely colorful individuals.³⁷ If the reputation of urban police forces in other medieval cities is any indication, the *berrovarii* surely included some dubious characters among their ranks.³⁸ Indeed, Guido Ruggiero found that patrol officers in Venice accounted for a disproportionately large percentage of assault cases tried in court in the late fourteenth century.³⁹

The *berrovarii* were apparently not as instantly recognizable on patrol as one might assume. On the one hand, the *berrovarii* were well-armed, and incidental trial testimony indicates that they did wear uniforms. In one 1310 case, the Bolognese judge Francesco de’ Preti testified as a witness that the *berrovarii* had arrested the defendant while out of uniform (*absque pannis*). As he recounted, he later went to the podestà’s palace and admonished them for going about in disguise (*incogniti*), among other injustices they had allegedly committed toward the defendant.⁴⁰ On the other hand, defendants frequently swore that they had mistaken the *familia* for other armed men (see Chapter 6). However self-serving these claims were, they must have at least been plausible for defendants to have argued them in unrelated cases over the course of decades. Whatever garb the *berrovarii* wore, then, must not have been very distinctive.

Lastly, the podestà’s attendants (*domicelli* or *scutiferi*) rounded out the patrol party. The sources say little about them, but in 1300 they numbered 12. Judging from the court records, they regularly participated in police patrols, working to make arrests and later testifying against the accused.⁴¹ In their police function, then, they were hardly distinguishable from the *berrovarii*, but they were probably unarmed and likely younger. The example of Alberghetto Calamatoni, detailed in Chapter 5, may indicate the general station of these attendants. In January 1315, this young man (*iuvenis*) from a prominent Bolognese family told a judge that he had served as *domicellus* to a podestà in Siena while he was under ban in Bologna for armed assault.⁴²

³⁴ For instance, see ASB, Corone 2, 1287II, 17v: “Niger de Canagnis et Lancellotus de Barazis familliares dicti domini potestatis.” Two members of the Tebaldi family, Giacomino and Baricanda, seem to have served together in 1294, in apparent contravention of the statutes; see ASB, Corone 6, 1294I (118 fols.), 37r, 48r. For one of many *berrovarii* named Bastardo, see ASB, Cartacea 217, reg. 16, 37r–v.

³⁵ ASB, Corone 1, 1286II, 8r: “Azolinus Lafricanus.” ASB, Corone 2, 1288II, 12r: “Grecho.” ASB, Corone 4, 1292I (92 fols.), 23v: “Borgogninus.”

³⁶ ASB, Corone 11, 1300 (82 fols.), 2r, 9r: “Torus qui dicitur Bovarius.” ASB, Cartacea 217, reg. 11, 10r–v: “Matarassa” and “Fustucius.”

³⁷ ASB, Cartacea 217, reg. 16, 37r–v: “Malatalla.” ASB, Corone 2, 1287II, 21v: “Ribaldus de Sacha.” ASB, Corone 11, 1300 (82 fols.), 2r: “Spiglatus Umberti.”

³⁸ Turning, *Municipal Officials*, 116–26. For later centuries, see Hughes, “Fear and Loathing.”

³⁹ Patrol officers constituted less than half a percent of the population but accounted for 3.3 percent of assaults tried by the Forty, Venice’s judicial council; see Ruggiero, *Violence*, 83.

⁴⁰ ASB, Corone 18, 1310II (96 fols.), 37v.

⁴¹ ASB, Corone 11, 1300 (82 fols.), 1v.

⁴² ASB, Corone 21, 1315I (102 fols.), 26v.

All told, Bologna's police forces were relatively modest in size. Between *berrovarii* and *domicelli*, Bologna's podestà typically had 32 men (or 52 in wartime) available for patrol, plus three or four knights and seven to 12 notaries to lead them. If one takes a high count of the podestà's *familia*—four knights, 12 notaries, 40 *berrovarii*, and 12 attendants—the total number of foreign patrol officers was 66, or one for every 735 inhabitants circa 1300, when the population was about 50,000. (This does not include the local officials, the criers and heralds, who sometimes assisted the *familia* on patrol.) More conservatively, with a force of just 20 *berrovarii* under the podestà, the ratio was one to 1,042. These figures appear to have been low for communal Italy. Siena had one foreign police officer for every 145 inhabitants in the 1330s, and Venice had one patroller for every 250 inhabitants by the mid-fourteenth century.⁴³ As William Bowsky pointed out decades ago, the police presence in medieval communes could compare favorably to that of Western cities today. Contemporary Italy makes a difficult case for comparison because there is no centralized database of police personnel figures by municipality, and Italy's multiple state police forces—which operate in addition to regional, metropolitan, and municipal forces—skew the national ratio upward. In 2016 Italy had approximately one police officer for every 221 inhabitants, compared to one for every 336 in Germany and one for every 472 in England and Wales, less than half of Italy's per capita number.⁴⁴ Nonetheless, a 2017 census of local police in the Lombardy region found Milan, Brescia, and Bergamo to have one officer for every 450, 648, and 877 inhabitants, respectively. In Lombardy's smaller cities and towns (less than 100,000 inhabitants), ratios ranged well upward of one to 1,000.⁴⁵ To extend the comparison, the United States in 2017 had one sworn officer for every 417 inhabitants, with medium-sized towns (25,000 to 49,999 inhabitants, or about the size of a large medieval commune) averaging one for every 589.⁴⁶ By modern standards, then, medieval Siena and Venice had high ratios of police to inhabitants, while Bologna's police force was somewhat undersized.

Individual police patrols in Bologna were apparently modest in size as well. The sources rarely indicate how many men constituted a patrol, but in a register from 1310, the notary consistently states that each patrol consisted of at least 12 men.⁴⁷ This formulaic language suggests he was giving due diligence to a recently passed city ordinance, which in turn would suggest that Bologna's lawmakers believed some recent patrols had been undermanned. By contrast, a 1306 case from Siena refers to a patrol of 25 *berrovarii* led by a notary and *socius*.⁴⁸

⁴³ Bowsky, "The Medieval Commune," 7. Ruggiero, *Violence*, 15.

⁴⁴ According to Eurostat, Italy had 452.73 police officers per 100,000 inhabitants Italy in 2016. This was the most recent data available at the time of writing. See "Police, court and prison personnel statistics," [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Police, court and prison personnel statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Police,_court_and_prison_personnel_statistics) (accessed December 2018).

⁴⁵ "In Lombardia oltre 8.200 agenti di polizia locale. A Como uno ogni 928 abitanti," *Corriere di Como*, 24 July 2018, www.corrieredicomo.it/in-lombardia-oltre-8-200-agenti-di-polizia-locale-a-como-uno-ogni-928-abitanti/ (accessed December 2018).

⁴⁶ These figures are from the Federal Bureau of Investigation's Uniform Crime Reporting Program, "Crime in the United States 2017 – Police Employee Data," <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/police-employee-data> (accessed December 2018).

⁴⁷ ASB, Corone 18, 1310II (96 fols.).

⁴⁸ ASS, Malefizi 11, 137v.

Based on these comparisons, it is not surprising that Siena's police forces produced a significantly greater number of convictions than Bologna's, as this chapter shows below. However, police forces and patrols did not have to be especially large to have a major impact on a medieval city. In Bologna, the *familia*'s typical patrol area within the city walls (corresponding to today's city center) was only 1.5 miles across. The city walls also enclosed a sizeable amount of uninhabited space, as most of the population resided near the central piazza and market areas and along a few major arteries.⁴⁹ Yet the data below show that even a modest police force could affect city life significantly. Indeed, as Guy Geltner has recently shown, a single notary patrolling with two *berrovarii* and perhaps a crier or two was sufficient to police violations of the city's many public sanitation and urban planning ordinances. The regularity of patrols, rather than the size of the force, was what made the threat of enforcement credible within the small space of a medieval town. This was simply more true in Siena, a smaller commune with a larger police presence.

Police Patrols and Inspections

The Crowns and Arms registers suggest that the podestà's *familia* spent much of their time patrolling the city for violations of the curfew, gambling, and arms-bearing laws. Although the latter two were subject to frequent modification, their core provisions endured through the decades. The curfew law prohibited residents from being outside without a light after the third curfew bell, which rang about two hours after sunset. The same statute forbade taverners from serving wine at night and all residents from making music (*mattinando*) in the streets at night.⁵⁰ Gambling was permitted in designated public spaces called *baratarie* but prohibited anywhere else, whether in a private home, tavern, or public space. Hosting private gaming was a serious crime that could result in a hefty fine or even the loss of one's home.⁵¹ By the late thirteenth century, Bologna had at least two public gambling spots: one in the piazza near the old palace and the other in the crossroads of Porta Ravegnana under the Asinelli tower.⁵² In effect, the licensing of *baratarie* meant that gambling was legal only in the city's most public places—in contrast to prostitution, which was forbidden near the civic center and churches.⁵³ Arms-bearing laws were the most frequently amended, but generally they forbade residents from carrying assault weapons (*arma offensibilia*)—which included all types of blade, percussive, and projectile weapons—and required them to obtain a government permit to wear armor (*arma defensibilia*) in public.⁵⁴ In theory the podestà's *familia* patrolled in search of all kinds of crime, from theft to prostitution outside of red light districts (see Chapter 3), but the Crowns and Arms registers show little evidence of police action against other crimes.

⁴⁹ For the geography of thirteenth-century Bologna, see Bocchi, ed., *Bologna*.

⁵⁰ *Statuti 1288*, 1:229–30. If custom in Bologna was the same as in Siena, the first bell sounded at sunset, the second an hour later, and the third two hours after sunset; see Falletti-Fossati, *Costumi senesi*, 186. Perugia's statutes expressly prohibited taverners from serving wine after the first bell; see *Statuto 1279*, 1:329.

⁵¹ *Statuti 1288*, 1:223–24.

⁵² Bologna had *baratarie* as early as 1265 and by the 1330s had at least four. See Ungarelli and Giorgi, "Documenti"; Frati, *La vita privata*, 103–8. In general, see Zdekauer, *Il gioco d'azzardo*.

⁵³ On prostitution in medieval Italy, see Mazzi, "Un 'dilettoso luogo'"; Mazzi, *Prostitute e lenoni*.

⁵⁴ *Statuti 1288*, 1:225–29. For the jurisprudence surrounding these laws, see Cavallar, "Regulating Arms," 62–73.

It is difficult to date with precision when these laws first appeared or when the *familia* began patrolling the streets of Bologna to enforce them. The first explicit mention of a gambling law in Bologna comes from 1234, in a criminal ban that refers to “Fra Giovanni’s statute” against the game *azarum*.⁵⁵ This is almost certainly a reference to Fra Giovanni da Vicenza, a charismatic preacher who took governance of Bologna in 1233 as the Alleluia Movement swept through the city. Much as Girolamo Savonarola would do in Florence some 260 years later, Fra Giovanni instituted strict morality laws in Bologna and other communes, some of which had an enduring influence on municipal statutes.⁵⁶ It is unclear whether he also shaped Bologna’s arms-bearing regulations, which could well have predated him. Indeed, Genoa restricted the bearing of arms in the city as early as 1143.⁵⁷ Early criminal bans make clear that Bologna had such laws in place by 1234 but offer no evidence of enforcement by the *familia*.⁵⁸ Likewise, the earliest evidence of curfew enforcement dates from 1237 but involves the night watch, not the *familia*.⁵⁹ There is evidence of law enforcement by the podestà’s household as early as 1235, when one of the podestà’s judges denounced two victualers, who worked for the cathedral canons, for failing to have grain weighed before milling.⁶⁰ But the podestà’s *familia* does not appear on patrol until 1242, when there is record of it searching for curfew breakers and watchmen absent from their posts.⁶¹ Although the evidence is not conclusive, it would suggest that the *familia*’s patrols began between 1234 and 1242, within a few years of a new prohibition on gambling. Certainly by 1256 the podestà’s *familia* were actively and regularly patrolling for violations of the curfew, gambling, and arms-bearing laws (see Table 7 below).

By the end of the thirteenth century, the podestà’s *familia* was patrolling the city streets on a daily or near-daily basis.⁶² The sources do not indicate what pattern (if any) these patrols followed, but their timing and routes both seem to have varied. On the one hand, the *familia* routinely patrolled on the cusp of curfew, between the first and third bells, to make sure residents closed up their houses for the night or at least lit a lamp if they planned to remain out of doors. A witness in a 1289 arms-bearing case referred to an “appointed hour for searching for arms,” suggesting that these patrols also took place at regular times.⁶³ On the other hand, the podestà gave free license to his knights and notaries

⁵⁵ ASB, Accusationes 1a, reg. 4, 40r: “Item luxisse ad azarum a tempore statuti fratris Johannis citra per xx vices contra formam statuti.”

⁵⁶ Thompson, *Revival Preachers*; Vauchez, “Une campagne de pacification.”

⁵⁷ Epstein, *Genoa*, 36, 66–68.

⁵⁸ Some of the earliest surviving criminal bans mention the bearing of prohibited arms; see ASB, Accusationes 1a, reg. 4, 34r–35r, 36v.

⁵⁹ ASB, Accusationes 1a, reg. 6, 33r–v (loose folio).

⁶⁰ ASB, Accusationes 1a, 1235 (unnumbered), 1v.

⁶¹ ASB, Inquisitiones 1, reg. 1, 3v.

⁶² The Crowns and Arms register from the first semester of 1293 contains a patrol log that records patrols virtually every day of the semester; see ASB, Corone 5, 1293I (66 fols.), 55r–56r. Other registers record the podestà’s orders to his *familia* to patrol the city every day of his regime: ASB, Corone 11, 1300 (82 fols.), 1v; Corone 13, 1302II (102 fols.), 1r; 1303I (44 fols.), 1r; Corone 26, 1319II (82 fols.), 2r; Corone 28, 1320II (100 fols.), 10r. In later years, notaries sometimes recorded patrols separately from trial records to show the podestà’s due diligence in executing his office. For examples, see ASB, Corone 27, 1320I (38 fols.), 2r–23r; 1320I (46 fols.), 2r–24v; Corone 29, 1324I, 8r–22v; 1324II, 99r–115v.

⁶³ ASB, Corone 2, 1289II (74 fols.), 26v: “Ipse testis non credebat ipsos esse berruarios, quia non erat hora deputata de rimando arma.”

to patrol the city any time it pleased them.⁶⁴ In a number of cases the *familia* appears to have surprised defendants in the street, suggesting they took advantage of this license. The *familia* likewise enjoyed discretion in choosing where to patrol. According to Bologna's 1288 statutes, the podestà's *familia* was to keep the night watch at least once a week in each quarter of the city.⁶⁵ But they were also free to patrol the whole city and did so. In November 1299, for example, the podestà explicitly ordered his *familia* to cover all quarters of the city as well as its *borghi* and suburbs on a nocturnal patrol.⁶⁶ This set the *familia* apart from the night watch and other local security forces, who guarded specific parishes or quarters. In effect, the *familia* could appear anywhere in the city at any time. While this unpredictability helped to maximize their deterrent effect, the *familia* did not simply patrol the streets at random. They acted on tips from informants, as in the gambling house raid described in the Introduction, and likely targeted known threats and nuisances, such as taverns, more than the sources let on.

Although the *familia* spent much of its time patrolling the city streets, they also undertook regular expeditions into the *contado*, the rural territory under the commune's administrative jurisdiction. Many of these missions aimed to capture outlaws. For example, in July 1301 the podestà ordered his *familia* to go once a week into the *contado* to capture outlaws and once every 15 days to search for outlaws from Modena residing within ten miles of the border. In the same order, the podestà directed his *familia* to patrol the roads of the *contado* once a month for illegal weapons and other violations of the statutes.⁶⁷ A register from 1320 shows them patrolling the *contado* roughly twice a month, and trial records bear out that they did make arrests for illicit arms-bearing and occasionally gambling on these patrols.⁶⁸ Chapter 3 will discuss the significance of these outlaw-capturing missions more fully, but it should be noted here that Bologna's *barisellus*, an official drawn from the butcher's guild, pursued political exiles in the *contado* separately.⁶⁹ To bolster police power in the *contado*, Bologna sometimes employed companies of cavalrymen (*cavalcatores* or *stipendiarii*), especially in the mountains to the south of the city, and explicitly tasked these mercenaries with enforcing the arms-bearing laws.⁷⁰ The podestà's ranking officials were known to join these auxiliary forces on patrol. One Sunday in February 1295, for example, a knight and notary of the podestà discovered some ten arms-bearing violations in the *contado* while patrolling with these *cavalcatores*.⁷¹ Records from Perugia show the capitano's *familia* policing outside the city walls as well.⁷²

⁶⁴ ASB, Corone 17, 1310I, 2r.

⁶⁵ *Statuti 1288*, 1:13.

⁶⁶ ASB, Corone 10, 1299 (8 fols.), 1r.

⁶⁷ ASB, Corone 12, 1301II, 5r. The podestà also mandated that his *familia* go once a week to Castelfranco—a strategic outpost on the border with Modena, Bologna's neighbor and perennial rival—to check on the commune's officials and garrison there.

⁶⁸ See the entries in ASB, Corone 28, 1320II (100 fols.), 7r–v, 19r–20v, 24r–25v.

⁶⁹ Blanshei, *Politics and Justice*, 60, 93–95, 415–16; Pini, “Discere turba volens”; Vitale, *Il dominio*, 119–23.

⁷⁰ ASB, Corone 7, 1295I (30 fols.), 23r. For a “captain of the mountains” in late 1302, see ASB, Corone 13, 1302II (152 fols.), 103r–v, 134v.

⁷¹ ASB, Corone 7, 1295I (30 fols.), 13r–16v.

⁷² From 1283: ASP, Capitano 7b, reg. 7, 23v–24v.

Communes' efforts to police the countryside can well be understood as part of their long struggle to pacify the unruly nobles and villages under their nominal control.⁷³

The *familia*'s patrol activity was hardly limited to searching for violations of the curfew, arms-bearing, and gambling laws. In keeping with the name of his office, the crowns notary conducted regular inspections for violations of the sumptuary laws, which regulated the consumption and public display of luxury goods—especially women's clothing and jewelry. Historians have generally emphasized the symbolic value of sumptuary law, noting—as contemporaries also did—the difficulty of enforcing it. In a recent comparative study, Laurel Wilson goes so far as to argue that “these laws had no instrumental function and were not really intended to.”⁷⁴ Nevertheless, patrol logs show that Bologna's crowns notary policed the sumptuary laws on a regular, albeit limited, basis. According to their records, these notaries would visit several of the city's most prestigious churches—usually the basilicas of San Domenico and San Francesco and a handful of others—virtually every Sunday and major feast day to inspect the congregation. The notary Giovanni of Pistoia, for example, recorded church visits on 31 different Sundays and feast days between July and December 1301.⁷⁵ Although some crowns notaries claimed to have patrolled the city and visited its churches looking for all matters that pertained to their office, others indicated that their inspections targeted women's dress in particular.⁷⁶ In August 1292, the podestà ordered his notary to visit the basilica of San Domenico on the saint's feast day to look for women wearing tiaras.⁷⁷ Another notary cited women wearing pearls, tiaras, and long dresses as his targets.⁷⁸ A third stated that he visited the city's churches in order to measure the tails of women's dresses.⁷⁹ On all of these inspections, a few *berrovarii* and criers accompanied the notary.

On most occasions, the notary reported finding nothing in violation of the statutes. However, there is evidence to suggest that at least some notaries made an earnest effort to enforce the law. Between 1286 and 1303, crowns notaries reported at least 13 women wearing tiaras (both gold and silver) and pearl necklaces on at least six different occasions.⁸⁰ Some of these notaries even measured the trains of dresses, which, according to statute, could not touch the ground by more than three quarters of a *braccio*. In September 1302, for example, the notary charged three women with wearing illegal garments: the first for wearing a blue cloak (*guarnazonus*) one palm too long, the second for a vermillion gown (*gonella*) one palm too long, and the third for a green cloak three digits too long.⁸¹ In July 1296, the notary denounced Giacoma, wife of Niccolò da Monzuno,

⁷³ In general, see Gentile, “From Commune to Regional State”; Gamberini, “La territorialità”; Fasoli, “Feudalità e città”; Chittolini, ed., *La Crisi*; Chittolini, “Città e contado”; Jones, “Communes and Despots.” On Bologna, see Bocchi, “Il comune.”

⁷⁴ Wilson, “Common Threads,” 159. See also Lansing, *Passion and Order*, 45–47, 58–60; Stuard, *Gilding the Market*, 84–121; Killerby, *Sumptuary Law*, 133–63; Hunt, *Governance*; Hughes, “Sumptuary Law.”

⁷⁵ ASB, Corone 12, 1301II, 1r, 9r–10v. For a similar monthly log, see ASB, Corone 23, 1316II (72 fols.), 17v, 20v, 23v, 36r, 45r, 51v.

⁷⁶ ASB, Corone 5, 1293I (42 fols.), 19r.

⁷⁷ ASB, Corone 4, 1292II (54 fols.), 25v.

⁷⁸ ASB, Corone 13, 1303I (44 fols.), 3v, 27r.

⁷⁹ ASB, Corone 4, 1292I (92 fols.), 4v, 7v–8v.

⁸⁰ ASB, Inquisitiones 7, reg. 8, 24r; reg. 11, 4r–7v; Corone 4, 1292I (92 fols.), 11v; 1292II (54 fols.), 21v–22r; Corone 8, 1296II (40 fols.), 4r; Corone 13, 1302II (102 fols.), 48r; 1303I (44 fols.), 3v, 9r–v.

⁸¹ ASB, Corone 13, 1302II (102 fols.), 48r.

for wearing a silver tiara and a dress with an excessively long train.⁸² On two other occasions, the notary charged a woman with not allowing him to measure her dress.⁸³ The records suggest that no convictions were made in these cases, and in one case, the podestà explicitly ordered the charge to be dropped.⁸⁴ By contrast, Siena's podestà convicted six different women for sumptuary violations in 1306 and assessed fines ranging from 10 to 35 lire, which fines at least three of them paid.⁸⁵

Whatever the case outcome, it is remarkable that, in late thirteenth-century Bologna, government officials went around town measuring the trains of women's dresses down to the width of a finger. If the crowns notaries did not report more women in violation of the law, it may be because they could not find any. The notaries' rounds were predictable and limited to a specific social setting: Sunday (or feast day) Mass at important churches. Thus, it is entirely likely that women were deterred from wearing their fineries to church, especially when they could save them for banquets or other festivities where the podestà's *familia* was less likely to intrude. Bologna's sumptuary inspections suggest how police patrols could prevent violations of the law, precluding the need for judicial punishment.

The same principle of deterrence seems to have underpinned the crowns notaries' efforts to enforce Bologna's funeral laws, which prohibited conspicuous displays of wealth and mourning displays that could threaten civic order (see Chapter 5). The statutes required neighborhood officials, the *ministrales* elected from each parish, to notify the crowns notary of impending funerals so that he could inspect them. Although the *ministrales* and the crowns notary surely neglected their official duties from time to time, there is evidence that both officials attempted to fulfill their respective charges. On 31 August 1290, for instance, a *ministralis* from the parish of San Lorenzo reported that the wife of Alerario Alerari was to be buried at the basilica of San Francesco that day after nones. The notary dutifully attended the burial but observed no violations of the statute. Three days later the same sequence played out in another parish, except this time the notary reported that the family had three crosses at the burial, one more than the statutes allowed.⁸⁶ Likewise in August 1302, the podestà, apparently having been notified by the *ministrales*, ordered his notary to inspect the funeral of Baruffaldino Storlitti at the basilica of San Francesco. There he found a lavish service with four large candelabras, four crosses, and 24 priests—all violations of statute. The accompanying *berrovarii* and crier vouched for the notary's report, and so the court summoned Baruffaldino's heirs to answer the charges, but there the record ends.⁸⁷ The podestà likely did not prosecute such cases aggressively, though in at least two other cases, the accused did appear in court to give surety and answer the charge.⁸⁸ In Bologna, then, there was a good chance that the podestà's *familia* would show up at the funeral of any noteworthy person in the city. Once again, it seems the deterrent effect was more important than the case outcome. Perugia's

⁸² ASB, Corone 8, 1296II (40 fols.), 4r.

⁸³ ASB, Inquisitiones 8, reg. 17, 38r; Corone 3, 1290II (64 fols.), 2r. The cases are also discussed in Lansing, *Passion and Order*, 45–47 and Muzzarelli, ed., *La legislazione suntuaria*, 49.

⁸⁴ ASB, Corone 8, 1296II (40 fols.), 4r.

⁸⁵ ASS, Malefizi 11, 196r, 200r–v.

⁸⁶ ASB, Corone 3, 1290II (64 fols.), 5r–v.

⁸⁷ ASB, Corone 13, 1302II (102 fols.), 34r–v.

⁸⁸ ASB, Corone 3, 1291II (56 fols.), 5r; Corone 5, 1293II (53 fols.), 2v.

statutes similarly enjoined the podestà and capitano to send one of their notaries to the cathedral of San Lorenzo and monastery of San Pietro whenever there was a funeral there in order to check for violations of these laws.⁸⁹ Orvieto produced the same effect by employing spies to attend funerals, as Carol Lansing has amply documented.⁹⁰

The *familia* also ventured outside the city walls to police the grape harvest. In general, the commune strictly regulated agricultural production, the flow of water, and its food supply.⁹¹ Bologna employed some of its residents as wardens (*saltarii*) to prevent the private use or sale of crops designated for the commune, as well as damages to vineyards and other farmland. Lawmakers also created an Office of “Vineyards and Palisades,” overseen by one of the podestà’s notaries, to hear these kinds of cases. In late summer, as the harvest season approached, the podestà typically lent more of his *familia* to assist the wardens in searching for individuals carrying grapes, much as they searched for individuals carrying prohibited weapons.⁹² The records of the Vineyards and Palisades office are not nearly as complete as the Crowns and Arms records, and sometimes appear in the registers of the crowns notary and dirt notary (see below). Nonetheless, the evidence that does survive suggests a robust enforcement effort. For example, over the course of 25 days in August 1297, the *familia* charged 40 individuals (including five women) with illegal harvests. Of these, 23 were convicted in court and four acquitted. (The verdicts of the remaining 13 are not given.) Between February and September 1307, the Office of Vineyards and Palisades collected 204 lire and 3 soldi in fines from some 345 individuals.⁹³ Like Bologna, Orvieto employed “guards of the grapes” (*custodes uvarum*) and had its podestà’s *familia* police vineyards as well.⁹⁴ In Perugia, the statutes enjoined the capitano to elect ten guards, half of them mounted, for each of the city’s five districts to prevent the illegal export of grain and other victuals from Perugian territory.⁹⁵

Bologna’s podestà was also responsible for upholding the many statutes concerned with regulating the urban environment. To give us a sense of the scale of this undertaking, Book Nine of Bologna’s 1250 statutes contains 572 separate ordinances dealing with the commune’s infrastructure (streets, bridges, wells, canals, defensive walls, etc.) and commerce. The podestà was enforcing these laws by the 1250s, if not earlier. By the 1280s, lawmakers had created a new office to oversee public roads and sanitation, headed by one of the podestà’s notaries, whom the sources aptly refer to as the “dirt” (*fango*) notary.⁹⁶

⁸⁹ *Statuto 1279*, 1:354.

⁹⁰ Lansing, *Passion and Order*, 60–61. On at least one occasion, in August 1295, the *familia* of Orvieto’s podestà denounced a funeral violation; ASO, Podestà 2, reg. 8, 75r.

⁹¹ Foschi, “Il governo”; Pini, *Campagne bolognesi*; Pini, *Vite e vino*.

⁹² In a typical entry from 28 August 1289, the *familia* reported finding a city resident carrying a basket of ripe grapes against the form of the statutes; ASB, Corone 2, 1289II (58 fols.), 4r. For an example of the podestà’s order to his *familia* to patrol the vineyards, see ASB, Fango 5, 1293II (80 fols.), 31v. For denunciations made by the *familia* and *saltarii* both separately and together, see ASB, Vigne 1, 1299, 1r, 1v, and 3r.

⁹³ ASB, Vigne 1, 1297, 1v–13v; 1307, 1r–20v.

⁹⁴ For *custodes uvarum*, see ASO, Podestà 2, reg. 8, 70v. For the *familia*’s involvement in policing vineyards, see ASO, Podestà 2, reg. 8, 84v. For rural officials elsewhere in the Po Valley, see Geltner, *Roads to Health*; Campopiano, “Rural Communities,” 391.

⁹⁵ *Statuto 1279*, 1:340.

⁹⁶ For convictions from the 1250s, see ASB, Inquisitiones 1, reg. 7; Accusationes 2, reg. 6, 2v–7r; reg. 8, 3r–4v, 7r–16r, 34r–36v. The podestà convicted at least 69 individuals in the first semester of 1256 (7r–16r), suggesting a robust enforcement effort. For the office, see *Statuti 1288*, 1:11, 26.

Like the crowns notary, the dirt notary went on regular patrols accompanied by two *berrovarii*, who were likely assigned to this duty for the duration of the podestà's tenure.⁹⁷ The podestà's knights, town criers, heralds, or even master carpenters or masons could also join these patrols, depending on the needs of the office.⁹⁸ Geltner has found that the dirt notary's excursions could exceed more than 90 per semester, or one every other day, in the late thirteenth and early fourteenth century.⁹⁹ Some of the dirt notary's most common concerns were obstructed streets and waterways, improper waste disposal, porticoes that were too low, unattended livestock, and persons occupying public soil.¹⁰⁰ Importantly, the dirt notary was also concerned with "prohibited persons," a category that could include artisans plying their trades outside of designated zones, public gamblers found outside the *baratarie*, or "false" beggars found anywhere in the city.¹⁰¹ Both the dirt and crowns notary sometimes arrested public gamblers (*marochi* or *baraterii*) and trespassers on the premises of the communal palace. Indeed, Bologna's early statutes (1250s–1260s) show explicit concern with *marochi* urinating on the palace, and convictions for this offense survive in a 1256 book of sentences.¹⁰² It seems that lawmakers decided to establish the *baratarie* in the city's two most public spaces so that the authorities could keep a close eye on such "vile" persons. In effect, police patrols conflated prohibited persons and things, treating both as "matter out of place"—a point that Chapter 4 will explore in greater detail.

Bologna's policing of its urban environment is once again indicative of the pattern across the Italian communes.¹⁰³ Registers of convictions from Siena (1305–1306) suggest that the podestà's *familia* spent a significant amount of energy policing such violations there.¹⁰⁴ Perugia's statutes appointed one of the podestà's three judges and one of his five notaries to oversee such matters, and enjoined them to patrol each of the city's five districts once a week to search for public health hazards, obstructed roadways, and the like.¹⁰⁵ A 1279 register from Perugia also shows the capitano's notary working with the town's *bailitores* to round up stray animals.¹⁰⁶ Orvieto seems to have relied more on local guards elected from the community, including fountain guards (*custodes fontis*) and piazza guards (*custodes platee*), to police urban regulations, but the podestà ultimately prosecuted the men they charged.¹⁰⁷ Lucca had a special tribunal, the Court of Roads (*Curia viarum*), whose officials worked to enforce these laws in part through on-site inspections.¹⁰⁸

⁹⁷ Court records refer to *berrovarii* who were accustomed (*soliti*) to accompany the dirt notary; for an example, see ASB, Fango 1, 1286II (52 fols.), 4v.

⁹⁸ For a *magister muri et lignaminis* accompanying the dirt notary on patrol, see ASB, Fango 1, 1285II (54 fols.), 11r, 18r.

⁹⁹ Geltner, "Public Health," 108. ASB, Fango 5, 1293I, 82r–v.

¹⁰⁰ ASB, Fango 5, 1293II (80 fols.), 1r.

¹⁰¹ ASB, Fango 1, 1286II (52 fols.), 7v: "Prohibita persona." For arrests of *baraterii* by the dirt notary, see ASB, Fango 4, 1292II (48 fols.), 3v; Fango 5, 1293II (80 fols.), 2v.

¹⁰² *Statuti* 1245, 1:76–77. For convictions, see ASB, Accusationes 2, reg. 8, 22v, 44r.

¹⁰³ Geltner, *Roads to Health*; Szabó, *Comuni e politica stradale*; Ciampoli and Szabó, eds., *Viabilità*.

¹⁰⁴ For convictions of individuals for dumping water and waste in the streets and violating building and zoning codes, see ASS, Malefizi 11, 2r, 22v, 45v, 75r, 86r, 88v, 105v, 110r, 114r, 137v–138r, 166v, 170r, 171r, 182v, 190r–v, 195r, 196r, 200r–v, 205r, 211v–212r, 217r, 221r, 237v, 257v, 262v, 271r–v, 277v, 279r.

¹⁰⁵ *Statuto* 1279, 1:17–18.

¹⁰⁶ ASP, Capitano 5b, reg. 8, 8r, 11v.

¹⁰⁷ For piazza guards, see ASO, Podestà 1, reg. 6, passim. For fountain guards, see ASO, Podestà 2, reg. 8, 74r. For "secret guards" (*custodes secreti*) denouncing stray pigs, see ASO, Podestà 2, reg. 8, 16v.

¹⁰⁸ Geltner, "Healthscaping."

In Bologna and Perugia, the podestà's notaries also inspected taverns to ensure the quality of wine and use of the commune's standard measures.¹⁰⁹ In Bologna, these inspections, along with diverse matters pertaining to the dirt notary's office, had been the responsibility of local officials for decades.¹¹⁰ But by the 1280s, the podestà's *familia* had assumed these duties. Of course, taverns attracted the *familia*'s attention for other reasons, namely their popular association with gambling and prostitution and the curfew law's prohibition against serving wine after the final bell.¹¹¹ But the *familia* also paid special visits to taverns to see if they were selling wine by "just" measures.¹¹² A register from the second semester of 1291, for example, shows one of the podestà's notaries inspecting measures in taverns once every month.¹¹³ During these visits, the podestà's ranking official would bring a standard measure of the commune and compare it to the measures of wine the taverner was serving. In a 1289 case, for example, the podestà's knight and notary measured what one taverner was selling as a half *quarta*, and found he was shorting his customers.¹¹⁴ As with sumptuary inspections and the dirt notary's patrols, a few *berrovarii* and criers accompanied the podestà's ranking officers on tavern inspections. In Siena and Orvieto, the podestà also investigated the illicit resale of wine (*ad minutum*) from the commune's cellars and even prosecuted customers who drank it.¹¹⁵

Finally, the podestà's *familia* inspected the commune's various guards (i.e., those elected from the community) to prevent absenteeism. In Bologna, this is evident from the *familia*'s earliest recorded patrol in 1242, when they reported three watchmen, two prison guards, and one other guard absent from their posts.¹¹⁶ For later decades, there is record of both the crowns notary and dirt notary inspecting the night watch and the guards of the city gates, as well as the garrison at Castelfranco.¹¹⁷ One of the podestà's knights seems to have been responsible for checking on the guards of the city gates at the posts.¹¹⁸ Likewise in Perugia, the capitano's *familia* reported watchmen found absent from duty.¹¹⁹ In sum,

¹⁰⁹ For the pertinent statutes from Bologna, see *Statuti 1245*, 1:211; *Statuti 1288*, 2:217. Perugia's statutes called for one of the podestà's notaries to inspect taverns for nonstandard measures and prices at least once per week; see *Statuto 1279*, 1:331. On quality concerns, which are not explicit in the statutes, see Pini, *Vite e vino*, 108.

¹¹⁰ For the evolution of the office, see Geltner, "Public Health"; Geltner, "Finding Matter Out of Place."

¹¹¹ Taverns were so associated with illicit gaming that Perugia's statutes required anyone wishing to sell wine in the city to give surety to the capitano that he would not allow any gambling on his property; see *Statuto 1279*, 1:328. Regarding prostitution, Siena's lawmakers passed a law in May 1305 that prohibited women from even entering taverns under penalty of a 10-lire fine; see *Costituto*, 2:403. A book of sentences from 1305–1306 shows the podestà duly convicting women for this offense; see ASS, Malefizi 11, 4r, 61r, 166v–167r, 190v, 204r, 252r. For a patrol that explicitly looked for taverners serving wine after curfew in Bologna, see ASB, Corone 9, 1298–1299 (48 fols.), 9v. A register from Perugia shows a judge of the capitano leading nocturnal inspections of taverns in 1283; see ASP, Capitano 7b, reg. 7, 17r–18v, 45r.

¹¹² For measures of wine found not to be "just" (*iustum*), see ASB, Corone 2, 1289II (58 fols.), 2v.

¹¹³ ASB, Fango 4, 1291II (50 fols.), 37r–38r, 39r–40r.

¹¹⁴ ASB, Corone 2, 1289II (58 fols.), 9r.

¹¹⁵ For convictions from Siena (1305–1306), see ASS, Malefizi 11, 2r, 5r, 61r. For convictions of men who drank illicitly sold wine, see ASO, Podestà 1, reg. 6, 17r–v, 21r.

¹¹⁶ ASB, Inquisitiones 1, reg. 1, 3v.

¹¹⁷ ASB, Corone 6, 1294I (118 fols.), 56v; 1294I (84 fols.), 36v–37r; Fango 4, 1291II (50 fols.), 20v, 43v–46v; 1292II (48 fols.), 5r–v.

¹¹⁸ ASB, Corone 2, 1289II (58 fols.), 6v; Corone 3, 1290II (64 fols.), 1r–v, 2v, 4r–4v.

¹¹⁹ For examples from 1267, 1268, and 1279, respectively, see ASP, Capitano 2, reg. 1, 16v–17r; 1, reg. 2, 43v–44v; 5a, reg. 3, 25v–27r.

the communes' foreign officials worked diligently to detect and prevent violations of statute within their jurisdictions. This police activity was an integral part of public justice in the communes and, as we will see shortly, was far more coercive than negotiatory.

The Legal Process: From Detention to Trial

How did the *familia* proceed when, during their daily rounds, they believed someone was breaking the law? Their praxis can be pieced together from the records of the Crowns and Arms office, along with the legal process by which the podestà's judges handled denunciations by *familiaries*. The picture that emerges is strikingly modern in certain respects. The *familia* stopped and "booked" suspects, performed detective work, and routinely subjected city residents to pat-downs for illegal weapons. In the ensuing trials, judges followed a novel kind of inquisitorial procedure that privileged the *familia*'s denunciation as legal proof unless the defendant could disprove their account or prove that an exception to the law applied. Trials initiated by the *familia* are another example of how, as Massimo Vallerani has shown for criminal justice in the communes more broadly, judicial practice did not necessarily match the procedural theories articulated by jurists.¹²⁰

Familiaries typically began stops with a verbal order, which legally obligated the suspect to submit to what today would be called police detention.¹²¹ If the trial records are any indication, the *familia*'s phrase of choice was "go slowly" (*vade plane* in Latin, or "va piano" in modern Italian), but variations such as "stand fast" and "stop, don't move" are also attested.¹²² According to statute, anyone who refused to heed this order or otherwise fled from the *familia* would be considered guilty of bearing prohibited arms. It was thus a crime not to stop for the *familia* or allow oneself to be searched, seized, or otherwise "known" by the *familia*.¹²³ The *familia* frequently pursued suspects who fled, and the trial records show that judges did punish fugitives when they were caught, even if no weapon could be found. Furthermore, in choosing whom to stop, *familiaries* exercised considerable legal discretion (*arbitrium*), much like a judge at his bench. In this respect, *familiaries* made a preliminary determination of guilt in the streets before a judge ever did in court. The power of the *familia*'s word was thus considerable. With a simple verbal order, these officials could temporarily deprive anyone they encountered of his personal liberty; with a report to the podestà's judge, they could compel him to answer charges in court.

Once they stopped a suspect, the *familia* typically patted him down for concealed weapons. In a November 1292 case, for example, two witnesses testified that, when the *berrovarii* searched the defendant Giacomo di Bonagrazia for weapons on his doorstep, he

¹²⁰ Vallerani, *Medieval Public Justice*. For procedural theory, see Fowler-Magerl, *Ordines Iudicarii*; Maffei, *Dal reato alla sentenza*.

¹²¹ The distinction between detention and arrest used in American law is useful here: detention is the police's brief and cursory holding of a suspect on the basis of reasonable suspicion; arrest involves taking the suspect into custody on the basis of probable cause. In practice, of course, it is not always clear when detention becomes an arrest. But it is important that police detentions in medieval Italy did not necessarily result in arrests.

¹²² ASB, Corone 1, 1287I (34 fols.), 2v: "[Berrovarii] vocaverunt ipsum Ugolinum dicendo, 'Vade plane quia volumus te cercare si habes arma.'" For alternative language see ASB, Corone 4, 1292II (54 fols.), 21r; ASO, Podestà 2, reg. 10, 12v; ASS, Malefizi 11, 96r.

¹²³ *Statuti 1288*, 1:226–27; *Costituto*, 1:272. For a suspect's refusal in 1305 to let the *berrovarii* "know" (*cognoscere*) him, see ASS, Malefizi 11, 105r. See also ASB, Corone 1, 1287I (16 fols.), 5r; ASO, Podestà 2, reg. 8, 60r. For a discussion, see Cavallar, "Regulating Arms," 118–19.

“lifted his clothes and showed himself” to the *familia*.¹²⁴ Arms-bearing cases also allude to these pat-downs using the verb *tentare*, which meant to test or simply to touch.¹²⁵ If the suspect was wearing armor, the *familia* also checked to make sure he was carrying a current permit from the podestà. The *familia* confiscated any illegal arms, dice, or other contraband they found on the suspect. The arms would be auctioned off in the event of a conviction (see below) or restituted to the suspect if he made a legitimate defense.¹²⁶ The trial records—both for the crowns notary and dirt notary—refer to the legal violations found or witnessed by the *familia* as “discoveries” (*inventiones*). Thus, some notaries labeled their registers “books of discoveries,” and in one case a notary referred to *familiares* as “discoverers” (*inventores*), underlining their role as detectors of crime.¹²⁷

Upon making a “discovery,” the *berrovarii* presented the suspect to the patrol captain (the knight or judge) and notary for booking. The patrol captain questioned the suspect while the notary wrote down the basic facts of the case: the suspect’s name, provenance, and alleged violation of statute. The notary also took down any preliminary plea from the suspect, whether it was an admission of guilt or protestation that his detention was unlawful. As today, the suspect’s words could be used against him later in court (see Chapter 6). While on patrol, notaries likely recorded their discoveries on small slips of parchment for entry later in an official register.¹²⁸ This act of writing was so fundamental to the institution of policing that defendants spoke of being “written up” (*scriptus*) by the *familia* as a euphemism for their detention.¹²⁹ The podestà even ordered his officials not merely to search for and report lawbreakers, but also to write them up.¹³⁰ Thus, the growth of government police power can be viewed as part and parcel of the growth in administrative recordkeeping taking place across Western Europe, as discussed in Chapters 3 and 6.

What happened after booking depended on the social identity of the suspect and the crime. If the *familia* determined the suspect was an outlaw or person of ill repute—i.e., that he had bad *fama*—then they would take him into custody.¹³¹ Under judicial scrutiny, a person of ill repute might be subjected to the full violence of the law (see Chapter 4). If the detained suspect was found reputable or at least unsuspicious, he could avoid arrest in one of two ways. First, he could prove to the *familia* that he was not in fact violating any statute, for example by producing a valid permit for his armor or a notarized document attesting his privileged exemption from certain laws. Second, if he could not immediately prove that

¹²⁴ ASB, Corone 4, 1292II (50 fols.), 38r–38v: “Et levavit ipse Jacobus drappos et obstendit se dictis berrovariis.”

¹²⁵ ASB, Corone 13, 1302II (152 fols.), 41r.

¹²⁶ The podestà’s office seems to have kept track of who owned confiscated arms by placing a tag on them. This is evident from an auction in 1318 which lists the former owners of the weapons, with one listed as *sine scripta*; see ASB, Corone 25, 1318I (50 fols.), 42r.

¹²⁷ For example: ASB, Corone 4, 1292I (46 fols.); Corone 8, 1296I (42 fols.); Corone 9, 1298–1299 (48 fols.). For *inventores*, see ASB, Corone 3, 1291II (56 fols.), 23r.

¹²⁸ Loose slips recording curfew violators survive in ASP, Capitano 7b, reg. 7. Similarly, a loose slip recording a curfew defense survives in ASB, Corone 6, 1294II (28 fols.).

¹²⁹ ASB, Corone 6, 1294I (84 fols.), 35r; Corone 4, 1292II (50 fols.), 43v–45r; Corone 9, 1298–1299 (48 fols.), 27r.

¹³⁰ ASB, Corone 13, 1303I (44 fols.), 1r–v.

¹³¹ On the concept of *fama*, see Lori Sanfilippo and Rigon, eds., *Fama e publica vox*; Vallerani, “La fama”; Fenster and Smail, eds., *Fama*; Migliorino, *Fama e infamia*.

his conduct was lawful, a reputable suspect could still secure his release by giving surety. This involved a friend or neighbor swearing before the patrol captain and notary that the accused individual would appear in court within an appointed timeframe to answer the charge, or else he would pay the penalty for him. If the suspect succeeded in either endeavor, the *familia* would set him at liberty. That said, it seems that individuals found gambling or carrying assault weapons generally did not have the option of giving surety; these offenses carried steeper penalties than breaking curfew or wearing armor without a permit. In all likelihood, it was ultimately up to the patrol captain's discretion whether a suspect would have the option to give surety.

If the suspect could not excuse himself or give surety, the *familia* took him into custody and marched him to the podestà's palace, where the commune's prisons were located.¹³² There the suspect would remain in prison until he managed to pay surety (or someone else paid for him), paid the fine for his conviction, or proved his innocence. When patrolling in the *contado*, the *familia* typically consigned suspects to the custody of a local official, the *massarius*, who was then responsible for delivering the accused to the podestà's court at a later date.¹³³ It seems likely that the *familia* physically restrained detainees before leading them to the palace. In one arms case from 1295, for example, a witness described seeing the defendant "captured and bound in the hands of" the commune's cavalrymen.¹³⁴ However, the use of physical restraints may have depended on the location of the arrest (e.g., in the *contado* versus inside the city walls), the character of the suspect, and his alleged crime.

Before releasing a detainee or leading him to prison, the *familia* could also conduct an investigation of the crime scene. Depending on the case, they might collect physical evidence. For example, after two *berrovarii* found a Florentine man wearing full armor one evening in February 1287, the podestà's knight suspected he had also been carrying a weapon. The knight ordered his men to lead him to where they had arrested the suspect, and there they found an abandoned knife that the Florentine eventually confessed was his.¹³⁵ Alternatively, the *familia* might question witnesses and neighbors. For example, in a gambling case from April 1293, the *familia* questioned local residents to determine who owned the tavern where they had discovered a dice game. When the property owner—who was leasing out the tavern—got word of this, he came to the scene and cooperated with the investigation.¹³⁶ Similarly, when suspects evaded capture, the *familia* typically tried to uncover their identities. The *familia* evidently succeeded in this in a 1295 case from the *contado*, where the podestà issued a summons at the house of an arms suspect who had evaded arrest.¹³⁷ Local cooperation is also on display in an August 1326 case, in which two neighborhood residents—perhaps the *ministrales*—provided the names of two alleged

¹³² For cases where it is clear that the *familia* and night watch actually arrested curfew violators who could not give surety, see ASB, Corone 2, 1289II (58 fols.), 24v–25r; Corone 4, 1292II (54 fols.), 17v. This standard procedure is also evident in a 1295 conviction from Orvieto; ASO, Podestà 2, reg. 8, 57r. For the organization of Bologna's prisons in the late thirteenth century, see Geltner, *The Medieval Prison*, 22.

¹³³ See ASB, Corone 8, 1296I (80 fols.), 5v, 20r; 1296I (42 fols.), 1r.

¹³⁴ ASB, Corone 7, 1295I (135 fols.), 101r: "Vidit dictum Sassinellum esse [...] captum et ligatum immanibus chavalchatorum."

¹³⁵ ASB, Corone 1, 1287I (34 fols.), 12v. See also ASP, Capitano 7b, reg. 7, 14v.

¹³⁶ ASB, Corone 5, 1293I (66 fols.), 25r.

¹³⁷ ASB, Corone 7, 1295I (30 fols.), 13r.

gamblers who had escaped the *familia*.¹³⁸ Thus, through simple detective work, the *familia* sought to gather the facts of the case following a discovery on patrol. In many respects, these ad hoc inquiries resembled the on-site investigations conducted by the podestà's judges, knights, and notaries in response to criminal complaints from local officials and residents.¹³⁹

Familiars formally initiated prosecution with a report (*relatio*) to the judge or other official presiding over the criminal court. Notaries seem to have followed a standard formula in recording *relationes*. First, they established the circumstances and lawfulness of the *familia*'s patrol, stating that the *berrovarii* (or other *familiars*) were going through the city by order of the podestà, with his knight and notary in attendance, looking for illegal weapons, gambling, and the like when they discovered such and such violation of the statutes. This preamble formally distinguished the charge as one made by public officials, in contrast to an accusation or denunciation made by a private individual. The *relatio* then gave the information recorded by the notary on patrol: at a minimum, the suspect's name, place of residence or provenance, and alleged offense. The *relatio* might also include the location of the discovery, which could have important legal implications (see Chapter 2). Finally, the *familia* might convey any protestation made by the suspect at his booking. For example, if a curfew suspect claimed his lantern had just gone out or the third bell had not yet sounded, the notary often included this in the *relatio*. Sometimes the notary also included longer, more descriptive depositions from the *familiars* who made the discovery. This was fairly common in gambling cases, but atypical in curfew and arms cases, where the *relatio* is generally terse and formulaic. Notaries across the communes followed this same basic formula when they recorded trials initiated by the *familia*.

Although notaries sometimes referred to the *familia*'s *relationes* as *accusationes*, denunciations made by public officials sparked inquisitorial proceedings (*inquisitiones*).¹⁴⁰ In principle, the purpose of inquisitorial procedure was to investigate the truth of an accusation and punish the guilty appropriately.¹⁴¹ Hence, the notary typically marked the initiation of the trial with a statement that the podestà intended to investigate, proceed, and punish the alleged crime according to statute. Crucially, however, inquisitions initiated by the *familia*'s denunciation were different than others begun by denunciation or *fama* because they put the burden of proof squarely on the accused. According to statute, the *familia*'s word was to be believed until the contrary (or an extenuating circumstance) could be proven.¹⁴² In a 1295 wine smuggling case from Orvieto, for example, the podestà declared the facts of the case to be evident "as much from the confession of those found [...] as from the report and denunciation of our *berrovarii*, who are to be believed and to whom

¹³⁸ ASB, Corone 30, 1326II (88 fols.), 7r-v.

¹³⁹ Blanshei, "Bolognese Criminal Justice," 71-72; Dean, "Investigating Homicide."

¹⁴⁰ For an example of this interchangeable terminology, see ASB, Corone 16, 1308I (64 fols.), 1r. Joanna Carraway Vitiello observed the same interchangeability in fourteenth-century Reggio; *Public Justice*, 67. On the role of *denuntiatio* in inquisitorial trials, see Peters, *Inquisition*, 64. On the various forms of inquest in medieval Europe, see Gauvard, ed., *L'enquête*.

¹⁴¹ On the "ideology of truth" in inquisitorial procedure, see Vallerani, *Medieval Public Justice*, 77-81, 101-6.

¹⁴² Both Bologna's and Perugia statutes on gambling state this explicitly. See *Statuti 1288*, 1:224; *Statuto 1279*, 1:328. Perugia's statute on arms-bearing does as well, provided that a ranking official (a knight, judge, or notary of the podestà or capitano) was present; see *Statuto 1279*, 1:334. For the ubiquity of the principle in communal statutes on arms-bearing, see Cavallar, "Regulating Arms," 117-19.

trust is given.”¹⁴³ Thus, absent a legitimate defense, the judge would default to a guilty verdict for anyone accused by the *familia*. Bologna seems to have upheld the Roman law principle that two or more witnesses were needed to constitute proof; a charge made by a single *berrovarius* would not necessarily secure a conviction.¹⁴⁴ But as a general rule, the defendant was guilty until proven innocent in trials initiated by the *familia*. The deck was further stacked against the defendant insofar as the notary and possibly the judge who booked him presided over his trial. On occasion, the notary recording the trial even noted in the first person that he had been present to witness the *inventio*.¹⁴⁵ But even if they did not witness the violation themselves, the court’s magistrates and officers had a strong presumption of guilt against the accused.

In other respects, inquisitions initiated by the *familia* were less exceptional. If the accused was present in court—as was usually the case when the *familia* brought the charge—then the inquest began with his arraignment and initial questioning. At this time the defendant typically entered a plea: he either flatly denied (*negavit*) the charge; confessed it was true (*confessus fuit*); or claimed extenuating circumstances (*confessus fuit [...] tamen dixit*), which often prefigured a formal defense. The judge then gave the defendant a period (usually three days) to make a defense if he so wished, regardless of the plea he had entered. Indeed, defendants had the option of changing their stories, as Chapter 6 will bear out. The defendant also had to give surety to the court, again with the help of guarantors (*fideiussores*), that he would appear as often as required for subsequent proceedings and pay the penalty if found guilty. Defendants who could not produce guarantors were placed in jail until they could or, in the event of a conviction, until they paid the penalty.¹⁴⁶ Most defendants managed to give surety, but this requirement could constitute a hardship, and even a curfew breaker was liable to spend weeks in prison if he could not give surety to the court (see Chapter 6). Outlaws and suspects of ill repute, however, did not have the option of giving surety. If a judge found the defendant to be suspicious or a wanted man, then he would keep him in official custody until an inquest could determine his hidden crimes and/or the penalty he owed the commune.

If a defendant wished to make a legal defense, he then had to submit an *intentio* and produce at least two witnesses to attest its contents. An *intentio* comprised a series of discrete arguments concerning the facts of the case, which the sources variously call *capitula*, *iura*, or *defensiones*. In principle, the court would only hear defenses that were legally admissible and offered legal grounds for acquittal.¹⁴⁷ The crown’s notary recorded *intentiones* and the accompanying witness testimony in a separate register, appropriately labeled the “Book of Witnesses” (*Liber testium*). The podestà’s court was generally open to the public, and in Bologna, the judge often held court outside under the portico of the

¹⁴³ ASO, Podestà 2, reg. 6, 6r: “Tam ex confessione dictorum inventorum [...] quam et etiam ex relatione et denuntiatione nostrorum berroariorum quibus creditur et fides datur.”

¹⁴⁴ This is all but explicit in a 1289 gambling case: after only one *berrovarius* gave the *relatio*, the judge acquitted the defendant “since nothing was proved against him.” See ASB, Corone 2, 1289II (58 fols.), 14v. For a discussion, see Cavallar, “Regulating Arms,” 118–19.

¹⁴⁵ ASB, Sindacato 6, 1289I (19 fols.), 18v.

¹⁴⁶ Incarceration aimed mostly at debt collection, not punishment per se, although the former could shade into the latter; see Geltner, *The Medieval Prison*, 46–50.

¹⁴⁷ In one arms-bearing case, the court consulted an outside judge as to whether the defense should be admitted; see ASB, Corone 1, 1286II, 38v.

palace.¹⁴⁸ This meant that trials initiated by the *familia*, regardless of their outcome, made a spectacle of prosecution; public trials communicated the government's police power to local residents as much as the *familia*'s presence in the street.¹⁴⁹

After examining the witnesses carefully—or in the absence of witnesses, weighing the evidence presented by the *familia* and the defendant respectively—the judge would make a determination of guilt or innocence. Although the podestà and his judges enjoyed the discretion (*arbitrium*) to mitigate sentences, they generally defaulted to the statutory fine in cases of guilt. However, the case might continue beyond the podestà's court if the defendant appealed his sentence or punishment to a higher court. In Bologna, *popolani* could appeal cases to the capitano del popolo's court and ultimately to the Council of the Popolo.¹⁵⁰ Notaries recorded judicial sentences in separate registers of convictions (*condemnationes*) and acquittals (*absolutiones*). For Bologna, the registers of sentences for inquisitions do not survive for this period of study; when we do know the outcomes of trials, it is because the crown's notary wrote the verdict in the margin of the book of discoveries. Convicted individuals could pay their fines to any of the podestà's knights or notaries, who were then responsible for issuing a receipt of payment (*carticella*) and crossing off the individual's name in the book of condemnations.¹⁵¹

Two exceptions to the trial proceedings outlined above are important to note. The first concerns individuals with clerical status, who, in theory, fell under the jurisdiction of the episcopal court. Most students in Bologna, who probably numbered in the low thousands in the late thirteenth century, could claim clerical status in court even though they were not religious professionals.¹⁵² In practice, however, the podestà's court sometimes tried and convicted clerics on its own, and simply gave half the fine to the episcopal court. For example, in July 1302 the court convicted the student Nuccio of San Gimignano for wearing an iron helmet without a license, even though he proved clerical status. The judge ordered half of the 5-lire fine to go to the commune and half to the episcopal court; if the bishop pardoned him, the 5 lire was to be returned to Nuccio or his guarantor.¹⁵³ In other cases, there is no indication the podestà paid the bishop any heed whatsoever. For instance, in August 1292 the court convicted Donato Donati—a university student from one of Florence's most prominent Guelf families—and fined him for carrying a knife even though he proved he had clerical status.¹⁵⁴ The bishop's justice was generally

¹⁴⁸ For cases where it is explicit that the judge set up his bench under the portico of the palace, see ASB, Corone 4, 1292II (54 fols.), 34r; Corone 10, 1299–1300 (18 fols.), 5v; Corone 11, 1300 (82 fols.), 11r. For open-air courts in medieval Marseille, see Smail, *The Consumption of Justice*, 33–34.

¹⁴⁹ On the performative nature of premodern judicial processes, see Camphuijsen, "'In Hemde Ende in Broeck.'"

¹⁵⁰ Blanshei, *Politics and Justice*, 65–68, 474. Appeals became more common in the early fourteenth century. For appeals in Perugia, see Vallerani, *Medieval Public Justice*, 259–64.

¹⁵¹ In 1291, the podestà's judge *ad dischum ursi* ordered his notaries to record every quantity paid to them or the knight. In response, the notaries gave a list of reasons why they could not fulfill the charge of crossing off the names of those who had paid and making *carteselas* for them. See ASB, Corone 3, 1291II (56 fols.), 50v and loose slip.

¹⁵² Brundage, *The Medieval Origins*, 270–71; Dean, *Crime in Medieval Europe*, 108–114. On Bologna's university and students more generally, see Pini, "'Discere turba volens'"; Capitani, ed., *Cultura universitaria*.

¹⁵³ ASB, Corone 13, 1302II (152 fols.), 8r. For a similar case, see ASB, Corone 5, 1293II (48 fols.), 8v.

¹⁵⁴ ASB, Corone 4, 1292II (54 fols.), 29v.

more lenient than the commune's, which explains why many individuals tried to claim clerical immunity.

The second exception concerns public gamblers (called *baraterii*, *marochi*, and *ribaldi* in the sources), who could be found in communes across northern Italy.¹⁵⁵ Many alleged gamblers tried to claim this status since, by definition, public gamblers were so poor they could not afford the 25-lira fine. In Bologna, the judge was supposed to fine them 1 lira, or, if they were insolvent or repeat offenders, impose corporal punishment.¹⁵⁶ The podestà's *familiars* were known to flog insolvent *baraterii* themselves, but flogging was not the only option available to the court.¹⁵⁷ Judges ordered some *baraterii* to stand in shackles (literally, "in chains") for an entire day—likely to be jeered and pelted with waste as the *familia* egged on the crowd.¹⁵⁸ According to Bolognese custom, the podestà could also have public gamblers drenched with water (*adaquatus*) at the well in the palace courtyard. The sources alternatively describe this public humiliation as being "bathed" (*balneatus*), "baptized" (*baptizatus*), or "beaten" with water (*verberati de aqua*).¹⁵⁹ This last phrase suggests the *baraterius* was merely soaked with water rather than ducked into the well, though the sources are not entirely clear. Though humiliating, this punishment was clearly preferable to being flogged or pilloried. Some *baraterii* even requested it in lieu of the 1-lira fine.¹⁶⁰ This alternative course of punishment offered a legal opening for alleged gamblers who, if not quite insolvent, nevertheless wished to avoid the relatively steep fine prescribed by statute.

In sum, a denunciation by the *familia* created hardship for the accused, regardless of the trial outcome. Even before any trial, a stop by the *familia* involved a temporary loss of liberty for the detainee. Of course, locals might successfully evade the *familia*, prove to have a legal exemption, or perhaps talk their way out of legal trouble. But in principle, there was nothing negotiable about having to obey a lawful order in the street, even if only for a moment. If the *familia*'s stop resulted in charges, the ensuing trial was procedurally unique in that it always included official eyewitnesses against the defendant. Because of this, the accused was presumed guilty and could not hope for a simple lack of evidence, as he or she could in inquisitions initiated on the basis of *fama* or denunciation by a private citizen. At a minimum, the defendant faced the hassle of having to appear in court and call in friends, associates, or kin to give surety for him. The hassle was greater if he sought to exonerate himself from the charge, and again more so if the judge convicted him. Furthermore, contrary to what was customary in accusatorial proceedings, *familiars* bore none of the costs if the charges were disproved. This lowered the threshold of accusation and brought

¹⁵⁵ Ortalli, *Barattieri*; Taddei, "Gioco d'azzardo"; Artifoni, "I ribaldi." For convictions of *ribaldi* in Siena, see ASS, Malefizi 11, 41v, 170v.

¹⁵⁶ By statute, *baraterii* found gambling outside the designated areas were to be fined 1 lira (20 soldi) or flogged around the circumference of the palace if they could not pay; see *Statuti 1245*, 1:76–77.

¹⁵⁷ See for example ASB, Corone 5, 1293II (53 fols.), 49v.

¹⁵⁸ For public gamblers "placed in chains" (*positus ad catenas*), see ASB, Corone 3, 1291II (56 fols.), 30v–31v. Corone 5, 1293II (53 fols.), 48r. The 1288 statute concerning blasphemy—a crime closely linked to gambling—explicitly said a blasphemer who could not pay his fine was to be flogged and then placed in shackles "to stand there for the whole day with his face uncovered, and men are to be encouraged by someone from the podestà's *familia* to throw mud, eggs, and excrement [at him]." See *Statuti 1288*, 1:191.

¹⁵⁹ ASB, Corone 3, 1291II (56 fols.), 33r: "Balneatus." ASB, Corone 29, 1324II, 70v: "Baptizatus." ASB, Corone 7, 1295II (32 fols.), 5v: "Verberatus de aqua."

¹⁶⁰ ASB, Corone 19, 1312I (40 fols.), 8v.

more charges to court. Thus, the *familia*'s police patrols amplified the government's capacity to coerce its subjects to an extraordinary extent.

A Comparison of Selected Data

If communal statutes empowered foreign officials to police locals aggressively, how did those officials use their powers of arrest and accusation? As rich as they are, the archival sources do not lend themselves to true case samples or statistical analysis. The Crowns and Arms registers, for example, have significant gaps from semester to semester, and some statutory offenses—such as sumptuary violations, absence from guard duty, illegal measures in taverns, and agricultural theft and vandalism—appear inconsistently. Nonetheless, by selecting some of the better documented semesters from Bologna and other communes, we can get a sense of how the *familia*'s patrols impacted public justice and how police efforts compared across cities.

For Bologna, I selected seven Crowns and Arms registers, ranging in date from 1286 to 1320, based on their completeness and the roughly regular intervals (five to seven years) between them.¹⁶¹ I present their data for curfew, gambling, and arms-bearing cases only, both because these offenses are recorded most consistently and because they concern the policing of persons rather than things.¹⁶² This selection of registers indicates that the podestà's *familia* denounced approximately 150 individuals per semester for curfew, gambling, and arms-bearing offenses alone (Table 1).¹⁶³

Table 1 – Bologna: Persons Denounced per Semester

	1286II	1291II	1296I	1302II	1308I	1313II	1320II	Total	Avg.
Curfew	36	72	43	44	10	35	7	247	35
Arms	52	60	104	78	43	103	97	537	77
Gambling	71	79	28	-	39	34	25	276	46
Total	159	211	175	122	92	172	129	1060	151

By extension that would mean the *familia* made 300 individuals stand trial for these offenses per year.¹⁶⁴ This is not a huge figure for a city that was one of Europe's largest in the late thirteenth century, with a population of roughly 50,000.¹⁶⁵ The figure of 300 also pales in comparison to the number of trials by accusation that took place each year around the same time, a number that Massimo Vallerani estimates at 1200-1500.¹⁶⁶ However, the number is significant given that Bologna's podestà oversaw roughly 150 trials by

¹⁶¹ The selected registers are: ASB, Corone 1, 1286II; Corone 3, 1291II (56 fols.); Corone 8, 1296I (80 fols.) and (42 fols.); Corone 13, 1302II (102 fols.); Corone 16, 1308I (64 fols.) and (45 fols.); Corone 20, 1313II (48 fols.), (33 fols.), and (46 fols.); Corone 28, 1320II (100 fols.) and (56 fols.).

¹⁶² On the distinction between "people police" and "thing police," see Dubber, *The Police Power*, 121–25.

¹⁶³ For the methodology behind this table and those below, see Roberts, "Policing and Public Power."

¹⁶⁴ The vast majority of denunciations were in fact made by the podestà's *familia*, not the night watchmen. *Familiars* account for all of the cases in 1286II, 1313II, and 1320II. In the other four semesters, the watchmen account for a total of nine curfew cases and one arms case; the watchmen appear not to have policed gambling at all.

¹⁶⁵ Dondarini, *Bologna medievale*, 173. Medieval Bologna's population peaked at 55,000 or 60,000 around 1280, but declined to 50,000 by 1300, to 45,000 by 1306, and to 43,000 by 1324.

¹⁶⁶ Vallerani, *Medieval Public Justice*, 121.

inquisition each year, excluding those in the Crowns and Arms registers.¹⁶⁷ Even if we take into account the incongruity of comparing inquisitions to individuals charged, as well as the summary nature of proceedings where the defendant did not contest the charge, it seems that the *familia*'s denunciations for these three crimes alone could easily have accounted for 50 percent of the criminal court's inquests in a given year. The data are most significant, however, insofar as they show a consistent and credible threat of arrest. On many if not most patrols, the *familia* did not find anyone violating the statutes.¹⁶⁸ But the data above show that when they did, they prosecuted them.

That said, police patrols in Bologna only seem to have targeted half the population, as women are conspicuously absent from the Crowns and Arms registers.¹⁶⁹ The podestà did prosecute women for allowing gambling on their premises, but I found only one prosecution of a woman for gambling herself. In that case, the *familia* arrested Caterina of Trent for gambling in the piazza in August 1292, and the podestà had her flogged after she successfully defended herself as a *biscazatrix*.¹⁷⁰ However, if the protracted nature of her legal process is any indication, Caterina's case was so exceptional that the podestà did not know what to do with her. Though she was arrested on 7 August, the court did not hear her defense until 26 September and did not have Caterina flogged until 8 November—an extraordinarily long delay for anyone accused by the *familia*, let alone for public gambling. Surely more women than Caterina were discovered gambling in medieval Bologna, but the *familia* seems to have ignored them. This is all but explicit in a 1290 case, where the *familia* reportedly discovered the suspect gambling with an unnamed woman, whom they apparently did not charge.¹⁷¹ The absence of arms-bearing charges against women is perhaps less surprising given that armed conflict was a male domain, though one suspects women sometimes carried knives for personal defense or simply as tools. More difficult to explain is the complete absence of curfew charges against women. Not only is it hard to believe that Bolognese women never went out at night without a light, Siena's podestà did prosecute women caught without a light at night (see below). Apparently, Bologna's police forces either gave women a free pass or held their male relatives and companions responsible. The *familia*'s apparent lack of interest in prosecuting women for these offenses suggests that their patrols were largely aimed at controlling male behavior.

Of the 300 or so men whom the *familia* charged each year, nearly all stood trial in person. This stands in stark contrast to the pattern for criminal trials in medieval Italy and Europe more broadly. In both accusatorial and inquisitorial trials, contumacy rates were consistently high when the *familia* was not involved.¹⁷² The near-zero contumacy rate seen in the Crowns and Arms registers owes much to the fact that the *familia* detained and

¹⁶⁷ Blanshei, *Politics and Justice*, 333–34, 597–98.

¹⁶⁸ In the second semester of 1320, the *familia* documented 116 patrols—more than 60 percent of the total—with no discoveries made; see ASB, Corone 28, 1320II (100 fols.). For a similar log see Corone 26, 1319II (82 fols.).

¹⁶⁹ For the lower rate of documented criminality among women in late medieval Italy, see Geltner, "A Cell of Their Own," 29–35. Geltner also found women to be curiously absent from the records of the dirt notary, Geltner, "Public Health," 117–18.

¹⁷⁰ ASB, Corone 4, 1292II (54 fols.), 26r; 1292II (50 fols.), 8v.

¹⁷¹ ASB, Accusationes 9a, reg. 11, 6v.

¹⁷² For the criminal ban as a tool of dispute resolution, see Vallerani, *Medieval Public Justice*, 178–80. For high contumacy rates in late medieval Italy, see Carraway, "Contumacy"; Chambers and Dean, *Clean Hands*, 65; Stern, *The Criminal Law System*, 210.

arrested many suspects, but it also suggests that the surety system was effective. When suspects promised to appear in court at a later date, with the backing of friends, family, and neighbors, they generally did so. For reputable citizens, it was simply not practical to flee the city to avoid a curfew fine. In the rare cases where this happened, it was likely because the suspect was an outlaw or suspected of a more serious crime.

Most of the hundreds of men whom the *familia* charged each year were convicted and fined. Denunciations by the *familia* for breaking curfew and bearing prohibited arms ended in convictions in well over 50 percent of cases (Tables 2–4).¹⁷³ On average, the conviction rate in curfew cases was between 54 and 68 percent. Arms-bearing cases had a similar rate of conviction, between 56 and 71 percent of the time. Gambling cases had a lower conviction rate, likely because it was more difficult for the *familia* to prove alleged gamblers had been playing and not merely spectating (see Chapter 2). Nevertheless, the conviction rate for gamblers was still relatively high, with guilty verdicts in one third to one half of cases. In contrast, Sarah Blanshei has found that, in the period 1285–1326, inquisitions initiated without the *familia* (usually by secret denunciation or *ex officio*) ended in conviction only 16 percent of the time. Even if we count bans as guilty verdicts—which by a common legal fiction they were—the conviction rate was just under half.¹⁷⁴ Massimo Vallerani has shown that accusatorial proceedings were even less punitive. Charges were dropped approximately 30 percent of the time, either due to the contumacy of the accused or the accuser’s inability to pursue the charge further. The acquittal rate in these proceedings averaged over 80 percent, with most of the remaining 20 percent ending in bans; actual convictions were exceedingly rare.¹⁷⁵ The higher conviction rates found in the Crowns and Arms registers can be attributed to two distinguishing features of the *familia*’s policing: it virtually eliminated contumacy and operated under a principle of guilty until proven innocent. With the suspect present for trial, judges could deliver verdicts instead of bans in absentia, and unless the suspect made a valid legal excuse or the judge showed leniency, the default outcome was a conviction.

Table 2 – Bologna: Curfew Case Outcomes by Percentage

	1286II	1291II	1296I	1302II	1308I	1313II	1320II	Avg.
Convicted	64	58–70	49–60	39–50	60–75	35–75	71–83	54–68
Acquitted	36	21–25	33–40	32–41	20–25	11–25	14–17	24–30
Cleric	0	4–5	0	7–9	0	0	0	1.5–2
Unknown	0	17	19	23	20	54	14	21

Table 3 – Bologna: Arms-bearing Case Outcomes by Percentage

	1286II	1291II	1296I	1302II	1308I	1313II	1320II	Avg.
Convicted	56	43–59	62–66	55–69	58–86	27–74	88	56–71
Acquitted	25	30–41	27–29	23–29	9–14	9–24	11	19–25
Cleric	19	0	2	1–2	0	1–3	1	3–4

¹⁷³ Where a range is shown, the first number is the percentage of all cases, including those with unknown verdicts; the second number is the percentage only of those cases where the outcome is known. The actual percentage must fall somewhere in between.

¹⁷⁴ Blanshei, *Politics and Justice*, 338, 597–98.

¹⁷⁵ Vallerani, *Medieval Public Justice*, 156–61.

Banned	0	0	3	0	0	0	0	< 1
Unknown	0	27	7	21	33	63	0	22

Table 4 – Bologna: Gambling Case Outcomes by Percentage

	1286II	1291II	1296I	1308I	1313II	1320II	Avg.
Convicted	54–55	24–37	39–42	10–50	32–52	88–92	41–55
<i>Marochus</i>	7	37–57	7–8	0	6–10	0	10–14
Acquitted	34–35	3–4	46–50	10–50	21–33	4	20–29
Cleric	1	1–2	0	0	3–5	4	2
Banned	1	0	0	0	0	0	< 1
Unknown	3	35	7	80	38	4	28

The high conviction rates meant that policing could generate significant income for the commune. Table 5 gives the amount of penalties by offense for three registers, wherein the notary was unusually scrupulous in writing out the penalty next to the verdict. For the relatively few cases where the notary did not do this, the table gives the statutory penalty in parentheses. These registers show that the *familia*'s patrols had the potential to generate roughly 1,000–2,000 lire in fines every six months. At the high end of this range (i.e., 2,105 lire in the second semester of 1320), these fines were enough to pay the podestà's salary for the entire semester. However, the low end of this range (i.e., 1,229 lire in the second semester of 1286) is likely more representative of a typical semester, since the other two semesters featured double penalties. Bologna's lawmakers doubled fines for illicit arms-bearing in the first semester of 1296 and for all crimes for a portion of the second semester of 1320.¹⁷⁶ These examples nonetheless illustrate how the commune could inflate the penalties for specific offenses to increase their deterrent effect and generate public revenue in times of insecurity. In 1296 Bologna was at war with Ferrara, so increasing the penalties for illicit arms-bearing served both to pacify the commune's territory and finance military expenses.¹⁷⁷ On a single four-day expedition into the *contado* in January 1296, the podestà's *familia* and the commune's cavalymen (*cavalcatores*) arrested some 23 *contadini*, 20 for arms-bearing and three for gambling. All but two of these were convicted, generating (doubled) fines totaling 540 lire—a handsome sum for just a few days' worth of police work.¹⁷⁸ Even in ordinary times, police patrols were an important source of public revenue for the commune. A *berrovarius* had only to secure two arms convictions (10 lire each) to cover his entire salary (2 soldi per day) for his six months in office. Through effective policing, the podestà's *familia* could pay for itself.

Table 5 – Bologna: Total Amount of Penalties in Lire

	1286II	1296I	1320II
Curfew	46 (7)	245 (20)	25
Arms	305 (40)	1410 (230)	1155
Gambling	878 (125)	275 (100)	925

¹⁷⁶ The commune doubled penalties sometime between 1 October and 9 October 1320, so that carrying a knife cost the offender 20 lire instead of 10, and gambling 50 lire instead of 25.

¹⁷⁷ On Bologna's war with Ferrara, see Gorreta, *La lotta*.

¹⁷⁸ ASB, Corone 8, 1296I (80 fols.), 20v–24v.

Total	1229 (172)	1930 (350)	2105
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In the same vein, Bologna's government auctioned off the weapons the *familia* confiscated and used that money to pay for the upkeep of the communal palace.¹⁷⁹ These auctions took place at the notary's bench, known as the *scarania*, at the old palace facing the piazza. Besides weapons, these auctions might include produce and livestock confiscated by the dirt notary on his patrols. For example, on six different dates between September and December 1291, the commune auctioned a total of 68 arms back to its citizens for a total of 22 lire, 19 soldi, and 10 denari.¹⁸⁰ Similarly, a series of auctions between May and August 1298 took in 17 lire, 9 soldi, and 5 denari for 53 arms, plus 10 *imperiales* for what must have been a highly prized knife.¹⁸¹ And in the second semester of 1320, the commune auctioned off 120 arms for a sum of 30 lire, 8 soldi, and 11 denari.¹⁸² While these auctions did not approach statutory penalties as a source of revenue, they show that policing functioned in part as a tax on bad behavior. Indeed, the potential of policing arms-bearing to generate revenue may explain why the *familia* seem to have focused increasingly on that offense as the decades wore on (Table 6). The auctions also epitomize the distinction between the legitimate and illegitimate use of violence, whereby citizens were expected to bear arms in the communal army and popular militias but largely forbidden to do so in a private capacity (see Chapter 5).

Table 6 – Bologna: Case Type by Percentage of Total Cases

	1286II	1291II	1296I	1302II	1308I	1313II	1320II	Avg.
Curfew	23	34	25	36	11	20	5	22
Arms	33	28	59	64	47	60	75	52
Gambling	45	37	16	NA	42	20	19	26

Although data for third-party policing in Bologna is generally lacking before the 1280s, two registers from earlier decades show that the institution was well-established by mid-century, if still subject to experimentation. A register of convictions from the first three months of 1256 (Table 7) evidences a robust law enforcement effort, with 82 curfew, gambling, and arms convictions in that short time span.¹⁸³ All but seven of these violations were discovered by the podestà's *familia*; the remaining seven were curfew cases denounced by the night watch. If the court continued to convict individuals at this rate for the remainder of 1256, then convictions for these offenses would have approached nearly 250 by the end of the year. Furthermore, if conviction rates in 1256 were roughly the same as in later decades (50 percent for gambling and 66 percent for curfew and arms cases),

¹⁷⁹ For decades it was customary for the commune's *massarolus* to spend these funds on the maintenance of the communal palace. In October 1318, the *massarolus* petitioned the council to enshrine this custom in written law, and they obliged; see ASB, Cartacea 218, reg. 23, 6v–7r, 10v.

¹⁸⁰ ASB, Fango 4, 1291II (50 fols.), 34r–36v.

¹⁸¹ ASB, Fango 7, 1298 (4 fols.), 1r–4r.

¹⁸² ASB, Corone 28, 1320II (100 fols.), 97r–98v and 1320II (56 fols.), 51r–52r. Other examples of arms auctions are in ASB, Corone 25, 1318I (50 fols.), 41r–42r; Corone 28, 1321II (96 fols.), 87r–89r.

¹⁸³ ASB, Accusationes 2, reg. 8, 5r–v, 20r–22r, 23r–v, 25v–27r, 39v–43v, 44v. The curfew convictions include four cases of nighttime serenading.

then the *familia* would have denounced more than 500 individuals over the course of this single year, a figure much higher than any seen in the later records. Notably, all but five of these convictions—that is, 20 of 22 arms-bearing violations and 20 of 23 gambling violations—were for offenses committed at night. When compared with subsequent decades, the 1256 register suggests a concerted effort to prevent nocturnal crime. It may also indicate that daytime patrols only became routine at a later point in time.

Table 7 – Bologna: Convictions, January–March 1256

	Persons Convicted	Total Fines in Lire	Made Some Payment	Flogged Instead	Did Not Pay at All
Curfew	37	44	31	0	6
Arms	22	230	19	0	3
Gambling	23	1075	11	7	5
Total	82	1349	61	7	14

The sample from 1256 not only shows, once again, that police patrols could generate substantial public revenue, but also that the criminal court was fairly efficient at collecting fines. Curfew, gambling, and arms convictions generated more than 1300 lire in fines in three months (Table 8), a pace that would have resulted in nearly 2700 lire worth of fines in a single semester. Gambling offenses accounted for the vast majority of this sum, because most of those convicted were discovered in taverns at night, when gambling incurred a double penalty of 50 lire. Unlike the Crowns and Arms registers, this book of condemnations indicates when convicts paid their penalties. Of the 82 condemned, 61 paid their fines at least in part, while another seven gamblers (or their hosts) submitted to flogging instead. For the remaining 14 individuals convicted, there is no indication they made any kind of payment. The register also reveals how judges used their authority to adjust statutory penalties according to specific circumstances. For example, a judge could reduce the penalty out of leniency or as a reward for prompt payment. Conversely, he could increase the penalty by one quarter for failure to pay on time. When convicted individuals pled insolvency, the judge might accept corporal punishment as a substitute or a promise to pay the fine in installments over time.¹⁸⁴ Indeed, some convicted gamblers actually requested flogging in lieu of an onerous 50-lire fine.¹⁸⁵ Despite the prevalence of such negotiations, the record still suggests that, on a basic level, judges followed through on the threat of punishment created by the *familia*'s patrols.

A fragmentary register of curfew and arms-bearing cases from April–October 1264 (Table 8) provides a final data point for Bologna and serves as a reminder that third-party policing was subject to frequent experimentation. This register stands out from those presented above in three regards. First, the night watch (both the *suprarguardie* and *custodes noctis*) accounts for 30 of the 47 discoveries, while the *familia* accounts for just 14, with the remaining three of indeterminable origin. All but one of the arms-bearing suspects were discovered at night, and that discovery was made “after nones” (i.e., not long before

¹⁸⁴ For examples of partial payments, see ASB, Accusationes 2, reg. 8, 27r, 42v. For promises of future payment, see ASB, Accusationes 2, reg. 8, 41r, 43r.

¹⁸⁵ ASB, Accusationes 2, reg. 8, 25v–26r. On the conversion of financial punishments to corporal punishments, see Geltner, *Flogging Others*, 66–68.

evening), again suggesting that daytime patrols by the *familia* may not have become routine until a later date. Second, the conviction rate for curfew and arms cases is lower than that in later decades: somewhere between 47 and 51 percent overall, or marginally higher than the rate of acquittal. This may be because most of the denunciations came from the night watch, whose word did not carry the same legal weight as the *familia*'s. Finally, these offenses did not generate nearly as much revenue as seen above. The penalties in 1264 simply were not as steep as in 1256 or the 1280s: just 1 lira for breaking curfew and 7 lire for bearing prohibited arms. Moreover, the latter penalty was not applied on a per-weapon basis, as it was in 1256 and from the 1280s on. The disparities suggest that Bologna's lawmakers did not view these penalties purely as a source of public revenue, but as a tool of public policy that could be adjusted as expediency required.

Table 8 – Bologna: Crowns and Arms Fragment, April–October 1264

	Persons Charged	Convicted	Acquitted	Banned	Unknown	Total Fines in Lire
Curfew	24	13	8	0	3	17
Arms	23	9	12	1	1	43
Total	47	22	20	1	4	60

Data from other communes indicate that, despite local variations in policing, Bologna's example is broadly representative of the Italian communes. Perugia is perhaps the only other commune from which registers of police discoveries (*inventiones*) survive for the thirteenth century. Tables 9-10 give the contents of two such registers from the office of the capitano del popolo, consisting mostly of curfew and arms violations.¹⁸⁶ The registers attest 128 *inventiones* for curfew and arms violations in the year 1279 and 134 in the first eight months of 1283. Considering that Perugia had a population of about 30,000 in 1285—about 60 percent the size of Bologna's—the data show a comparable if not more aggressive effort to police these laws.¹⁸⁷ The capitano's *familia* accounted for most of the arms-bearing cases, while the watchmen played a larger role in policing curfew, accounting for two thirds of these violations in 1279. Gambling is conspicuously absent from these two samples, with only three individuals denounced in 1283. As in Bologna, the foreign police and night watch do not seem to have denounced women for curfew or arms violations. The notary in 1283 generally did not record verdicts, but the 1279 register shows low conviction rates compared to Bologna, with less than a third for curfew and less than half for arms violations. As in the 1264 register from Bologna, the involvement of the night watch instead of the *familia* may explain the relatively low conviction rate for curfew cases. But on the whole, these convictions rates are high for a criminal court in medieval Italy, once again because contumacy was rare. Perugia did not have a designated official like Bologna's crowns notary to record the *familia*'s denunciations, so these two registers are exceptional among Perugia's otherwise voluminous judicial records.¹⁸⁸ As in Bologna, they

¹⁸⁶ ASP, Capitano 5b, reg. 8; Capitano 7b, reg. 7.

¹⁸⁷ Blanshei, *Perugia*, 30.

¹⁸⁸ A third register of *inventiones* from the first semester of 1282 also survives, but it is incomplete and in poor condition; see ASP, Capitano 6b, reg. 5.

suggest a robust enforcement effort by the commune and a credible threat of punishment once in court.

Table 9 – Perugia: *Inventiones*, January–December 1279

	Number of Persons	Percent Convicted	Percent Acquitted	Percent Unknown	Percent Banned
Curfew	81	31	59	7	2
Arms	47	40	47	13	0
Gambling	0	-	-	-	-
Total/Avg.	128	34	55	9	2

Table 10 – Perugia: *Inventiones*, January–August 1283

	Number of Persons	Percent Convicted	Percent Acquitted	Percent Unknown	Percent Banned
Curfew	99	-	-	100	-
Arms	35	34	31	31	3
Gambling	3	-	-	67	33
Total	137	-	-	-	-

Registers of convictions provide a broader sense of how Perugia's government exercised police power. Drawing on Vallerani's study of the Perugian justice system, Table 11 presents the number of convictions for curfew, arms, and gambling violations for seven years between 1260 and 1274.¹⁸⁹ The comparison with Bologna is imperfect, since only about 70 percent of these crimes were denounced by foreign police forces. The night watch accounted for a significant number, and a few arms convictions stemmed from assault cases not denounced by any public officers.¹⁹⁰ Furthermore, these samples do not provide a complete picture of police power. In Perugia, the criminal jurisdictions of the capitano del popolo and podestà overlapped or perhaps alternated, and for each year below, the data come from one office or the other, but never both. Thus, more convictions may well have been recorded in the (lost) registers of the other magistrate's office. To take the most obvious example, the zero curfew convictions registered by the podestà in 1274 almost certainly indicates that the capitano took responsibility for policing curfew that year, not that Perugia stopped policing curfew altogether. Nevertheless, the figures show that curfew and arms-bearing cases comprised a significant portion of the criminal court's activity. On average, these two offenses made up nearly a quarter of the convictions in a given year (Table 12). At the higher end of the range, the 127 individuals convicted for illicit arms-bearing in 1269 and the 365 convicted for curfew violations in 1262 are once again comparable to the figures from Bologna. In contrast with Bologna and Siena (see below), however, Perugia's authorities consistently showed less interest in prosecuting gambling. In a later register of gambling and weapons convictions, dating from the end of November 1321 to the end of March 1322, convictions for arms-bearing violations (78) again far

¹⁸⁹ Vallerani, *Il sistema giudiziario*, 154–66.

¹⁹⁰ Vallerani, *Il sistema giudiziario*, 162, 166, 171. He does not indicate which officials denounced which crimes.

outpace those for gambling (15).¹⁹¹ The disparity reinforces the notion that police patrols were a flexible tool of public policy, continuously shaped by lawmakers' changing perceptions of threats to the public interest.

Table 11 – Perugia: Persons Convicted

	1260	1262	1263	1267	1269	1270	1274	Total	Avg.
Curfew	25	365	90	71	41	34	0	626	89
Arms	15	44	3	76	127	61	18	344	49
Gambling	0	13	0	0	0	0	6	19	3
Total	40	422	93	147	168	95	24	989	141

Table 12 – Perugia: Persons Convicted by Percentage of Total Convictions

	1260	1262	1263	1267	1269	1270	1274	Avg.
Curfew	5	38	18	17	6	7	0	15
Arms	3	5	1	19	18	12	3	8
Gambling	0	1	0	0	0	0	1	1
Total	8	44	19	36	24	19	4	24

Siena also offers an intriguing point of comparison, since its population was similar in size to Bologna's.¹⁹² Tables 13-16 show the number of persons convicted for curfew, arms, and gambling violations over three semesters in 1305 and 1306, as recorded in one large register of sentences.¹⁹³ Such registers of sentences are the only surviving evidence of the *famiglia's* denunciations from Siena, which has no records of *inventiones* like those found in Bologna and Perugia. In this sample, Siena's police patrols produced an average of 137 convictions for gambling, curfew, and arms violations each semester, or about 274 per year. This would suggest that Siena's police forces produced nearly as many convictions per year as Bologna's reported *inventiones*. It is tempting to attribute this to Siena's higher ratio of foreign police officers to residents. However, all of these convictions seem to have been the work of the podestà's *famiglia*. Siena's other foreign police—those attached to the Nine (the ruling oligarchy) and the capitano del popolo—did not police curfew, arms-bearing, or gambling at this time.

Even if the night watch assisted with a number of curfew case, the figures once again attest the impact that a few dozen *berrovarii* could have on a medieval city. The fluctuating number of gambling convictions—50 in the second half of 1305 but only eight the following semester—suggests that gambling enforcement was inconsistent. It likely varied according to the priorities of different podestà and local officeholders, who may have demanded a crackdown from time to time. In contrast to Bologna, illicit arms-bearing accounts for a surprisingly low number of convictions, less even than gambling, while curfew convictions were far and away more common (at least in 1306). Both findings may be attributable to the differences between Sienese and Bolognese penalties. Sienese law prescribed a fine of only 1 lira for breaking curfew (compared to 5 lire in Bologna), but a steep 25-lire fine for

¹⁹¹ ASP, Capitano 63, reg. 5. It also contains one sentence against three individuals for illegal exporting.

¹⁹² Bowsky estimates a population of 50,000 in 1328; see *A Medieval Italian Commune*, 19.

¹⁹³ ASS, Malefizi 11.

carrying an offensive weapon (compared to 10 lire in Bologna). The number of convictions for each offense may thus reflect the relative deterrent effect of the penalties. In another striking contrast, at least 19 women appear among the curfew violators in Siena. This is not many overall—and there are still no women among those convicted of gambling and arms-bearing—but it is enough to suggest that Bologna and Perugia, unlike Siena, had an unwritten policy of not prosecuting women for breaking curfew.

Table 13 – Siena: Convictions, 1305II

	Persons Convicted	Total Fines in Lire	Made Some Payment	Percentage Who Paid
Curfew	19	46.5	11	58
Arms	22	455	20	91
Gambling	50	696	16	32
Total/Avg.	91	1197.5	47	52

Table 14 – Siena: Convictions, 1306I

	Persons Convicted	Total Fines in Lire	Made Some Payment	Percentage Who Paid
Curfew	113	132.75	64	57
Arms	20	650	16	80
Gambling	8	136	4	50
Total/Avg.	141	918.75	84	60

Table 15 – Siena: Convictions, 1306II

	Persons Convicted	Total Fines in Lire	Made Some Payment	Percentage Who Paid
Curfew	131	161.5	57	44
Arms	24	655	16	67
Gambling	23	402	14	61
Total/Avg.	178	1218.5	87	49

Table 16 – Siena: Total Convictions, 1305II–1306II

	Persons Convicted	Total Fines in Lire	Made Some Payment	Percentage Who Paid
Curfew	263	340.75	132	51
Arms	66	1760	52	79
Gambling	81	1234	34	42
Total/Avg.	410	3334.75	218	53

As in Bologna, the podestà's *familia* seems to have generated significant public revenue for the commune—on average, about 1,100 lire per semester. The bulk of this again came from arms violations, not because they were more numerous but because they were penalized more severely. At least half of those convicted actually paid some amount of their fine, either in full, at a reduced rate, or with an additional late penalty, as in Bologna. The capitano del popolo served as an appeals court, with the authority to reduce penalties or overturn convictions altogether. In one case from 1306, an individual sentenced by the

podestà to a 40-lire fine for carrying a knife and wearing three pieces of armor at night only had to pay 10 lire after appealing to the capitano.¹⁹⁴ At least a dozen individuals had their convictions overturned by the capitano, but for most of the cases where it is unclear whether the convict paid a penalty, the notary left no indication.

As a final point of comparison, Table 17 presents convictions from Orvieto in the period from November 1294 to November 1295.¹⁹⁵ Orvieto was a relatively small commune with an estimated population of between 14,000 and 17,000 in 1292—about half the size of Perugia’s and less than a third of Bologna’s and Siena’s.¹⁹⁶ This cross section of data, from two registers of the podestà’s court, suggests that law enforcement was more stringent in Orvieto than in any of the three communes discussed above. On a per capita basis, the 113 persons convicted for curfew, arms-bearing, and gambling offenses would translate to about 200 in Perugia and at least 300 in Siena and Bologna. This would mean that, proportionally, Orvieto’s podestà convicted as many people for curfew, arms-bearing, and gambling offenses as Bologna’s charged. More aggressive policing would be consistent with Carol Lansing’s observation that Orvieto stood out among the Italian communes for enforcing its funeral laws as well. Yet in financial terms, the cost of policing for those convicted was far less in Orvieto because the penalties were significantly lighter. Carrying a knife incurred no worse a fine than breaking curfew—just 1 lira, or one tenth the penalty in Bologna—and gambling a mere 5 lire, the same as Bologna’s curfew penalty. The lighter punishments may have both lessened the deterrent effect of policing and encouraged judges to deliver guilty verdicts without fear of overburdening local residents. But once again, this sample suggests that police patrols compelled hundreds of people to stand trial against their will each year, with many of them ending in conviction.

Table 17 – Orvieto: Convictions, November 1294–November 1295

	Persons Convicted	Total Fines in Lire	Made Some Payment	Percentage Who Paid
Curfew	52	53	29	56
Arms	51	104	29	57
Gambling	10	60	6	60
Total/Avg.	113	217	64	57

All told, the policing of curfew, arms-bearing, and gambling offenses in these four communes shows more similarity than difference. This is not surprising given their shared political-legal culture. While each town was autonomous, they shared foreign rectors (podestà and capitani del popolo), judges, and notaries on a rotating basis. These itinerant magistrates had to learn the particulars of the statutes in each new locality, but they operated within the same legal framework and facilitated the exchange of ideas among cities, with important implications for this study. While Bologna’s unrivaled records of police activity place it front and center, the policing described in those records should not be taken as a peculiar to that city. Third-party policing was substantially the same in other

¹⁹⁴ ASS, Malefizi 11, 89v. For an arms-bearing conviction absolved by the capitano, see ASS, Malefizi 11, 42r. For an overturned gambling conviction, see ASS, Malefizi 11, 56v.

¹⁹⁵ ASO, Podestà 2, reg. 8–9.

¹⁹⁶ Lansing, *Passion and Order*, 18.

communes, even if their archives shed less light on it. Furthermore, the judicial records suggest a police apparatus that was not merely active but effective. In a medieval town, it took only a few dozen men patrolling regularly for the government to project a credible threat of detecting and punishing offenders. The data above undermine the historiographical consensus that medieval courts lacked police power, which is based in large part on the high contumacy rates in trials for crimes against persons and property (e.g., theft, assault, and homicide). When the scope of analysis is expanded to include trials initiated by the *familia* for lesser statutory offenses, contumacy becomes rare and the courts appear more effective at delivering punitive justice.

Indeed, the data discussed above cover just three offenses, a fraction of the communes' broader efforts to police their territories. Geltner has found that Bologna's dirt notary adjudicated, on average, nearly 50 charges per month in the fourteenth century, most of them discovered by his own patrols and inspections.¹⁹⁷ Similarly, Vallerani found that "administrative crimes" denounced by the city's various police forces—not only the three above, but also neglect of guard duty, illegal exports, and agricultural damages (*danni dati*), among others—accounted for 60 to 70 percent of all guilty verdicts in Perugia's courts in the 1260s and 1270s.¹⁹⁸

There is also good reason to believe that the judicial sources underrepresent the disciplinary actions of the podestà's (or capitano's) *familia*. For example, in Bologna the *familia* likely delivered summary justice to public gamblers more often than the registers let on. A list of some 141 *marochi* arrested by the *familia* in or near public gambling spots during the second semester of 1293 shows that all but two of them were flogged, many the same day as their arrest. Vallerani has interpreted this list as evidence of an exceptional disciplinary operation ordered by one podestà.¹⁹⁹ However, the exceptional part may not be the operation, but the fact that a notary bothered to record it. Other evidence is suggestive: one day in August 1292, for example, 14 *marochi* were arrested near the two *baratarie* and flogged the same day.²⁰⁰ With no fines to collect or risk of contumacy, the court had little incentive to document these summary cases. Likewise, notaries may not have bothered to record cases that were quickly dismissed on the basis of privilege (see Chapters 2 and 6). For example, defense testimony survives for an October 1320 curfew case that is not listed in the book of discoveries, which has the appearance of being otherwise thorough. The defense hinged entirely on the defendant's legal privilege rather than the facts of the case.²⁰¹ If the notaries did not bother to record such discoveries, this would explain the extraordinarily high conviction rates seen in the second half of 1320 semester (about 90 percent in arms and gambling cases and 80 percent in curfew). It would also mean that a potentially large number of *inventiones* have not survived. Even if all the *familia*'s discoveries were recorded, this would still only represent a fraction of the individuals they stopped each semester. The countless individuals they stopped and found to be in compliance with the law have left no trace in the historical record, except in a few

¹⁹⁷ Geltner, "Public Health," 113–14.

¹⁹⁸ Vallerani, *Il sistema giudiziario*, 169. NB: this percentage is in terms of judicial acts, not persons convicted.

¹⁹⁹ ASB, Corone 5, 1293II (53 fols.), 48r–52v. Vallerani, "Giochi di posizione," 27.

²⁰⁰ ASB, Corone 4, 1292II (54 fols.), 32v.

²⁰¹ ASB, Corone 28, 1320II (30 fols.), 11r–v.

cases of incidental testimony.²⁰² All told, the records left by third-party policing show that public justice in the communes was more coercive than the historiography suggests.

Conclusion: Policing and Hegemonic Justice

The communes' judicial records show that their police forces were effective in their basic task of law enforcement. In larger cities like Bologna, they compelled hundreds of people to appear in court for minor offenses each year, greatly increasing the number of inquisitions conducted by the criminal court. They arrested offenders or made them give surety to appear in court at a later date, virtually eliminating the problem of contumacy that usually plagued the court. This in turn allowed judges to proactively hand down sentences rather than reactively issue bans. Moreover, a guilty verdict was far more likely than in most criminal cases, because the statutes presumed individuals accused by the *familia* guilty until proven innocent. The conviction rate was therefore significantly higher in criminal trials initiated by the *familia*. In brief, the evidence presented in this chapter shows that communal governments wielded significant police power that is unaccounted for in most histories of medieval states and public justice.

Put another way, the coercive law enforcement described in this chapter involved little negotiation. The *familia*'s patrols compelled locals to stand trial, and judges applied the statutory penalties often enough to make the threat of punishment credible. Third-party policing was therefore an important part of the shift from negotiated to hegemonic justice discussed in the introduction. This observation does not discount the value of dispute resolution as an interpretive framework for the study of medieval justice, nor does it necessarily indicate that police power was the most salient aspect of public justice in the Italian communes. Indeed, hegemonic and negotiated forms of justice complemented each other, and each played important roles in maintaining the social order. It suggests, however, that recent historiography, with its near-exclusive focus on negotiated justice, does not paint a balanced portrait of justice in the medieval communes.

The impact of the communes' police forces went well beyond the relatively small number of residents they charged and convicted each year. As North, Wallis, and Weingast point out, violence consists not just of physical actions, but of coercive threats of physical action.²⁰³ The *familia*, as executors of state-sanctioned violence, presented a coercive threat to citizens that was just as important as the actions they took. Their wide-ranging and frequent patrols made the possibility of law enforcement omnipresent; even if the podestà's men were not in sight, they could arrive at any moment. Furthermore, as the next chapter will make clear, virtually no one was spared this coercion, because the *familia* enforced the law across social strata. Thus, their patrols created a diffuse threat of state coercion not unlike the classic example of Bentham's panopticon. This, rather than the number of people the *familia* arrested per se, marked the real significance of the institution.

²⁰² For examples, see ASB, Corone 4, 1292I (46 fols.), 17v; Corone 8, 1296I (42 fols.), 17r.

²⁰³ North, Wallis, and Weingast, *Violence and Social Orders*, 13.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio del giudice al sindacato

Ufficio delle acque, strade, ponti, calanchi, selciate e fango

Ufficio per la custodia delle vigne, palancati e broili

Governo

Riformagioni e provvigioni, serie cartacea

Archivio di Stato di Orvieto

Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

Archivio di Stato di Siena

Podestà, Malefizi

PUBLISHED PRIMARY SOURCES

Caprioli, Severino, ed. *Statuto del comune di Perugia del 1279*. 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.

Il costituito del comune di Siena, volgarizzato nel MCCCIX-MCCCX. 2 vols. Siena: Tip. e Lit. Sordmuti di L. Lazzeri, 1903.

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267*. 3 vols. Bologna: Regia Tipografia, 1869–1877.

Muzzarelli, Maria Giuseppina, ed. *La legislazione suntuaria: secoli XIII–XVI: Emilia Romagna*. Rome: Ministero per i beni e le attività culturali, Direzione generale per gli archivi, 2002.

Ungarelli, Gaspare, and Francesco Giorgi. "Documenti riguardanti il giuoco in Bologna nei secoli XIII e XIV." *Atti e Memorie della R. Deputazione di storia patria per le provincie di Romagna*, series 3, vol. 11 (1892–1893): 360–410.

SECONDARY SOURCES

- Artifoni, Enrico. "I ribaldi. Immagini e istituzioni della marginalità nel tardo medioevo piemontese." In *Piemonte medievale. Forme del potere e della società. Studi per Giovanni Tabacco*, 227–48. Turin: G. Einaudi, 1985.
- Blanshei, Sarah Rubin. "Bolognese Criminal Justice: From Medieval Commune to Renaissance *Signoria*." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 55–82. Lanham, MD: Lexington Books, 2018.
- . *Perugia, 1260–1340: Conflict and Change in a Medieval Italian Urban Society*. Philadelphia: American Philosophical Society, 1976.
- . *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Bocchi, Francesca, ed. *Bologna*. Vol. 2, *Il duecento*. Bologna: Grafis, 1995.
- . "Il comune di Bologna e i signori del contado (secc. XII–XIII)." *Atti e memorie della Deputazione di storia patria per le province di Romagna* 32 (1982): 115–35.
- Bowsky, William M. "The Medieval Commune and Internal Violence: Police Power and Public Safety in Siena, 1287–1355." *The American Historical Review* 73 (1967): 1–17.
- . *A Medieval Italian Commune: Siena Under the Nine, 1287–1355*. Berkeley: University of California Press, 1981.
- Brundage, James A. *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*. Chicago: University of Chicago Press, 2008.
- Camphuijsen, Frans. "'In Hemde Ende in Broeck.' The Performance of Justice in Late Medieval Utrecht." Amsterdam Centre for Urban History Working Paper, 2016.
- Campopiano, Michele. "Rural Communities, Land Clearance and Water Management in the Po Valley in the Central and Late Middle Ages." *Journal of Medieval History* 39 (2013): 377–93.
- Capitani, Ovidio, ed. *Cultura universitaria e pubblici poteri a Bologna dal XII al XV secolo: atti del 2o convegno, Bologna, 20–21 maggio 1988*. Bologna: Istituto per la storia di Bologna, 1990.
- Carraway, Joanna. "Contumacy, Defense Strategy, and Criminal Law in Late Medieval Italy." *Law and History Review* 29 (2011): 99–132.
- Cavallar, Osvaldo. "Regulating Arms in Late Medieval and Renaissance Italian City–States." In *Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society*, edited by Julius Kirshner and Laurent Mayali, 57–126. Berkeley: Robbins Collection, 2002.
- Chambers, David, and Trevor Dean. *Clean Hands and Rough Justice: An Investigating Magistrate in Renaissance Italy*. Ann Arbor: University of Michigan Press, 1997.
- Chittolini, Giorgio. "Città e contado nella tarda età comunale (a proposito di studi recenti)." *Nuova Rivista Storica* 53 (1969): 706–19.
- , ed. *La Crisi degli ordinamenti comunali e le origini dello stato del Rinascimento*. Bologna: Il Mulino, 1979.
- Ciampoli, Donatella, and Thomas Szabó, eds. *Viabilità e legislazione di uno stato cittadino del Duecento: lo statuto dei viari di Siena*. Siena: Accademia senese degli intronati, 1992.
- Dean, Trevor. *Crime in Medieval Europe, 1200–1550*. Harlow: Longman, 2001.
- . "Investigating Homicide: Bologna in the 1450s." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 83–100. Lanham, MD: Lexington Books, 2018.
- Dondarini, Rolando. *Bologna medievale nella storia delle città*. Bologna: Pàtron, 2000.

- Dubber, Markus. *The Police Power: Patriarchy and the Foundations of American Government*. New York: Columbia University Press, 2005.
- Epstein, Steven. *Genoa and the Genoese, 958-1528*. Chapel Hill: University of North Carolina Press, 1996.
- Falletti-Fossati, Carlo. *Costumi senesi nella seconda metà del secolo XIV*. Siena: G. Bargellini, 1882.
- Fasoli, Gina. "Feudalità e città." In *Structures féodales et féodalisme dans l'Occident méditerranéen: Xe-XIIIe siècles: bilan et perspectives de recherches: colloque international*, 365-85. Rome: École française de Rome, 1980.
- Fenster, Thelma, and Daniel Smail, eds. *Fama: The Politics of Talk and Reputation in Medieval Europe*. Ithaca: Cornell University Press, 2003.
- Foschi, Paola. "Il governo del territorio negli statuti trecenteschi di Bologna." In *Acque di frontiera: Principi, comunità e governo del territorio nelle terre basse tra Enza e Reno (secoli XII-XVIII)*, edited by Franco Cazzola, 165-82. Bologna: CLUEB, 2000.
- Fowler-Magerl, Linda. *Ordines Iudicarii and Libelli de Ordine Iudiciorum: From the Middle of the Twelfth to the End of the Fifteenth Century*. Turnhout: Brepols, 1994.
- Fraher, Richard. "Ut nullus describatur reus prius quam vincatur: Presumption of Innocence in Medieval Canon Law." In *Proceedings of the Sixth International Congress of Medieval Canon Law*, edited by Stephan Kuttner and Kenneth Pennington, 493-506. Vatican City: Biblioteca Apostolica Vaticana, 1985.
- Franchini, Vittorio. *Saggio di ricerche sull'istituto del podestà nei comuni medievali*. Bologna: N. Zanichelli, 1912.
- Fрати, Lodovico. *La vita privata di Bologna dal secolo XIII al XVII*. Bologna: N. Zanichelli, 1900.
- Freis, Helmut. *Die cohortes urbanae*. Cologne: Granz, Böhlau, 1967.
- Gamberini, Andrea. "La territorialità nel Basso Medioevo: un problema chiuso? Osservazioni a margine della vicenda di Reggio." In *Poteri signorili e feudali nelle campagne dell'Italia settentrionale fra Tre e Quattrocento: fondamenti di legittimità e forme di esercizio*, edited by Federica Cengarle, Giorgio Chittolini, and Gian Maria Varanini, 47-71. Florence: Firenze University Press, 2005.
- Gauvard, Claude, ed. *L'enquête au Moyen Âge*. Rome: École française de Rome, 2008.
- Geltner, Guy. "A Cell of Their Own: The Incarceration of Women in Late Medieval Italy." *Signs* 39 (2013): 27-51.
- . "Finding Matter Out of Place: Bologna's Fango ('Dirt') Notary in the History of Premodern Public Health." In *The Far-Sighted Gaze of Capital Cities: Essays in Honor of Francesca Bocchi*, edited by Rosa Smurra, Houbert Houben, and Manuela Ghizzoni, 307-21. Rome: Viella, 2014.
- . *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present*. Amsterdam: Amsterdam University Press, 2015.
- . "Healthscaping a Medieval City: Lucca's *Curia Viarum* and the Future of Public Health History." *Urban History* 40 (2013): 395-415.
- . *The Medieval Prison: A Social History*. Princeton: Princeton University Press, 2008.
- . "Public Health." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 103-28. Leiden: Brill, 2018.
- . *Roads to Health: Infrastructure and Urban Wellbeing in Later Medieval Italy*. Philadelphia: University of Pennsylvania Press, forthcoming.

- Gentile, Marco. "From Commune to Regional State: Political Experiments in Fourteenth Century Cremona." In *Communes and Despots in Medieval and Renaissance Italy*, edited by Bernadette Paton and John E. Law, 91–103. Burlington, VT: Ashgate, 2010.
- Goodich, Michael. "Sodomy in Medieval Secular Law." *Journal of Homosexuality* 1 (1976): 295–302.
- Gorreta, Alma. *La lotta fra il comune bolognese e la signoria estense: 1293–1303*. Bologna: N. Zanichelli, 1906.
- Grillo, Paolo. "Podestà dell'Italia comunale: recenti studi e nuovi problemi sulla storia politica e istituzionale dei comuni italiani nel duecento." *Rivista storica italiana* 115 (2003): 556–90.
- Hanauer, Gustav. "Das Berufspodestat im dreizehnten Jahrhundert." *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 23 (1902): 377–426.
- Hughes, Diane Owen. "Sumptuary Law and Social Relations in Renaissance Italy." In *Disputes and Settlements: Law and Human Relations in the West*, edited by John Bossy, 69–99. New York: Cambridge University Press, 1983.
- Hughes, Steven C. "Fear and Loathing in Bologna and Rome: The Papal Police in Perspective." *Journal of Social History* 21 (1987): 97–116.
- Hunt, Alan. *Governance of the Consuming Passions: A History of Sumptuary Law*. New York: St. Martin's Press, 1996.
- Jones, Philip. "Communes and Despots: The City State in Late-Medieval Italy." *Transactions of the Royal Historical Society* 15 (1965): 71–96.
- Kantorowicz, Hermann. *Albertus Gandinus und das Strafrecht der Scholastik*. Vol. 1, *Die Praxis*. Berlin: J. Guttentag, 1907.
- Killerby, Catherine Kovesi. *Sumptuary Law in Italy, 1200–1500*. Oxford: Oxford University Press, 2002.
- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Lori Sanfilippo, Isa, and Antonio Rigon, eds. *Fama e publica vox nel Medioevo: Atti del convegno di studio svoltosi in occasione della XXI edizione del Premio internazionale Ascoli Piceno (Ascoli Piceno, Palazzo dei Capitani, 3–5 dicembre 2009)*. Rome: ISIME, 2011.
- Maffei, Elena. *Dal reato alla sentenza: Il processo criminale in età comunale*. Rome: Edizioni di storia e letteratura, 2005.
- Maire Vigueur, Jean-Claude, ed. *I podestà dell'Italia comunale*. 2 vols. Rome: École française de Rome, 2000.
- . "L'ufficiale forestiero." In *Ceti, modelli, comportamenti nella società medievale (secoli XIII–metà XIV) (Pistoia, 14–17 maggio 1999)*, 75–97. Pistoia: Centro italiano di studi di storia e d'arte, 2001.
- Mazzi, Maria Serena. *Prostitutes and Lenoni in the Florence of the Quattrocento*. Milan: Saggiatore, 1991.
- . "Un 'dilettoso luogo': l'organizzazione della prostituzione nel tardo Medioevo." In *Città e servizi sociali nell'Italia dei secoli XII–XV: 12o Convegno di studi: Pistoia, 9–12 ottobre 1987*, edited by Emilio Cristiani and Enrica Salvatori, 465–80. Pistoia: Centro italiano di studi di storia e d'arte, 1990.
- Ménard, Hélène. *Maintenir l'ordre à Rome: Ile–Ive siècles ap. J.-C.* Seyssel: Champ Vallon, 2004.

- Migliorino, Francesco. *Fama e infamia: problemi della società medievale nel pensiero giuridico nei secoli XII e XIII*. Catania: Giannotta, 1985.
- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Rev. ed. Cambridge: Cambridge University Press, 2013.
- Ortalli, Gherardo. *Barattieri: il gioco d'azzardo fra economia ed etica: secoli XIII–XV*. Bologna: Il Mulino, 2012.
- Pennington, Kenneth. "Innocent Until Proven Guilty: The Origins of a Legal Maxim." *The Jurist* 63 (2003): 106–24.
- Peters, Edward. *Inquisition*. Berkeley: University of California Press, 1989.
- Pini, Antonio Ivan. *Campagne bolognesi: le radici agrarie di una metropoli medievale*. Florence: Le Lettere, 1993.
- . "'Discere turba volens.' Studenti e vita studentesca a Bologna dalle origini dello studio alla metà del trecento." In *Studenti e università degli studenti dal XII al XIX secolo*, edited by Gian Paolo Brizzi and Antonio Ivan Pini, 45–136. Bologna: Presso l'Istituto per la storia dell'Università, 1988.
- . *Vite e vino nel Medioevo*. Bologna: CLUEB, 1989.
- Purpura, Gianfranco. "Polizia (diritto romano)." *Enciclopedia del diritto*. Milan: A. Giuffrè, 1985.
- Quintard-Morénas, François. "The Presumption of Innocence in the French and Anglo-American Legal Traditions." *The American Journal of Comparative Law* 58 (2010): 107–49.
- Roberts, Gregory. "Policing and Public Power in the Italian Communes." PhD diss. Yale University, 2013.
- Ruggiero, Guido. *Violence in Early Renaissance Venice*. New Brunswick, NJ: Rutgers University Press, 1980.
- Sablayrolles, Robert. *Libertinus miles: les cohortes de vigiles*. Rome: École française de Rome, 1996.
- Settia, Aldo A. *Comuni in guerra. Armi ed eserciti nell'Italia delle città*. Bologna: CLUEB, 1993.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- . *Legal Plunder: Households and Debt Collection in Late Medieval Europe*. Cambridge, Mass.: Harvard University Press, 2016.
- Smurra, Rosa. "The Palatium Communis Bononie and Its Commercial Facilities in the 13th and 14th Centuries." In *Städtische Wirtschaft im Mittelalter: Festschrift für Franz Irsigler zum 70. Geburtstag*, edited by Rudolf Holbach and Michel Pauly, 71–92. Cologne: Böhlau Verlag, 2011.
- Stern, Laura Ikins. *The Criminal Law System of Medieval and Renaissance Florence*. Baltimore: Johns Hopkins University Press, 1994.
- Stuard, Susan Mosher. *Gilding the Market: Luxury and Fashion in Fourteenth-Century Italy*. Philadelphia: University of Pennsylvania Press, 2006.
- Szabó, Thomas. *Comuni e politica stradale in Toscana e in Italia nel Medioevo*. Bologna: CLUEB, 1992.
- Taddei, Ilaria. "Gioco d'azzardo, ribaldi e baratteria nelle città della Toscana tardo-medievale." *Quaderni storici* 92 (1996): 335–62.

- Tamba, Giorgio. "Civic Institutions (12th–Early 15th Centuries)." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 211–38. Leiden: Brill, 2018.
- Thompson, Augustine. *Revival Preachers and Politics in Thirteenth Century Italy: The Great Devotion of 1233*. Oxford: Oxford University Press, 1992.
- Turning, Patricia. *Municipal Officials, Their Public, and the Negotiation of Justice in Medieval Languedoc: Fear Not the Madness of the Raging Mob*. Leiden: Brill, 2012.
- Vallerani, Massimo. "La fama tra costruzioni giuridiche e modelli sociali nel tardo Medioevo." In *La Fiducia Secondo i Linguaggi Del Potere*, edited by Paolo Prodi, 93–111. Bologna: Il Mulino, 2007.
- . "Giochi di posizione tra definizioni legali e pratiche sociali nelle fonti giudiziarie bolognesi del XIII secolo." In *Gioco e giustizia nell'Italia di comune*, edited by Gherardo Ortalli, 13–34. Rome: Viella, 1993.
- . *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- . *Il sistema giudiziario del comune di Perugia: conflitti, reati e processi nella seconda metà del XIII secolo*. Perugia: Deputazione di storia patria per l'Umbria, 1991.
- Vaucher, André. "Une campagne de pacification en Lombardie autour de 1233. L'action politique des Ordres Mendiants d'après la réforme des statuts communaux et les accords de paix." *Mélanges d'archéologie et d'histoire* 78 (1966): 503–49.
- Vitale, Vito. *Il dominio della parte guelfa in Bologna (1280–1327)*. Bologna: A. Forni, 1901.
- Vitiello, Joanna Carraway. *Public Justice and the Criminal Trial in Late Medieval Italy: Reggio Emilia in the Visconti Age*. Leiden: Brill, 2016.
- Wilson, Laurel Ann. "Common Threads: A Reappraisal of Medieval European Sumptuary Law." In *Legal Encounters on the Medieval Globe*, edited by Elizabeth Lambourn and Carol Symes, 141–66. Kalamazoo: Arc Humanities Press, 2017.
- Zdekauer, Lodovico. *Il gioco d'azzardo nel Medioevo italiano*. Edited by Gherardo Ortalli. Florence: Salimbeni, 1993.

Chapter 2: Police Discretion and Personal Autonomy

In January 1287, two *berrovarii* testified in court against Ugolino Zovenzoni, whom they had charged with carrying a prohibited knife. The Zovenzoni banking family, whose members frequently held public office, was among the city's most prominent, but this did not seem to faze the podestà's *familiares*. The judge began by asking the *berrovarii* a simple factual question: had they discovered a knife on the defendant while patrolling a few days earlier? The officers proceeded to tell their side of the story with the defendant present before them. When they encountered Ugolino on patrol, they called after him to stop and submit to a pat-down. Ugolino, however, "pretended not to hear" and entered the shop of a certain barber instead, "not permitting himself to be searched." Not to be deterred, the *berrovarii* followed Ugolino inside and checked him for weapons there. Although they did not find any on his person, they did find a knife in a pail inside the shop. They therefore arrested Ugolino on the basis of presumption and led him before the podestà's knight. Questioning Ugolino in turn, the judge asked him if the knife found by the *berrovarii* was in fact his. Ugolino admitted the knife belonged to him, but claimed he had placed it in the barber's shop for safekeeping before the *familia* searched him. Ugolino also denied under further questioning that the *familia* had been following him when he entered the shop, as well as the allegation that he had fled and refused to be searched. The podestà's judge apparently found Ugolino's testimony unconvincing, however. Notwithstanding his membership in an elite family, he was convicted of bearing illicit arms and sentenced to pay the statutory fine of 10 lire.¹

The last chapter illustrated the coercive capacity of the *familia* with regards to its proactive patrols and ability to compel suspects to answer charges in court. This chapter explains how the *familia* projected a credible threat of punishment throughout the commune, including for political elites like the Zovenzoni. In Bologna, lawmakers did not explicitly accord the *berrovarii* legal discretion (*arbitrium*) in enforcing the laws, as they did the podestà and his judges.² But like all patrol officers, the *berrovarii* used discretion in deciding how the commune's statutes—many of which created considerable legal ambiguities—should apply to the realities they encountered in the street. In other words, the *berrovarii* acted to some extent as judges of first instance. Kenneth Culp Davis' observation about Chicago's police in 1975 is just as apt for the podestà's *familia* in the thirteenth century: "The police make policy about what law to enforce, how much to enforce it, against whom, and on what occasions."³ As the evidence below will bear out, the *berrovarii* exercised police discretion in a surprisingly impersonal and sometimes aggressive manner.

To get at the question of how the *familia* enforced the statutes, this chapter discusses the issues of identification and interpretation they routinely confronted on patrol. It starts by asking whom the *familia* enforced the law against, a question that in turn

¹ ASB, Corone 1, 1287I (34 fols.), 2r-v: "Et dum volebant eum cercare de armis, vocaverunt ipsum Ugolinum dicendo, 'Vade plane quia volumus te cercare si habes arma.' Et ipse Ugolinus finsit non audire, et de minori post ivit et intravit stationem infrascripti barberii non permitendo se rimari." On the Zovenzoni, see Blanshei, *Politics and Justice*, 100, 130, 542, 557.

² On the concept of *arbitrium*, see Vallerani, "L'arbitrio"; Meccarelli, *Arbitrium*.

³ Davis, *Police Discretion*, 1.

has two components. First, how did the *familia* deal with questions of social identity and political status? The statutes and custom granted exceptions for people based on their occupation, activity, or political status. Watchmen, travelers, and select public officeholders, for example, enjoyed certain immunities from the arms-bearing laws. In many encounters, the *berrovarii* therefore had to decide whether an apparent violator of statute enjoyed an exemption or not.⁴ Second, assuming the *familia* made a proper identification, did they enforce the law against everyone they were supposed to enforce it against? It is entirely reasonable to assume that the commune's political elites would pass certain laws with a wink to the podestà that they were meant for "other" city residents. Nevertheless, Ugolino Zovenzoni's case above is illustrative: his family name neither deterred the *berrovarii* from pursuing him on suspicion of carrying an illegal weapon nor spared him conviction in court. Indeed, the trial records show the *familia* regularly arrested and denounced members of the commune's elite families—the same citizens who employed them and authored the statutes they enforced.

The chapter then treats the deceptively simple questions of fact the *familia* had to interpret, such as whether a knife was of the type prohibited by statute. It goes on to show how certain legal presumptions built into statute allowed the *familia* to make arrests in many cases on the basis of suspicion. These presumptions stacked the deck against the locals the *familia* policed, including the *popolano* elites whom they ultimately served. The chapter then treats questions of jurisdiction—i.e., of *where* the law was to be enforced—implicit in statute, and suggests that the *familia* often pushed the boundaries of their authority. Lastly, the chapter takes on questions of intent, asking to what extent the *familia* took the apparent good (or bad) intentions of a suspect into account when deciding to register a charge. Again, the evidence suggests that the *familia* erred on the side of aggressive enforcement. Although the trial records tend to suppress crucial details about the circumstances of arrests, a number of cases suggest that the *familia* took advantage of ambiguities in the statutes to bring charges on tenuous grounds. To be sure, defendants often exploited those same ambiguities in their legal defenses, and foreign judges (to say nothing of local jurists) did not always agree with their *berrovarii*. The point remains, however, that the *berrovarii* were empowered to arrest individuals at the slightest hint of a legal infraction, and there was little to stop them from exploiting this. Even the *sindacato*, an audit procedure that podestà underwent at the end of their terms at some risk to their professional reputations, seems not to have checked the *berrovarii*'s behavior.⁵ In general, the system encouraged *familiars* to make arrests and allow a judge to decide the truth of the matter later in court.

To be clear, this chapter does not argue that the *familia* habitually abused its power, harassing and arresting people in arbitrary fashion—although that is entirely possible. Nor does it claim that the *familia* always enforced the law as strictly as possible. For obvious reasons, instances where the *familia* showed leniency—e.g., when they had "probable cause" but chose not to make the arrest—leave no historical record. But it does argue that the *familia* used their legal discretion to police aggressively. Furthermore, they enforced the law with a remarkable degree of impersonality, in the sense of treating all violations in

⁴ On legal privilege in Bologna, see Vallerani, *Medieval Public Justice*, 275–76; Blanshei, *Politics and Justice*, 377–408. Chapter 6 will deal with the subject more extensively.

⁵ Geltner, "Fighting Corruption"; Sabapathy, "A Medieval Officer."

the same manner.⁶ Granted, there were no truly impersonal institutions in thirteenth-century Italy, and no concept of equality before the law. Medieval legal codes enshrined social inequalities by prescribing different rules, punishments, and procedures for different classes of person, and the statutes of the Italian communes were no exception. However, the statutes generally forbade anyone—regardless of social identity—from going about the city at night without a light, playing dice outside of the public gambling spots, or carrying a knife through the city streets. And the *familia* enforced the law impersonally enough to make the threat of punishment for certain offenses credible for all.

The *familia*'s impersonal and sometimes aggressive use of their discretion was perhaps the most consequential feature of third-party policing in the communes. When *berrovarii* decided to denounce an individual for violating a statute, it was a coercive act in its own right, regardless of whether the judge subsequently found him guilty. Indeed, as Chapter 6 will bear out, the mere threat of denunciation could have a coercive effect on city residents. The *familia*'s patrols made legal harassment a part of daily life and placed punitive judgments in the hands of public officials, effectively making city residents more subject to government authority. Third-party policing thus infringed significantly on the personal autonomy of citizens, including elites, and diminished their ability to negotiate justice on their own terms. The apparent paradox is that this change seems to have occurred at a moment when elite citizens enjoyed real autonomy in deciding how to govern themselves.

Social Identity

In the first place, *berrovarii* generally had to ascertain *who* was committing a particular deed in order to determine its legality. Communal statutes included numerous exceptions that allowed individuals to engage in proscribed behaviors on the basis of their occupation or intent. Perugia's 1279 statute on arms-bearing, for example, made explicit exceptions for travelers, night watchmen, the guards of the commune's grain stores (*custodes grascie*), officials carrying out orders from the podestà or capitano, or anyone delivering outlaws into the commune's custody.⁷ In 1293, Bologna's lawmakers enshrined in statute the exception, long recognized by custom, that allowed travelers to carry certain weapons. The law provided that anyone coming and going from the city could carry a sword, dagger, or knife if he wore a cap (*capellus*) and, if mounted, spurs—two visible markers that would make travelers more readily identifiable. Any traveler also had to carry his weapon "publicly and visibly," in hand, with the hilt lashed to the sheath such that it could not be drawn, all the way from his home to the gates of the city, and vice versa upon return. The guards of the city gates were responsible for educating all foreigners entering the city about these rules, as were innkeepers.⁸ Thus, whenever the *familia* suspected someone of bearing arms illicitly, they had to determine if the suspect was traveling, and if so, if he was bearing his arms in the manner stipulated by law.

⁶ On the concept of impersonality, see Wallis, "Institutions, Organizations, Impersonality, and Interests."

⁷ *Statuto 1279*, 1:333.

⁸ *Statuti 1288*, 1:227, 568–69. Perugia's statutes held innkeepers monetarily responsible for educating foreign guests about the city's arms-bearing regulations; see *Statuto 1279*, 1:333. Such requirements of gate- and innkeepers were common across northern Italy; see Cavallar, "Regulating Arms," 87–89. The traveling cap seems to have been a customary marker across communal Italy; see Cavallar, 107–8.

The *familia* viewed armed men who claimed to be traveling with a certain skepticism. Multiple cases survive from multiple communes wherein the *familia* apparently denounced an individual for openly carrying a weapon that was lashed shut, either while traveling or attempting to peddle the weapon on the street.⁹ Indeed, Perugia's 1279 statute seemed to assume the *familia* would arrest individuals wearing traveling caps, even though the cap was supposed to signal the armed traveler's exempt status under law.¹⁰ Certainly, the *familia* had little to lose by denouncing a man with a knife in hand, even if he was carrying it in accordance with the statutes. Similar are cases where the *familia* did not show leniency to armed men who claimed they were about to start travel or had just returned from a trip. For example, in September 1287, the *familia* reported finding Giovanni Aliseri on his doorstep with a knife, and that he "was saying he had just then come from abroad and was not yet able to put down the knife."¹¹ They registered the charge against him nonetheless, forcing Giovanni to appear in court.

The *familia* also had to ascertain whether a traveler was a citizen or *contadino*, because at times different rules applied to each. For example, in 1293 Bologna's lawmakers prohibited *contadini* from carrying any "offensive arms," citing a wave of violent crime by "rustics."¹² But here too, there is good evidence the *berrovarii* preferred not to take armed men at their word. For example, in November 1320, two *berrovarii* denounced Lenzo Buttrigari for carrying a sword on a public road in the *contado*. Presumably, the *familia* did not know Lenzo was a citizen of Bologna, which meant that his carrying a sword outside the city walls was no crime at all. The court explicitly dismissed the case on the grounds that he was a citizen, but only after Lenzo had been made to appear in court, give surety, and prove his citizenship, which he did by producing two notarized letters showing that he was registered in the commune's tax rolls.¹³ If the *familia* did know he was a citizen when they arrested him, then their actions could only be described as unlawful. In all, the *berrovarii* seem to have been reluctant to accept excuses on the scene, preferring to let a judge make a determination later in court.

The trial records suggest a pattern of aggressive enforcement by the *familia* with regards to other customary exceptions to the statutes. For example, they sometimes detained bakers for violating curfew, even though ancient custom allowed bakers, by necessity of their occupation, to be out in the streets in the early hours of the morning.¹⁴ Or

⁹ ASB, Corone 2, 1289II (74 fols.), 8r, 25r-v, 29r-30v; 1290I (24 fols.), 6r; Corone 5, 1293I (66 fols.), 5v; Corone 9, 1298 (28 fols.), 16r; Corone 16, 1308I (64 fols.), 33r, 51r; Corone 18, 1310II (96 fols.), 48r, 50v, 82r; Corone 19, 1312I (48 fols.), 39r; 1312I (40 fols.), 32r; Corone 21, 1315I (102 fols.), 3r. For examples from Perugia and Orvieto, see ASP, Capitano 4, reg. 5 (1277), 11v-12r, 45r-46r; 6 (1277), 95r-96r, 97r-100r; 7b, reg. 7 (1283), 38r. ASO, Podestà 1, reg. 17 (1287), 3r. On statutory protections for individuals attempting to buy, sell, or repair weapons, see Cavallar, "Regulating Arms," 109-10.

¹⁰ The statute did not allow judges to admit traveling defenses in arms-bearing cases unless the defendant had been wearing a cap at the time of discovery; see *Statuto 1279*, 1:332.

¹¹ ASB, Corone 2, 1287II, 25r: "Qui dicebat se tantum tunc venisse de foris nec adhuc deponi potuisse cultellum." For similar cases, see ASB, Corone 4, 1292II (50 fols.), 42r-43r; Corone 7, 1295I (30 fols.), 22v; Corone 7, 1295I (135 fols.), 8r-9r. Corone 14, 1303II, 14v-15r.

¹² *Statuti 1288*, 1:569. On jurists' concerns about violent *rustici*, see Cavallar, "Regulating Arms," 64-67.

¹³ ASB, Corone 28, 1320II (56 fols.), 19v-20r: "Non fuit processus quia civis." For a similar case, see ASB, Corone 3, 1291II (56 fols.), 11r, 15v-16r.

¹⁴ For curfew cases involving bakers, see ASB, Corone 4, 1292I (92 fols.), 19r, 41r-42r; ASP, Capitano 5b, reg. 8, 7v.

the *familia* might mistake the tools carried by butchers, tailors, millers, and other artisans for illegal weapons, forcing them to stand trial.¹⁵ In part, these cases rested on a question of fact, namely whether the instrument carried was one of the weapons prohibited by statute. But they also rested on a question of customary right, since the tools carried by certain tradesmen could also be used as deadly weapons. In one such case, from July 1292, some *berrovarii* reported finding “a small, sharp knife of the sort for skinning animals” on the ground, and Andriolo Albizi near it. Andriolo said he had been carrying the knife because he was a butcher, but threw it away when he saw the *berrovarii* patrolling “because of the fear he had of the *familia*.” The judge acquitted Andriolo explicitly because he was a butcher and his knife was not malicious—in other words, because the facts of the case were just as the *familia* had reported.¹⁶ Indeed, Andriolo’s testimony is noteworthy for its suggestion that the *familia*’s patrols inspired even law-abiding citizens to hide legitimate trade tools to avoid the possibility of arrest. Anyone carrying any sort of blade through the city, in any manner, risked being stopped by the *familia*.

Lending further weight to this point, the *familia* seems to have impeded the commune’s own watchmen, guards, and other officials from carrying out their respective offices on multiple occasions. For their part, Bologna’s watchmen were supposed to carry proof of office in the form of a notarized license (*carticella*) while on duty.¹⁷ But this system was hardly a foolproof means of keeping watchmen on the right side of the law. For example, in November 1293, the *familia* arrested Giovanni Zaccarelli for breaking curfew unarmed, forcing him to spend four days in prison until he could give surety. The notary Berardino Bambaglioli eventually certified that Giovanni was listed among the watchmen for the quarter of Porta Ravegnana, thereby securing his acquittal.¹⁸ In April of that same year, the *familia* charged another resident of Bologna with carrying a knife, sword, and shield around the time of the first curfew bell, even though he protested that he was patrolling with other watchmen. It later emerged (the record does not indicate how) that he was filling in for his brother, who was a watchman, and had been in the company of other watchmen when the *familia* stopped him. The court acquitted him accordingly.¹⁹ The same pattern is evident in Perugia, where in July 1283 the capitano del popolo restituted confiscated arms to several watchmen whom his *familia* had wrongfully charged.²⁰ In other cases, the *familia* seems to have arrested armed men in the course of military service for

¹⁵ For a miller carrying a sickle, see ASB, Corone 6, 1294I (118 fols.), 28r. For a tailor carrying a bodkin, see ASB, Corone 5, 1293II (48 fols.), 5r; 1293II (53 fols.), 4v. For a tailor carrying scissors, see ASB, Corone 6, 1294I (118 fols.), 22r; 1294I (84 fols.), 17v. For a skinner carrying a knife, see ASB, Corone 8, 1296I (80 fols.), 1v; 1296I (42 fols.), 25r–v. For two men who fleshed hides for the cobblers’ guild carrying knives, see ASP, Capitano 5b, reg. 8, 4r.

¹⁶ ASB, Corone 4, 1292II (54 fols.), 17v: “Invenerunt quendam cultellum parvum acutum ad modum excorticandi bestias iacentem in terra. [...] Et propter timorem quod habuit de dicta familia, ipse proiecit dictum cultellum.”

¹⁷ This is evident from a case of substitution on the night watch from 1289. Witnesses reported hearing the absent watchman ask the defendant to stand in for him for that night, and then hand him his *carticella*. See ASB, Corone 2, 1289II (74 fols.), 33v.

¹⁸ ASB, Corone 5, 1293II (48 fols.), 18r–18v. For similar cases, see ASP, Capitano 7b, reg. 7, 28v; ASB, Corone 1, 1286II, 21v.

¹⁹ ASB, Corone 5, 1293I (66 fols.), 23r. For a similar case, see ASB, Corone 2, 1289II (74 fols.), 49r.

²⁰ ASP, Capitano 7b, reg. 7, 41r.

Bologna or an allied commune.²¹ Other officeholders who faced charges from the *familia*, apparently as a result of fulfilling their duties, included a gatekeeper on his way to open the gate of Via San Donato early one morning before the first bell, two *contadini* headed to guard duty at the castle of Crespellano, a guard hired by the butchers' guild to stand watch over their shops, and a jailer pursuing an escaped prisoner in the commune's piazza.²² In all these cases, the *familia* seems not have heeded the social identity of the individual in question, compelling them to prove before a judge that they were discharging their official duties at the time the *familia* discovered them.

One case is especially illustrative of the *familia*'s apparent penchant for strict enforcement. In October 1290, the *familia* found Antonio the ragman (*strazarolus*) with a knife in the middle of the crossroads of Porta Ravegnana. Antonio argued in his defense that he was a warden (*saltarius*) and had license to bear arms when coming and going from duty. At that moment, moreover, he had just returned from the vineyard of a certain Giovanni, where some trees and vines had been damaged. Before going home from duty, he had stopped at the bench of the notary Bonaventura to file a report. According to his defense, he was still speaking with Bonaventura's son Conradino, who was in the middle of writing up the report, when the *familia* found him with the knife. Two fellow wardens who had accompanied Antonio to the damaged vineyard testified as witnesses. As they told it, they went straight from the vineyard to the notary's bench to have a denunciation (or accusation) written up so they could deliver it to the commune's officials. Furthermore, Antonio, like all wardens, had a written license for bearing arms. The notary's son Conradino also confirmed that Antonio had been carrying out his office as warden, and that the *familia* came just as he was speaking with Antonio.²³ Unsurprisingly, the court acquitted him. In fairness to the *berrovarii*, Antonio may well have forgotten his license, which would explain why they apparently did not book his fellow wardens. But surely those wardens and the notary would have vouched for Antonio when they encountered the *familia*. The case suggests once again that the *familia* took the narrowest possible view of the law: they had found Antonio in the crossroads with a knife, and they would report him regardless of whom he was with or what he was doing. In at least two other cases, the defendant was acquitted after proving in court that he was a warden.²⁴

Lastly, the *familia*'s relative disregard for status of any kind is evident in their prosecution of legal minors. Under Bolognese law, 15 was the age of majority, but younger adolescents and even children are not uncommon in the trial records.²⁵ To give but three examples, in March 1295 the *familia* reported finding a boy roughly eight years of age carrying a knife "against the form of the statutes." Although the podestà ultimately acquitted him, he initiated proceedings against the boy "according to the form of the

²¹ ASB, Corone 1, 1264, 4v; 1286II, 20v; Corone 6, 1294I (40 fols.), 17v, 19v.

²² In order of mention: ASB, Corone 2, 1289II (74 fols.), 6r, 37v; Corone 8, 1296I (80 fols.), 40v–42r, 56r; Corone 13, 1302II (102 fols.), 9r–v, 17v and 1302II (152 fols.), 14v–15r; Corone 5, 1293II (48 fols.), 20v and 1293II (53 fols.), 25r–v. For similar cases, see ASB, Corone 6, 1294II (58 fols.), 14v and 1294II (42 fols.), 17v–18r; Corone 8, 1296I (80 fols.), 58r.

²³ ASB, Corone 3, 1290II (110 fols.), 40r–v, 45r–47r.

²⁴ ASB, Corone 2, 1287II, 20r; Corone 3, 1291II (56 fols.), 28v; 1291II (37 fols.), 6r.

²⁵ A 1311 statute explicitly refers to crimes committed "per maiorem vel maiores annorum quindecim"; ASB, Provvigioni 4, reg. 213, 1v–2r.

statutes.”²⁶ In August 1297, an 11-year-old girl named Meldina—with her father present and consenting—confessed in court that the *familia* had found her carrying two bunches of grapes back to the city that day. The judge ultimately acquitted Meldina and her father, but only after giving them five days to make a legal defense and accepting surety from her father.²⁷ And one evening in November 1316, the *familia* apparently stopped and frisked two young boys (*pueri*) near the apothecary where they worked, even though they were carrying a light.²⁸ In some cases, the podestà’s *familia* may have been acting at the behest of a paterfamilias to discipline a wayward child.²⁹ In others, the *familia* might simply have mistaken a legal minor for a legal adult, or a legal adult might have lied about his age to avoid prosecution. Yet the overall pattern suggests that the *familia* showed little regard for the age of suspects in their quest to detect violations of the statute, just as they showed little regard for other forms of social status.³⁰ All told, the *familia* frequently ignored social identity on patrol. Anyone who appeared to be violating a statute, regardless of who they were, was worth bringing before a judge.

Political Status

Of course, the question of whom the *familia* enforced the law against also has a political dimension. As discussed in the Introduction, foreign police forces were supposed to enforce the law impersonally—meaning against everyone equally—insofar as the statutes allowed it. It is a valid question, however, whether the *familia* actually denounced and punished members of the political elite. The social order in medieval Italy was deeply inegalitarian and predicated on exclusion, and municipal statutes enshrined different rules and penalties for persons of different status. Bologna’s early statutes, for instance, distinguished between two basic categories of people, *milites* and *pedites*, and scaled penalties for each group according to income. To take one example, the law regulating arms-bearing prescribed penalties as follows: 20 lire for a *miles* worth more than 100 lire; 15 lire for a *miles* worth 50 to 100 lire; 10 lire for a *pedes* worth 100 lire; 7 lire for a *pedes* worth 50-100 lire; and 7 lire for anyone worth less than 50 lire.³¹ By the 1270s and especially by the 1280s, Bologna’s laws prescribed special obligations and penalties for “magnates,” a juridical category whose membership, with few exceptions, comprised the ancient noble families previously labeled *milites*. More broadly, the popular regime “governed by list,” keeping ever-changing rosters—some positive (taxpayers, guild members, militia members), some negative (outlaws, magnates, political exiles)—that determined who could and could not participate in various aspects of political life.³²

Legal privileges, which exempted individuals from certain statutes and procedural norms, also played an important role in Bolognese politics in the late thirteenth and early

²⁶ ASB, Corone 7, 1295I (30 fols.), 21r–v.

²⁷ ASB, Vigne 1, 1297, 1v.

²⁸ The *berrovarii* alleged that the two boys (whom they did not identify as such) had fled; see ASB, Corone 23, 1316II (99 fols.), 41r. Defense witnesses, however, said the *familia* had searched them and led them before the *miles*, but found them unarmed; see Corone 23, 1316II (36 fols.), 15r–17v.

²⁹ On the corrective (*pro amendare*) imprisonment of slaves and children, see Geltner, *The Medieval Prison*, 50–51.

³⁰ For further examples, see ASB, Inquisitiones 7, reg. 11 (January 1286), 3r; Corone 8, 1296I (42 fols.), 20v–21r; Corone 9, 1298–1299 (48 fols.), 29v; Corone 29, 1324I, 55r–v.

³¹ *Statuti 1245*, 1:268–72.

³² Milani, “Il governo delle liste”; Milani, *L’esclusione*.

fourteenth centuries.³³ Sarah Blanshei has detailed the evolution of legal privilege in Bologna, but it is worth sketching the broad outlines here to illustrate how communal politics affected law enforcement.³⁴ The earliest privileges, dating from the 1250s, were designed to protect select public officials from retaliation for harsh or unpopular measures they imposed in the course of their official duties. Accusations by privileged officeholders enjoyed the status of proof, and the podestà was required to punish those they accused swiftly and severely, which effectively deprived their would-be enemies of due process. In 1274, the commune extended such privileges to university students on a permanent basis. But it was the Sacred and Most Sacred Ordinances of 1282-1284 that made privilege a more permanent feature of the political elite. These ordinances extended privileges like those previously reserved for select officials to all members of the guilds and popular militias to protect them from attacks by magnates or anyone outside the popular societies. They also granted extraordinary immunities to the authors of the Sacred Ordinances and their male kin, including the right to bear arms without a license. These privileges endured with some modifications until the first decade of the fourteenth century, when major political conspiracies in 1303 and 1306 splintered the *popolo* coalition.³⁵ The government that emerged was dominated by hardline Guelfs and the Scacchese faction of the wealthy banker Romeo Pepoli.³⁶ This regime deployed legal privilege as a political weapon, using it to protect its own partisans and cripple the opposition, namely the Lambertazzi party (Bologna's Ghibelline party) and Maltraversa faction (rivals to the Scacchesi). By 1310, Romeo Pepoli controlled Bolognese politics under a "proto-signoria," and some 5,500 members of the popular societies could purchase extraordinary privileges for a mere 12 denari. These privileges granted their holders immunity from public prosecution for all but major crimes, such as homicide and robbery, and new protections against Lambertazzi, in addition to the older ones against magnates and persons outside the popular societies. In effect, this meant half the politically active adult male population—the half aligned with the Scacchesi—could carry weapons, gamble, and even assault their enemies with impunity. Bologna's government periodically revoked the privilege of bearing arms, occasionally granted its foreign magistrates the authority to disregard privilege in special cases, and in 1318 reduced the ranks of the privileged to 4,000. But by and large, these egregiously partisan privileges stood until 1321, when the Pepoli were overthrown and banned, and the new regime reduced the number of individuals who enjoyed such extraordinary immunities to just 99.

During the peak of privilege in Bologna (roughly 1310 to 1321), the question of whether the *familia* enforced the statutes against political elites was essentially moot. Granted, privileges were constantly being repealed and re-extended, but generally speaking, the only elites they could enforce the law against were those who had fallen out of political favor (see Chapter 6). However, privilege seems to have played an outsized role in Bologna compared to other communes, and the *familia* had been patrolling Bologna's streets since at least the 1240s. The question therefore stands whether third-party police

³³ On the concept of *privilegium* in medieval jurisprudence, see Vallerani, "Paradigmi dell'eccezione," 188–92; Gouron, "La notion de privilège"; Cortese, *La norma giuridica*, 2:44–46; Piano Mortari, "Ius singulare."

³⁴ The following discussion is drawn from Blanshei, *Politics and Justice*, 377–408.

³⁵ See Milani, "From One Conflict to Another," esp. 242–51.

³⁶ On the Pepoli, see Giansante, *L'usuraio onorato*, 193–219; "Romeo Pepoli"; *Patrimonio familiare*. Romeo's son Taddeo became Bologna's first officially recognized *signore* in 1337.

forces, as one of the communes' enduring institutions, were ever capable of policing the political elites who hired them. Again, it would hardly be surprising if the *familia* turned a blind eye to offenses by elites and instead targeted the politically and socially marginalized, since they ultimately served the local governing elite.

The trial records frequently disguise the social identities of persons accused by the *familia*, if for no other reason than notaries frequently omitted their family names and occupations.³⁷ Nevertheless, there is enough evidence to suggest that the podestà's *familia* was not merely a tool of political repression for the governing elite. In the first place, they do not seem to have targeted magnates any more than other elites. For example, among the more than 200 individuals denounced by the *familia* in the second semester of 1291, only one is identified as a noble. Second, *familiars* do not seem to have given *popolani* a free pass. The raid on a gambling house described at the start of this book netted three notaries who were later convicted, and these were hardly the only notaries to be forced into court by the *familia*.³⁸ Members of the *popolo*'s preeminent families—the Gozzadini, Sabadini, Zovenzoni, and Bentivoglio, to name a few of the most famous—also appear throughout the Crowns and Arms registers.

This is not to say that the *familia* was blind to social status. As today, patrolling officers could not have helped but notice obvious signs of social status, such as how an individual dressed, where he lived, and what kind of company he kept. This is all but explicit in a 1291 curfew case where the *familia* charged Bigolo and Bonacossa Gozzadini. The notary recorded the gratuitous detail that Bonacossa was found holding a sparrowhawk, as if to suggest that he might be a noble, since falconry was an elite pastime.³⁹ Nor is it to say that the *familia* never let suspects go with a warning or turned a blind eye altogether. Such instances tend to leave no trace in the historical record outside of incidental testimony by witnesses or investigations of corruption. Indeed, it is reasonable to assume that the *familia* let urban elites off with a warning more often than others. But the regular appearance of politically prominent families in the trial records shows that the *familia* enforced the law impersonally enough to make the threat of punishment credible for all, including their employers.

Perhaps the best illustration of the *familia*'s unbiased law enforcement is their consistent prosecution of the Pepoli family, both before and after Romeo came to exercise extraordinary personal authority over Bologna. The *familia* charged Zoene di Ugolino Pepoli, himself an important political figure, with illicit arms-bearing in July 1285 and again in April 1287, and the court convicted him in at least the latter case.⁴⁰ The *familia* charged Balduino di Filippo Pepoli with gambling in January 1287, and he was convicted of fleeing the *familia* and violating curfew one month later in February 1287.⁴¹ Cingo(lo) di Ugolino Pepoli was convicted for carrying a knife in January 1293, as was Romeo Pepoli himself in

³⁷ For example, a certain Bertuccio di Bonaiole was one of eight men charged with violating curfew one evening in 1294. Only from his defense—a claim to legal privilege—do we know that this Bertuccio was Albertuccio Maranesi, from a preeminent family in the *popolo* coalition; see ASB, Corone 6, 1294II (28 fols.), 7r. His *defensio* is on a loose slip wedged into the register.

³⁸ For other notaries convicted on arms-bearing and curfew charges, see ASB, Corone 2, 1288II, 21v; Corone 5, 1293I (66 fols.), 10r, 42r.

³⁹ ASB, Corone 3, 1291II (56 fols.), 42v.

⁴⁰ ASB, Corone 1, 1285II (70 fols.), 11r; 1287I (16 fols.), 11v.

⁴¹ ASB, Corone 1, 1287I (34 fols.), 5r, 20r.

September 1294.⁴² Romeo's cousin Filippo had multiple run-ins with the law: he was convicted four times on weapons charges, namely in April 1298, July 1299, November 1299, and December 1300.⁴³ In January 1315, the *familia* charged Romeo's son Tarlatto with carrying a knife in the piazza, and in November 1320, Cingolo's son Borniolo was convicted for carrying a knife.⁴⁴ To be sure, it cannot be assumed that all of Romeo's relatives enjoyed elite political status, and the Pepoli's political fortunes varied considerably over this 35-year period. Nonetheless, the fact remains that the Pepoli were an elite *popolano* banking family, and the *familia* clearly did not let the Pepoli's prominence dissuade them from prosecution.

One of Filippo Pepoli's run-ins with the law is worth detailing for what it reveals about the effects of third-party policing on local elites. In December 1300, two *berrovarii* denounced Filippo for carrying a prohibited weapon. According to their report, when they encountered Filippo in the crossroads of Porta Ravegnana and tried to search him for weapons, he fled into a tailor's shop. They may not have realized at the moment that Filippo belonged to one of the commune's elite banking families, or they may have recognized him as a Pepoli and decided to search him anyway. Whatever the case, the podestà's knight Guido had to intervene to coax Filippo back outside. In the *familia*'s telling, Guido came to the door of the tailor's shop and ordered Filippo to come out. He cooperated, exiting the shop and surrendering his knife to one of the *berrovarii*. Filippo, however, told a different story in his deposition. Filippo claimed that he had never fled before the *familia* and the *familia* had not found the knife on him, strictly speaking. Rather, he had entered the tailor's shop to have some wool garments made when the *familia* just happened to pass through the neighborhood. When the podestà's knight came to the shop's door and told him to come outside, Filippo replied that he did not want to. The knight Guido then asked him if he had any weapons that he wished to hand over. Filippo answered that he did not, because the *familia* had not found any on him. At this point, Guido decided to take a different tack. "You may exit safely since I believe you," he said. "Whatever arms you have and however they might be found on you, you'll bear no penalty." Filippo then came outside "under the hope of this guarantee" and handed over his knife to one of the *berrovarii*.⁴⁵ But the knight's guarantee—if indeed it was offered—proved no guarantee at all. The podestà's judge was unmoved by Filippo's story and had him sentenced to the statutory penalty of 10 lire for carrying a prohibited knife.

Filippo's encounter with Guido strongly suggests that the *familia* showed little deference to local elites. Not only did the *berrovarii* try to stop this member of the Pepoli clan in the street, they did not allow his attempt at evasion to go unchallenged. Indeed, the podestà's knight seems to have duped Filippo into giving himself up for conviction, knowing full well who he was at the time. Even if he were eventually able to secure his acquittal through political connections and/or an appeal, this did not change the fundamental coerciveness of the *familia*'s actions. The *familia*'s denunciation forced Filippo to stand trial and established a presumption of guilt against him. Filippo's attempt to argue

⁴² ASB, Corone 5, 1293I (66 fols.), 4r; Corone 6, 1294II (58 fols.), 23r.

⁴³ ASB, Corone 9, 1298 (28 fols.), 5v; Corone 10, 1299 (40 fols.), 8r; 1299–1300 (18 fols.), 5v; Corone 11, 1300–1301 (40 fols.), 8r.

⁴⁴ ASB, Corone 21, 1315I (102 fols.), 22v; Corone 28, 1320II (56 fols.), 21r.

⁴⁵ ASB, Corone 11, 1300–1301 (40 fols.), 8r–v: "Dictus miles tunc dixit, 'Exeas secure quia te fido, et pro armis que habeas et modo tibi invenirentur nullam penam portabis.' Et tunc ipse sub spe dicte fidantie exivit extra."

that the *familia* had not, technically speaking, discovered a knife on him fell flat in court and failed to override the legal facts established in the *familia*'s report. Thus, while the *familia* served at the pleasure of elites like the Pepoli, those same elites were subject to the *familia*'s police power.

The *familia*'s police activity also affected elites indirectly by implicating their social networks. Whenever someone of good repute was stopped by the *familia*, his friends, family, or neighbors had to give surety for him to restore him to his previously liberty. This was a matter of course, as indicated by one witness in a 1316 curfew case who spoke of exiting his home to give surety for the defendants "as neighbors and friends do."⁴⁶ If the *familia* would not accept surety for a detainee, then those same friends and neighbors might have to follow him to the palace to give surety there.⁴⁷ Furthermore, the defendant's social network might have to come to court to vouch for his defense. This is well-illustrated in the 1292 curfew case of Corrodo, the servant of Antonio, notary to the Archbishop of Ravenna. Antonio submitted a legal defense and produced some six witnesses to testify in support of it, all to save poor Corrodo—or more likely himself, since he would have paid his servant's penalty—from a 5-lire fine.⁴⁸ No charge was too trivial to merit the attention of an elite patron, as when Candaleone Gozzadini gave surety for Pietro of Medicina after he was caught urinating on the jail tower in 1256.⁴⁹

Indeed, because the *familia*'s police actions affected social networks, they could inconvenience political elites without targeting them directly. Again, the Pepoli family serves to illustrate the point. In September 1286, the *familia* discovered gamblers in a tavern owned by Romeo Pepoli.⁵⁰ In April 1308, Filippo Pepoli came to court to vouch for his servant Dino, who had been charged with carrying a knife.⁵¹ In July 1315, Tarlatto Pepoli's servant Mengolino answered an arms-bearing charge.⁵² In January 1318, the *familia* again discovered gamblers in a tavern owned by Romeo (it is unclear if it was the same one) and charged the taverner, a servant of Romeo, with hosting them.⁵³ And in August 1320, Romeo came to court to give surety for his friend Pietro di Jacopo Buonacatti—himself of an important notarial family—after the *familia* found Pietro under Romeo's portico with a knife.⁵⁴ In some cases, the *familia* may well have known whose servant or tavern they were dealing with. But frequently they could not have predicted who would be implicated or inconvenienced by their police actions. Inevitably, third-party policing involved a certain amount of collateral damage for the elites who instituted it.

Factual Matters

At its most basic level, the *familia*'s legal discretion resided in their having to determine—as all police do—which of the realities they observed in the street constituted

⁴⁶ ASB, Corone 23, 1316II (36 fols.), 17v: "Voluit exire extra domum suam ad faciendum eis securitatem ut faciunt vicini et amici."

⁴⁷ See for example ASB, Corone 4, 1292I (92 fols.), 42v; Corone 5, 1293II (53 fols.), 14r–15r.

⁴⁸ ASB, Corone 4, 1292II (50 fols.), 43v–44r. For cases where elites paid the fines of servants, see ASB, Accusationes 2, reg. 8, 20r; ASO, Podestà 1, reg. 6, 4r.

⁴⁹ ASB, Accusationes 2, reg. 8, 22v.

⁵⁰ ASB, Corone 1, 1286II, 21r.

⁵¹ ASB, Corone 16, 1308I (64 fols.), 27v. Dino is identified as both a *famulus* and *familiaris*.

⁵² ASB, Corone 22, 1315II (38 fols.), 10r–11r.

⁵³ ASB, Corone 25, 1318I (82 fols.), 19r.

⁵⁴ ASB, Corone 28, 1320II (100 fols.), 42r–v.

a violation of statute. In arms-bearing cases, the *familia* first had to determine if the weapon was indeed of a prohibited type. When it came to conspicuous weapons like lances and pole arms, there was little for the *berrovarii* to determine; they were all illegal inside the city. For humbler objects like wooden maces, clubs, and stones, Perugia's statutes left it to the podestà and capitano to determine whether it was wielded with malicious intent (*in fraudem*) based on the person's social identity (both his *habitus* and *condicio*) and the nature of the object itself.⁵⁵ Blade weapons could also create legal ambiguity, as it was not always easy to distinguish a *cultellus de ferire*, the kind of knife a soldier carried as a sidearm into battle, from a knife used as a trade tool or for eating.⁵⁶ To make the statutes on arms-bearing clearer to residents, many of whom could not read Latin, Bologna's government had pictures of illegal weapons painted on the walls of the palace and the Asinelli tower.⁵⁷ But even then, the *familia* still had to decide if the weapons they found in the streets conformed to these ideal types. The 1295 defense of one *contadino* from Montelungo, for example, hinged entirely on his claim that his confiscated weapon was a long sword (*spata*), not a dagger (*sponto*).⁵⁸

Familiares indicated their belief that a knife was illegal by reporting it as *vetitus*, *malitiosus*, *fraudulosus*, or *suspectus*.⁵⁹ The court, in turn, took these descriptors seriously. In a 1308 case, the notary first described a small blade (*stochettum*) as "very sharp" (*acutissimum*) but then crossed this out and labeled it simply "sharp" (*acutum*) instead.⁶⁰ Judges did not always agree with the *berrovarii* about the legality of a given weapon. For example, in 1291 the *familia* arrested a butcher named Pace for carrying a large pointed knife, which they deemed "against the form of the statutes." The charge was dropped, however, after the judge determined that the knife in question "was not beyond the suitable form."⁶¹ And in 1293, the *familia* reported finding one individual carrying a wooden club and wearing three pieces of armor. He was acquitted, however, after he produced a license for the armor and the podestà and his judges deemed that the club, upon closer examination, was "neither malicious nor suspect."⁶² Yet regardless of the judge's eventual ruling, it was the job of the *berrovarii* to bring in all arms-bearing suspects and let the court decide their guilt.

⁵⁵ *Statuto* 1279, 1:333.

⁵⁶ For the legal questions surrounding the definition of arms and, in particular, different kinds of knives, see Cavallar, "Regulating Arms," 73–86, 94–102.

⁵⁷ These paintings are mentioned incidentally in defense testimony in a 1294 weapons case; ASB, Corone 6, 1294I (84 fols.), 20r. A 1293 law that banned armor-piercing daggers also stipulated that they be painted on the palace walls and Asinelli tower, presumably where other prohibited weapons were depicted; *Statuti* 1288, 1:568. The commune used the same strategy to educate the public about standard measures, publishing a table of them in 1286 on the church of Santa Maria dei Rustigani, located on the south side of the central piazza; see Bergonzoni, "Note sulle unità di misura bolognesi," 168.

⁵⁸ ASB, Corone 7, 1295I (135 fols.), 70r. Long swords were generally licit in the *contado*, and the early statutes did not prohibit them at all; see *Statuti* 1245, 1:270–71.

⁵⁹ ASB, Corone 6, 1294II (28 fols.), 5v: "Vetitus." ASB, Corone 2, 1289II (58 fols.), 43r: "Malitiosus." ASB, Corone 5, 1293II (48 fols.), 2v and ASO, Podestà 2, reg. 3, 3r: "Fraudulosus." ASB, Corone 5, 1293I (66 fols.), 3v: "Suspectus."

⁶⁰ ASB, Corone 16, 1308I (64 fols.), 19r.

⁶¹ ASB, Corone 3, 1291II (56 fols.), 15r: "Canzellatus quia dictus cultelus non erat ultra formam congruam."

⁶² ASB, Corone 5, 1293I (66 fols.), 18r: "Dictus bastone fuit examinatus per dominum potestatem et suos iudices quod non erat malitiosus nec suspectus, ideo fuit relaxatus."

Likewise, when they encountered men at play, the *berrovarii* had to determine if they were witnessing an illegal game or one permitted by statute. The popular *ludus ad zardum*, where players won if they rolled the number they called out first, was widely prohibited outside of the public gambling spots.⁶³ Bologna's 1288 statutes seem to prohibit dice games altogether, but certain games involving dice were apparently licit. The law permitted the *ludus tabularum*, which seems to have involved a board and game pieces as well as dice. In one 1318 case, witnesses referred to the same game, which they were arguing was licit, by three different names: *tabule*, *alee*, and *minoreti*.⁶⁴ In a 1299 gambling inquisition, two neighborhood witnesses testified that the defendants were playing *rappellum ad vinum cum taxillis*, most likely a drinking game, as if it were legal.⁶⁵ If anything seems clear, it is that the rules and names of games were fluid and likely varied from city to city, which only complicated the job of the *berrovarii* tasked with enforcing local gaming laws.⁶⁶ To overcome this challenge, the *familia* took pains to observe what appeared to be illegal dice games before moving against them. For example, in 1299, two *berrovarii* gave damning testimony against a certain Francesco and a student named Giovanni, found gambling under a portico. They had observed Francesco roll the dice until he lost his turn, at which point a spectator said to him, "You owe him 14." Then Giovanni put down another bet saying, "I want to wager all the money I've got." At this point one of the *berrovarii* intervened, ordering them to freeze and not touch the money or dice until the knight arrived.⁶⁷ Fortunately for the *berrovarii*, legal presumptions against gamblers (see below) allowed them to make accusations with little fear of repercussions.

Agricultural crimes could also hinge on basic questions of fact. In July 1289, the *familia* arrested the servant (*famulus*) of Giacomo da Ignano for carrying a basket of unripe grapes. He made the defense that he was carrying the bitter grapes to the city for his master to eat, with his permission and by his order. Giacomo and two other witnesses confirmed this, and so the court acquitted his servant "since it was evident these grapes were for eating and not from a vineyard."⁶⁸ Much as the *familia* made it risky to carry any type of blade weapon through the city, even for legitimate purposes, they apparently made it risky for anyone to carry grapes in the countryside.

The language of curfew laws was especially imprecise and gave the *familia* significant leeway in determining who had violated this statute. At a glance, Bologna's curfew law seems straightforward: no one was to go through the city after the third

⁶³ Sella, "Nomi latini di giuochi," 214.

⁶⁴ ASB, Corone 26, 1318II (78 fols.), 37v–38r.

⁶⁵ ASB, Corone 10, 1299–1300 (41 fols.), 6r.

⁶⁶ Perugia's statutes, by contrast, expressly prohibited anyone from playing any dice game or game involving wagers in any house, tavern, or inn; see *Statuto 1279*, 1:328. A modern compendium of medieval gaming laws contains some 3,200 statutes; see Rizzi, ed., *Statuta de ludo*. For our limited understanding of the various types of games named in the sources, see Vallerani, "Giochi di posizione," 23.

⁶⁷ ASB, Corone 10, 1299 (34 fols.), 12v: "Et tunc unus qui nominatur Mercatus dixit ipse, 'Habet tibi quatuor decim.' Et viderunt quod dictus Johannes tunc proiecit super illas tabulas ubi ludebant illos denarios quos habebat in manu dicendo, 'Vollo temptare quot denarios habeo.'" For similar examples, see Corone 1, 1286II, 32r; Corone 6, 1294I (40 fols.), 8v.

⁶⁸ ASB, Corone 2, 1289II (74 fols.), 8r, 28r: "Non condempnetur quia apparuit ipsos uvas esse per gulas et non de vinea. Absolutus."

sounding of the bell without a light.⁶⁹ The first curfew bell marked the beginning of nightfall, and residents had until the third and final bell to either close up their houses or light a lamp of some sort.⁷⁰ Nighttime lasted until the sounding of the morning bell, which left individuals free to go about the streets unmolested. However, timekeeping in the premodern city was an inexact science. The cathedral bell, which marked time in Bologna, could be difficult to hear or its ring confused with other bells' in the city. People could also lose count of how many times it had rung, leading to disagreements over when night had fallen. Curfew defendants often claimed, therefore, that the *berrovarii* had detained them before nightfall or after daybreak, and judges sometimes sided with them against the *berrovarii*. In a 1279 case from Perugia, the capitano's *familia* seems to have arrested one individual at the exact moment the third bell was ringing. He argued that, when the *familia* found him, the final curfew bell had not finished ringing but lasted a long time thereafter. Two witnesses confirmed this, and the court acquitted him.⁷¹

The pattern of contention over the timing of curfew arrests is likely attributable to the *familia*'s tendency to patrol on the cusp of nightfall. These evening patrols served the disciplinary function of putting the city to bed, so to speak. This is more or less explicit in a September 1294 case in which six alleged curfew breakers argued jointly that they had not heard the third bell when the *familia* booked them. According to their witness Tommasio, he had been standing unshod near his front door with his neighbors "as men stand in summertime because of the heat" when some *berrovarii* came upon them. The officers let them off with the warning: "Go inside now, since it is time." Tommasio went inside, but evidently some of his neighbors did not. Soon afterward, the podestà's notary arrived on the scene and booked them, causing a disturbance (*rumor*) in the neighborhood. Tommasio and another witness testified that the curfew bell was broken at the time and could not be heard clearly over the noise of the millhouses in their neighborhood. Despite this favorable testimony from Tommasio and other witnesses, the judge convicted these six men of violating curfew.⁷² A similar incident occurred earlier that year in March, when the *familia* seems to have booked three *popolani* just before the third sounding of the bell—even after letting some of their neighbors go. Again, the judge acquitted them of the curfew charges accordingly.⁷³ The trial records may conceal legitimate reasons the *familia* had for singling these individuals out among their neighbors. Nonetheless, these incidents indicate the *familia*'s willingness to use their discretion for disciplinary purposes, even if one of their own judges overturned them later.

More subjective than the question of when curfew fell, however, was the question of whether someone was with or without a light. The language of the statute itself created this

⁶⁹ *Statuti 1288*, 1:229. Lawmakers sometimes enacted strict curfews prohibiting nocturnal travel even with a light, but such measures were temporary.

⁷⁰ A crime was considered nocturnal if it occurred after the first bell, not the third; see *Statuti 1288*, 1:175.

⁷¹ ASP, Capitano 5b, reg. 8, 1r. For similar cases, see ASP, Capitano 7b, reg. 7, 32r–v; ASB, Corone 4, 1292II (54 fols.), 30v.

⁷² ASB, Corone 6, 1294II (28 fols.), 7r, 27v: "Et ego fui de illis [...] qui dimittebamur per familiam, quia inveniebant nos ita descalzati ad ostia nostra et sub porticibus propter calorem, sicut stant homines in estivo tempore. Et dicebant tantum barruarii quod precedebant vobis domino, 'Intrante amodo in domum quia est tempus.' Et ita ibant viam."

⁷³ ASB, Corone 6, 1294I (118 fols.), 54v; 1294I (84 fols.), 34r–35r. The three *popolani* were the notary Giberto di Guidolino, Allegrezzia Musoni, and Ugolino Sabadini. Despite his acquittal on curfew charges, Ugolino was convicted for carrying a sword at the same time.

ambiguity, since it did not require every individual to carry his own lamp. Exactly how close to a given light source did someone have to be for the *familia* or watchmen to consider him *cum lumine*? Many alleged curfew breakers claimed they had in fact been *cum lumine*—a light held by someone else—when the *familia* discovered them. A good example is the case of a certain Zambonino, whom the *familia* allegedly found without a light in the marketplace near the piazza in August 1302. Zambonino claimed in his defense that some watchmen had taken away his lamp right before the *familia* came upon him, but he was still “in the presence of the said light” when arrested.⁷⁴ Three watchmen corroborated this story. They all testified that they had taken Zambonino’s lamp with his consent as they responded to a disturbance nearby in the house of Lambertino Ramponi, a famous jurist and magnate. Nevertheless, as the watchman Giacomo put it: “Zambonino was in the presence of and with the said light when he was found by the podestà’s *familia*, even though he did not have the light in hand.”⁷⁵ The question of light possession could also arise when the alleged offender was discovered near his home, where the light from his portico or his neighbor’s reached the street. For example, in July 1310 the *familia* charged a certain Rizzardo and Tommaso for being out at night without a light. They argued jointly that, when the *familia* found them, they were fetching drinking water from the well next to Rizzardo’s house. Rizzardo’s sister Damiana was waiting at the door with a few other neighbors and holding a candle that cast light all the way to the well, such that Rizzardo and Tommaso believed they were *cum lumine* and not breaking the law.⁷⁶ Three neighbors who were present confirmed this story. According to one of them, Rizzardo had instructed Damiana before he and Tommaso went out: “Take a light and light it for us, so that if the *familia* of the podestà comes, they won’t be able to impede us or say anything.”⁷⁷ What motivated the *familia* to level charges in a case like this is impossible to say. But if anything is clear, it is that the ambiguous language of the curfew law made it a flexible tool of enforcement for the *familia*. Anyone who was out at night and not himself carrying a light could be booked and made to answer in a court of law.

Legal Presumptions

As the above examples show, the *berrovarii* exercised judicial discretion simply by applying the language of the statutes to everyday life. But the statutes created even more room for interpretation by allowing for convictions on the basis of presumption.⁷⁸ Communal statutes identified certain indicators and created certain legal fictions that could serve as proof of guilt even when the *familia* did not catch the suspect *in flagrante delicto*. Thus, in the words of a 1301 entry from the crowns notary, he searched the city and its churches for sumptuary violations “through *fama*, appearance, proofs, circumstantial

⁷⁴ ASB, Corone 13, 1302II (152 fols.), 57v: “Item quod dictus Zamboninus erat in presentia dicti luminis.” For the *relatio*, see Corone 13, 1302II (102 fols.), 44v–45r.

⁷⁵ ASB, Corone 13, 1302II (152 fols.), 58r–58v: “Respondit quod ipse Zamboninus erat in presentia dicti luminis et cum dicta lumine quando fuit inventus per familiam domini potestatis, sed tamen lumen non habebat in manu.”

⁷⁶ ASB, Corone 18, 1310II (96 fols.), 7v–8v, 11v. For a similar case, see ASB, Corone 5, 1293I (66 fols.), 27v.

⁷⁷ ASB, Corone 18, 1310II (96 fols.), 12r: “Et audivit et vidit quando dictus Riccardus dixit predicte Damiane sue sorore, ‘Accipe unum lumen et collumina nobis, ut si veniret familia potestatis non possit nos impedire neque dicere aliquid.’”

⁷⁸ Helmholz and Sellar, eds., *The Law of Presumptions*; Reggi, “Presunzione”; Ramponi, *La teoria generale*.

evidence, and presumptions.”⁷⁹ Ultimately it was up to the judge whether to convict on the basis of presumption, but the *familia* was always justified in reporting an offense on this basis. In effect, the *berrovarii*’s job was to bring anyone who *seemed* to be breaking the law into court and allow a judge to decide his or her guilt. Hence in a 1279 register from Perugia, denunciations for arms-bearing end with the formula “which seems to be against the form of the statute.”⁸⁰ By design, then, the *familia* had little incentive to police leniently.

Presumption played an especially important role in gambling cases. Strictly speaking, the crime lay not in the dice game but in the winning and losing of money over it, yet this was difficult for *berrovarii* to observe directly. Moreover, when the *familia* interrupted a dice game, it could be difficult to determine who was playing and who was merely spectating. Siena’s statutes circumvented this by prescribing a lesser penalty for anyone spectating at an illicit dice game.⁸¹ Bologna’s statutes, however, made no such distinction and allowed judges to convict anyone present at a dice game on the basis of presumption.⁸² The statutes did not elaborate on what created presumption for gambling offenses, but in practice the *familia* could arrest anyone standing around a gaming table, overheard placing bets, or found with dice or money before them. Perugia’s 1279 statutes stated that gambling should be “understood to have taken place if things apt for gambling are found.”⁸³

For the *berrovarii*, presumption functioned much like “probable cause” today. To make a legitimate arrest, the *familia* did not have to catch suspects in the act, but only in a situation that created adequate suspicion. Four cases from 1256 show the judge explicitly invoking presumption to convict men suspected of gambling in taverns at night. In one of these cases, the *familia* found three men seated at a table with dice before them and sent them fleeing. The podestà, “holding the presumption that they were gambling and from the discretion granted to him by statute,” sentenced each of them to a 50-lire fine.⁸⁴ In another case, the *familia* spied on three men in a tavern through a keyhole in the door and saw them rolling (or appearing to roll) dice on a table. Again, the judge “presumed” they were gambling and sentenced them each to a 50-lire fine.⁸⁵ The *berrovarii* themselves implicitly appealed to presumption when they reported violations using tentative language—for instance, that the suspects “seem to have been” gambling.⁸⁶ To take an example from

⁷⁹ ASB, Corone 12, 1301II, 1r: “Inquirendo per famam, aspectum, probationes, indictia, presuntiones, et quolibet alio modo.”

⁸⁰ ASP, Capitano 5b, reg. 8, 13r: “Quid videtur esse contra formam statuti.”

⁸¹ *Costituto*, 2:246.

⁸² This is explicit in Bologna’s earliest extant gambling statute from 1252; see *Statuti 1245*, 1:304. The principle held in the 1288 compilation; see *Statuti 1288*, 1:224.

⁸³ *Statuto 1279*, 1:328: “Et intelligatur ludus fieri, si inueniantur res parate ad ludendum secundum formam statuti.”

⁸⁴ ASB, Accusationes 2, reg. 8, 26r: “Ideo potestas habita presumptione quod luderent, et ex arbitrio ei dato ex statutis condenpnat quemlibet eorum secundum formam statutorum in libris quinquaginta.” The second case (on 26v) is nearly identical.

⁸⁵ ASB, Accusationes 2, reg. 8, 41r: “Unde cum potestas presumat eos luxisse, ideo ex arbitrio ei dato ex statutis condenpnat.” In the fourth case (on 40v), the *familia* eavesdropped at the tavern door.

⁸⁶ For examples, see ASB, Corone 1, 1286II, 30v; Corone 2, 1287II, 28v; Corone 5, 1293II (48 fols.), 9v; Corone 9, 1298 (28 fols.), 22v.

Orvieto, the judge convicted four men in 1277 “as if” (*tamquam*) they were found gambling after the *familia* reported them as “suspected of gambling” (*suspectus de ludo*).⁸⁷

Although judges did not always convict on the basis of presumption, the *familia*’s charge could serve a disciplinary function in itself, since it often meant at least a brief stint in jail. For instance, in 1298 the *familia* denounced four men for playing dice in a tavern, including the taverner. In court, the discovering officer admitted that, although he had seen one of the suspects with dice in hand, he had not seen money or wine (a common currency of wager) before them. The podestà thus had them released “since they were not playing,” but only after—or perhaps because—they had spent time in jail.⁸⁸ Similarly, in March 1287 a *domicellus* of the podestà named Bastardino denounced three men for illicit gambling. He had seen one of them shaking his hand “as men who roll dice when they gamble do,” and found a die on the ground nearby, but no money on the table. All three men denied the charge when they appeared in court, but they had difficulty giving surety and thus had to spend significant time in jail—more than three weeks in one case, and possibly more in another.⁸⁹ Regardless of the outcome, the *familia*’s denunciation itself constituted a penalty of sorts, and the presumptions included in statute only enabled the *familia* to make more denunciations.

Something like presumption also applied against tavern owners. According to Bologna’s statutes, if the *familia* found gamblers inside a building or on its premises, the proprietor was automatically implicated as a host of illegal gaming. Likewise, if anyone fled during a gambling raid and the property owner was present, he was liable for the fugitive’s penalty unless he gave the fugitive’s name.⁹⁰ If the taverner was present at the scene, the presumption of guilt could be hard to overcome. In each of the four cases from 1256 mentioned above, the taverners were indeed present and the judge sentenced them to the same penalty as the gamblers. In a 1286 case, the court summoned the taverner Pietro and his wife Gualandina after four men were arrested for gambling on their premises and a fifth escaped. Though they pleaded ignorance, the court sentenced Pietro to a 25-lire fine, perhaps in a show of clemency since the statutory penalty was 100 lire.⁹¹ As their plea suggests, these cases likely hinged on whether the gamblers had been playing with the proprietor’s knowledge and consent. Orvieto’s court also condemned taverners after men were found gambling in their establishments.⁹²

Proprietors were also disadvantaged by the legal fiction regarding gambling paraphernalia. According to statute, anyone reputed as a host who was found to have gaming tables on his property was to be condemned as if gamblers had been discovered there.⁹³ For example, in a 1289 inquisition Bologna’s court questioned some 30 witnesses

⁸⁷ ASO, Podestà 1, reg. 6, 31r. See 43r for a similar sentence.

⁸⁸ ASB, Corone 9, 1298 (28 fols.), 9v: “Relaxati de mandato domini potestatis quia non ludebant.”

⁸⁹ ASB, Corone 1, 1287 (32 fols.), 29v–30r: “Et unus illorum, qui stabant in pedibus, tenebat pugnum seu manum clausam quemadmodum tenent homines quando tra[h]unt tasillos pro ludendo. Et stabat chinatus super disco et torlabat manum contra socium suum, qui erat in pedibus, sicut faciunt homines qui tra[h]unt tasillos quando ludent.” After appearing in court on 9 March, one defendant was not released from jail until 19 March and a second not until 1 April. A third is noted to have been jailed but not released.

⁹⁰ *Statuti 1288*, 1:224.

⁹¹ ASB, Corone 1, 1286II, 10r–v.

⁹² ASO, Podestà 2, reg. 9, 22v, 45v.

⁹³ *Statuti 1288*, 1:224. Perugia’s statutes likewise presumed that illegal gaming was taking place wherever gambling paraphernalia was discovered; see *Statuto 1279*, 1:328.

about two taverners after the *familia* discovered gaming tables in their establishment.⁹⁴ That case ended in their acquittal, but others were not so lucky. In two similar cases from 1299, the *familia* discovered gaming tables in two different taverns. In these inquests, the witness testimony proved more damning, and the court sentenced each of the two taverners to pay the statutory fine of 100 lire.⁹⁵ By including such presumptions against gamblers and their facilitators in the statutes, Bologna's lawmakers empowered the *familia* to police gaming aggressively.

The statutes also created two legal fictions that were common in arms-bearing cases. First, the law regarded anyone who fled from the *familia* or otherwise refused a search as guilty of carrying a knife illicitly.⁹⁶ This was consistent with the law's stance toward contumacy more generally; anyone accused of a crime who refused to appear in court was considered guilty.⁹⁷ Ironically, this meant it actually behooved anyone carrying a prohibited weapon to flee, since then at least they might escape. Unsurprisingly, then, many arms-bearing suspects attempted to flee before the *familia*. In the first semester of 1308, for example, 15 of the 43 arms-bearing cases (i.e., more than a third) explicitly involved flight; in the second semester of 1320, 15 of the 97 arms-bearing cases did. As the next chapter will discuss, *familiars* were not shy about giving chase and worked hard to make fugitives pay the statutory penalty.

Second, the law presumed that anyone found "next to" an abandoned weapon was the owner of that weapon, unless he revealed whose it really was.⁹⁸ In Bologna this legal fiction dates back to at least 1256, when a cobbler was convicted for a *falzonus* found at his feet one night.⁹⁹ This principle was meant to ensure that individuals who tried to discard their weapons at the sight of the *familia* would not escape conviction. Indeed, the *familia* often reported witnessing such attempts at evasion.¹⁰⁰ But it also applied to groups. When multiple individuals were found in the vicinity of an abandoned weapon, the law presumed the nearest person to be the guilty party. This legal fiction aimed to compel the weapon's true owner to come forward lest his friends and associates suffer the penalty, and seems to have worked as intended on occasion.¹⁰¹ In other cases, however, a code of silence prevailed, and judges then had to determine the defendant's relative proximity to an abandoned weapon. In a typical case from Perugia in 1279, the judge asked the defendant whose knife it was, if anyone was nearer it than he, and how far he was from it.¹⁰² The statutes left no room for claims of ignorance in abandoned weapon cases. This presumption gave the *familia* grounds, once again, to charge more individuals and thereby discipline them, regardless of how the judge ultimately ruled.¹⁰³

⁹⁴ ASB, Corone 2, 1289II (58 fols.), 53r–55v.

⁹⁵ ASB, Corone 10, 1299–1300 (41 fols.), 8v–11r, 18v–23r.

⁹⁶ *Statuti 1288*, 1:226–27. *Statuto 1279*, 1:333. For other cities, see Cavallar, "Regulating Arms," 118–19.

⁹⁷ Carraway, "Contumacy," 103.

⁹⁸ *Statuti 1288*, 1:227.

⁹⁹ ASB, Accusationes 2, reg. 8, 5v.

¹⁰⁰ For examples, see ASB, Corone 5, 1293I (66 fols.), 6v, 36v; Corone 10, 1299 (34 fols.), 4r; Corone 13, 1302II (102 fols.), 22v. ASO, Podestà 1, reg. 6, 37r; 2, reg. 9, 45r. ASP, Capitano 2, reg. 1, 3r; 7b, reg. 7, 19v.

¹⁰¹ See for example ASB, Corone 28, 1320II (100 fols.), 56v.

¹⁰² ASP, Capitano 5b, reg. 8, 23v.

¹⁰³ For further examples, see ASB, Corone 13, 1302II (102 fols.), 81r; Corone 28, 1320II (100 fols.), 28r, 60v–61r.

Several cases also exist in which the *familia* apparently fabricated details that went beyond presumption, suggesting they wanted to secure convictions rather than merely level charges. For instance, in August 1298 the *familia* reported finding Carlo di Bonacossa Baciacomari carrying a knife through the city at night. Carlo also happened to be a magnate, as he confessed at his arraignment, though his family included a *popolano* branch as well. Testimony from the two discovering officers is squeezed into the margin next to the case entry, suggesting they were questioned later about the incident. When pressed, they admitted that they had found the knife on the ground and “did not know for certain whose knife it was, except that one of the men, namely the said Carlo or Bartolomeo, threw the said knife on the ground.” In another marginal note, this previously unmentioned Bartolomeo di Fra Giacomo then confessed that the knife was his and that he discarded it when he saw the *familia*. His name thus appears below Carlo’s as the individual found with a knife at night; where it once said Carlo was given three days to make his defense, his name was crossed out and Bartolomeo’s written instead.¹⁰⁴ Why the *familia* first charged Carlo and not Bartolomeo is unclear, but the salient point is that they first claimed they had found Carlo with the knife in hand, and only reluctantly admitted they had found it on the ground.

[Image 1: The record of Carlo Baciacomari’s trial in the Crowns and Arms series.]

Similarly, in 1302 the *familia* charged Ugolino di Bittino da Sala, another magnate, with carrying a knife. The notary initially recorded that they found Ugolino “going through the city” with a knife. The notary crossed this out, however, and wrote instead that the *familia* found a knife on the ground under a portico near Ugolino, and one of the *berrovarii* “believed” the knife belonged to him.¹⁰⁵ This likely represents another change in the *berrovarii*’s story under questioning, as in the case above, rather than scribal error. Once again, it seems the *berrovarii* had embellished their story to secure a conviction. These cases highlight once more the extent to which guilt or innocence could hinge on the word of the *berrovarii*. Although they ultimately shared exonerating information, the *berrovarii* were not forthcoming initially—apparently because they preferred to see their charges result in convictions.

Police Jurisdiction

For the *familia*, identifying illicit activity was not only a question of *what* they saw taking place but also *where* they saw it. This is abundantly clear in the activity of the dirt notary, who generally enforced the city’s zoning laws.¹⁰⁶ But the *familia* was also concerned with questions of space on its patrols for curfew, gambling, and arms-bearing offenses. Perugia’s statutes, for example, scaled the penalties for carrying assault weapons according

¹⁰⁴ ASB, Corone 9, 1298 (28 fols.), 19r: “Predicti Roffinus et Petrinus dixerunt quod invenerunt ipsum cutellum in terram et nesciunt pro firmo cuius sit ille cutellus, nisi quod unus ex eis dictum cutellum proiecit in terram, videlicet dictus Carlus vel Bertholomeus.”

¹⁰⁵ ASB, Corone 13, 1302II (102 fols.), 83v: “Qui beroarii [...] retulerunt [...] se invenisse [crossed out: Ugolinum Bitini de Salla capelle sancti Felicis sive sancti Nicolay ire per] sub quendam porticum in terra proiectum prope Ugolinum Bitini de Salla capelle sancti Felicis sive sancti Nicolay. Et predictus Janotus de Valdetario [berorius] dixit dictum cutellum fuisse predicti Ugolini ut credebat.”

¹⁰⁶ Geltner, “Finding Matter Out of Place.”

to where the offense took place, with the steepest fines for violations in the civic center (the central piazza and palaces of the commune and capitano) and the lightest penalties for violations in the *contado* or *distretto*.¹⁰⁷ In gambling cases, it could be important to delimit property boundaries and note precisely where players were found since, as noted above, the statutes held proprietors responsible for gamblers found on their premises.¹⁰⁸

Bologna's statutes did not set any spatial boundaries for licit or illicit arms-bearing, but trial records show that, in practice, the arms-bearing laws applied only in public spaces, not on private property.¹⁰⁹ This is explicit in a case from July 1289, when two *berrovarii* reported that a city resident named Zino da Collo was carrying a dagger and wearing an iron helmet "through the city of Bologna." According to the trial record, Zino confessed he was found carrying the arms "through the city of Bologna," but noted he was in a building (*domus*), not outside. The judge then questioned the *berrovarii* more closely, as recorded in the margins of the case. When pressed, the *berrovarii* admitted they had entered the building after Zino and found the arms there. They could not say they had discovered the arms outside the building, nor did they indicate that Zino had failed to heed their orders to stop. The notary amended the trial record accordingly to read that the *berrovarii* had found Zino "whom they believe to have been bearing" arms. In the end, the podestà dropped the charges against Zino altogether, for the explicit reason that his weapons were found inside a house and not outside.¹¹⁰ A similar sequence played out in April 1290, when two *berrovarii* reported that Simone of Vicenza, then resident of Bologna, was carrying a knife and iron mace "through the city of Bologna" without a cap. Simone confessed he had been found with the weapons, but in the garden behind the house where he lived. This claim became the sole article of his formal defense, which two witnesses upheld. Tellingly, the judge asked the witnesses: "When he exited the house with the weapons, did Simone enter a public street with those weapons?" They replied he had not.¹¹¹ Three days after this defense testimony—11 after the original denunciation—the judge asked the *berrovarii* where they had found Simone with the weapons. They replied, rather grudgingly it seems, that they had found him bearing arms "through the city, through the garden."¹¹² The judge acquitted Simone. In both of these cases, the outcome hinged solely on the question of public versus private space. In the first, the judge wanted to know whether the *berrovarii* had found Zino outside the house with the weapons; in the second, whether Simone had ever entered into the public street with his weapons. The interaction between the judges and *berrovarii* in these cases also illustrates the different incentives they had when it came to enforcing the law, even though both were *familiares* of the podestà.

¹⁰⁷ *Statuto 1279*, 1:332.

¹⁰⁸ For an example, see ASB, Corone 1, 1285II (7 fols.), 1r–v.

¹⁰⁹ Statutes of other communes made such jurisdictional limits explicit; see Cavallar, "Regulating Arms," 119–20.

¹¹⁰ ASB, Corone 2, 1289II (74 fols.), 13v: "Qui berruarii retulerunt mihi notario se invenisse Zinum de Collo capelle sancti Petri Marzolini [inserted later: quem credunt] portasse hodie secum per civitatem Bononie unum spontonem et unam planulam contra formam statutorum comunis Bononie."

¹¹¹ ASB, Corone 2, 1290I (24 fols.), 20r: "Interrogatus si dictus Simone quando exivit de dicta domo cum dictis armis intravit cum ipsis armis in viam publicam, respondit non."

¹¹² ASB, Corone 2, 1290I (24 fols.), 9r: "Dixerunt se invenisse dictum Simonem portantem dicta arma per dictam civitatem per quendam ortum."

The *familia*, then, was not supposed to arrest anyone for carrying a weapon unless he set foot in a public space. The principle seems to have held in Perugia as well, where a 1273 conviction spells out, for example, that the imputed was carrying two blade weapons “outside his home against the form of the statutes.”¹¹³ Because of this, notaries typically recorded where discoveries of prohibited arms took place, even if no more specifically than a public street or piazza. A record from 4 September 1288, for example, notes the *familia*’s discovery of six illegally armed men: one in the piazza of San Domenico, one in Via Barberia, another in Via Santo Stefano, two in Strada Maggiore, and the sixth in the vicinity of Strada Maggiore.¹¹⁴ However, the *familia* was justified in pursuing armed suspects into buildings if they were spotted in the street first. In a 1292 case, for example, the *familia* reported following the suspect into a shop after seeing him place his hand under his tunic, as if he had a knife.¹¹⁵

There is evidence, however, that the *berrovarii* frequently overstepped the boundaries of their jurisdiction, as they seem to have in Zino’s and Simone’s cases above. A pattern of encroachment is evident in a series of cases from autumn 1320. On 22 October, two *berrovarii* reported that Petrizolo d’Argelata had a knife “upon the entrance and almost inside the entrance” of his home, a dubious charge at best. Petrizolo produced two eyewitnesses who testified that the knife was in fact found inside the entrance, not “almost” inside. Apparently unsure whether to proceed with the case, the presiding judge sought the opinion of two outside jurists. By their advice he dropped the charges, since “it was proved that the knife was found inside the entrance of his house.”¹¹⁶ One day later (23 October), two other *berrovarii* charged Francesco Buonacatti with carrying a knife “upon the entrance” (*super hostio*) of his house. Four days later, he introduced a defense arguing that he was actually inside his house when the knife was found on him; the *familia* had entered and taken his knife away there. He produced two eyewitnesses to confirm this and was acquitted. Again the record states that the charge was dropped “since the weapon was found on him inside the entrance of his house.”¹¹⁷ Finally, on 5 November, two *berrovarii* denounced Desolo di Virgilio Spersonaldi for having a sword or dagger “inside the entrance” (*intra hostium*) of the house of Madaluccia Magnani. Here, the officers did not even make the “almost” distinction, which makes the charge somewhat baffling, especially after the precedent of the previous two cases. Nevertheless, like everyone charged by the *familia*, Desolo had to appear in court, give surety, and make a defense. Predictably, he argued that he had been inside Madaluccia’s house when found with the sword, and added that he had it lashed to its sheath. His two eyewitnesses confirmed this, and the charge was dropped accordingly.¹¹⁸ The records do not reveal what motivated the *familia*’s charges in

¹¹³ ASP, Capitano 1, reg. 4, 15v: “Extra domum suam contra formam statutorum populi.” Other entries note the accused to have been discovered in a public street; see Capitano 1, reg. 2, 38v–41v.

¹¹⁴ ASB, Corone 2, 1288II, 13r–v.

¹¹⁵ ASB, Corone 4, 1292II (54 fols.), 26r.

¹¹⁶ ASB, Corone 28, 1320II (56 fols.), 10r: “[Inventus] portare et super se habere unum cultellum de ferro feritorium et malitosum super hostium et quasi intra hostium domus dicti Petrizoli posite in burgho Gallerie cappelle predictae. [...] Non fuit processum ad condemnationem dicti Petrizoli de consilio domini Francisci et domini Guidi, quia probatum fuit dictum cultellum fore sibi inventum intra hostium domus sue.”

¹¹⁷ ASB, Corone 28, 1320II (56 fols.), 10v: “Non procedatur quia declaratum fuit per dominum potestatem procedendum non esse, quia inventa fuerunt sibi dicta arma intra hostium domus sue ut probatum est in libro testium.” The *intentio* is on 1320II (30 fols.), 12r–v.

¹¹⁸ ASB, Corone 28, 1320II (56 fols.), 19r; 1320II (30 fols.), 13r–14v.

these cases, but the pattern of encroachment—against members of elite *popolani* families, no less—seems clear.¹¹⁹

Furthermore, some cases appear to show the *familia* intentionally circumventing the limits of their jurisdiction. In February 1296, the *familia* reported that Giacomuccio Aldrovandini was carrying a knife in his home village of Ceretolo. The report gives no more detail than this, and Giacomuccio, appearing in court two days later, confessed it was true. No formal defense survives, but for some unexplained reason, the judge interrogated a *domicellus* of the podestà about the incident. The *domicellus* testified that he had first seen Giacomuccio standing under his portico when a *scutifer* in their patrol party called Giacomuccio over to help adjust his stirrup. Giacomuccio entered the public road, presumably to offer the help requested. However, according to the *domicellus*, the *scutifer* “only called him over since they saw him under the portico with a knife, and they wanted to take the knife from him.”¹²⁰ The judge sentenced Giacomuccio to pay a 20-lire fine all the same. Giacomuccio perhaps should have known better than to approach the *familia* armed, even in the *contado*. Nonetheless, it is remarkable that a *domicellus* of the podestà would publicly admit that his comrades had baited the suspect in order to convict him. In fact, the *familia* had extra incentive at this time to secure convictions, thanks to a 1295 provision that promised 20 soldi to the discovering officer—or ten times his daily salary—for any weapons conviction.¹²¹ The *familia* were surely aware that arresting Giacomuccio under his portico would have left him an avenue of defense, so they lured him out into a public space where the charge would be more difficult to beat. Likewise, in a 1314 case, two witnesses claimed that the *familia* had ordered the defendant, a spicer named Tura Banchelli, to exit his home only to arrest him for carrying a knife. A third witness even claimed that a *familiaris* had “grabbed Tura by his robe and pulled him out of his house,” and then found the knife on him.¹²² It is unclear how credible the judge found this story, since the verdict does not survive. But based on the examples above, it is plausible that the *familia* would have resorted to force in order to arrest Tura on public soil.

Ultimately, the *familia*’s aggressive style of policing could resemble the “personal” domination of feudal lordship more than the “impersonal” enforcement of a rational-bureaucratic government. A case in point comes from March-April 1295, when Bologna’s *cavalcatores* charged Giacomo Lanfranchetti of Zola Predosa with carrying a sword, knife, and shield in the *contado*. In his defense, Giacomo contended that the cavalrymen had discovered him eating lunch at a table with several others in the courtyard of a *domus* (perhaps a tavern) in Zola Predosa belonging to Michele Toschi. This courtyard, moreover, was closed off by a hedge and a ditch and had a gate as well.¹²³ The property owner, Michele Toschi, told the following story in his testimony: Giacomo and several others had

¹¹⁹ The Buonacatti were a prominent notarial family, and the Spersonaldi among the merchant-banking elite; see Blanshei, *Politics and Justice*, 126. One of Desolo’s witnesses was a Bentivoglio, the other a Borghesini.

¹²⁰ ASB, Corone 8, 1296I (80 fols.), 52v–53r: “Et quidam scutifer dicti domini potestatis vocavit eum Jacobucium [...] solomodo quia viderunt ipsum sub dicto porticu habere dictum cutellum, quia volebant ei auferre dictum cutellum.”

¹²¹ *Statuti 1288*, 1:586.

¹²² ASB, Corone 20, 1314I (40 fols.), 31v–32r: “Et unus ex dictis familiaribus cepit dictum Turam per guarnachiam et extrassit ex domo sua, et inventus fuit tunc sibi cultellus per dictam familiam.” For a similar case, see ASB, Corone 13, 1302II (102 fols.), 6r–6v.

¹²³ ASB, Corone 7, 1295I (135 fols.), 14r.

been lunching under his portico in the courtyard when a horseman armed with a battle ax rode into the courtyard and said, “Give me your weapons.” Giacomo handed over his sword, knife, and shield but protested that the cavalryman “was acting wrongfully since he could not *de jure* take those arms from him in that courtyard under that portico.”¹²⁴ Two other eyewitnesses corroborated this story. As one Omodeo recalled, Giacomo had rebuked the cavalryman that “*de jure* he was not supposed to take those arms from him since he was in a courtyard which is closed off with hedges and a gate under a portico.”¹²⁵ The verdict does not survive, but the defense reinforces the notion that property boundaries could mark the difference between lawful and unlawful enforcement. In effect, Giacomo’s defense argued, the cavalryman had every right to confiscate his weapons outside the confines of the courtyard, but inside them the same actions were an abuse of office. For Giacomo and his companions, the cavalryman had acted rapaciously and with impunity, much like a *contado* lord. The key difference—and source of his impunity—was that he enjoyed the veneer of legitimacy that came with public office.

Mitigating Factors

Lastly, the podestà’s *familia* had to navigate questions of criminal intent that, like questions of jurisdiction, the statutes did not always address. This is especially evident in their enforcement of the curfew law, which was not meant to penalize everyone found out of doors at night. Indeed, some communes’ statutes explicitly granted exceptions to the curfew law based on social identity and intent. Perugia’s, for example, exempted bakers, who went about their work in the early hours of the morning, and men of good repute discovered within three houses of their own from any curfew penalty. The statute also granted discretion to the court in cases of necessity, such as fetching a priest for a sick person, or simply coming home from someone else’s house. In such cases, the capitano was to decide whether a penalty was merited based on the defendant’s physical appearance and the nature of his business.¹²⁶ Siena’s statutes made it a lesser offense to leave one’s door open after curfew, with a fine of just 10 soldi.¹²⁷ Bologna’s 1288 curfew law was silent on such matters, but judges routinely took such mitigating factors under consideration in court.¹²⁸ Judges could use their discretion to acquit defendants who were not truly “going through the city,” as the statutes said, but merely idling in their neighborhoods in the evening. This is explicit in a 1293 case, where the notary first registered the discovery of Nerio Galluzzi “going through the city of Bologna after the third sounding of the bell without a light.” He later amended this to say the *familia* had found him “standing in the city of Bologna after the third sounding of the bell, namely next to his doorway which was

¹²⁴ ASB, Corone 7, 1295I (135 fols.), 14v: “Unus cavalcator comunis Bononie cum una manereta in manu concursit [sic] in dictam curtille et sub porticu sub [quo] erant predicti qui comedebant, et dixit eis, ‘Detis michi arma.’ Et ipse Jacobus dedit spatam unam et unum tabulatum et unum cutellum de ferire, dicendo ille Jacobus illi equitatori quod malle faciebat, quia non poterat de jure ei accipere ea arma quia erat in dictum curtille sub dicta porticu.”

¹²⁵ ASB, Corone 7, 1295I (135 fols.), 14v: “Dicebat ille Jacobus quod ille cavalcator de iure non debebat ei accipere dicta arma, quia erat in una curtille quod cluditur cum cedis et porta sub una porticu.”

¹²⁶ *Statuto* 1279, 1:337.

¹²⁷ For examples of convictions, see ASS, Malefizi 11, 2v, 4v.

¹²⁸ A 1265 ordinance required residents to close their doors after the third bell, but only in taverns, cellars, and “houses of suspicion”; see *Statuti* 1245, 3:557.

slightly open and there was light kindled near him.” The judge went on to acquit Nerio.¹²⁹ Many curfew defendants tried to prove their benign intent (i.e., that they were not thieves in the night) by protesting that the *familia* or watchmen had discovered them on their own doorsteps, unshod or in a state of undress.

For their part, however, Bologna’s *berrovarii* frequently leveled curfew charges against individuals found in close proximity to their homes. For example, 19 of the 36 individuals charged with violating curfew in the second semester of 1286 are explicitly noted—either through their acquittal or the *familia*’s own report—to have been under their porticoes, in front of their doors, or otherwise near their homes. This strict legalism—Bologna’s statutes said nothing about proximity to home, after all—contrasts sharply with judges’ consideration of extra-statutory factors. For example, in a series of cases from 3 August 1288, the judge sentenced the defendants according to how far each was discovered from his home. Piero Oseletti, Allegretto di ser Mercato, and Pietro di ser Tederigo Ferri, were all charged with nothing worse than having their doors open after the third bell, and were acquitted. Ugolino Garisendi was found under the portico of his house without a light, “but the servant who was with him had a light,” and so he too was acquitted. Lambertino Oseletti was found under the portico of his house without a light—slightly further afield than his kinsman Piero—and fined 20 soldi, a fraction of the full penalty. Piero Rayneri, on the other hand, was found “without a light going through the city of Bologna more than five houses distant from his house of habitation,” and sentenced to the statutory fine of 100 soldi. Allegretto’s servant was also found without a light more than five houses from his place of habitation but only fined 20 soldi, likely on account of his low social status.¹³⁰ But with regards to the other defendants, the judge cared less about their social status than the flagrancy with which they had violated the law.¹³¹ Proximity to home was a recurring theme in curfew cases in Bologna and in other communes as well.¹³² In a 1295 curfew case from Orvieto, the accused confessed that he had been found without a light “more than six houses from his own,” and was convicted accordingly.¹³³ And in a 1279 case from Perugia, three watchmen admitted to the court a day after the defendant was arraigned that they had discovered him next door to his home.¹³⁴

Wherever the law was silent on such matters, the *familia* could denounce apparent curfew breakers and allow a judge to decide whether they deserved punishment. Bologna’s *berrovarii* did not receive a cut of curfew fines, but neither did they suffer a penalty for failing to prove a charge, as in *accusatio* procedure. In practice, this meant the *familia* (and

¹²⁹ ASB, Corone 5, 1293I (66 fols.), 40r: “Mellinus, Cincus berovarii et familia dicti domini potestatis [...] retulerunt se invenisse dicta die de sero Nerium Jacobi Galluzzi cappelle Sancti Andree de Piatisiis [crossed out: eundo per] stando in civitatem Bononie post tertium sonum campane [crossed out: sine lumine], [added later:] videlicet iusta hostium suum, quod erat parum apertum, et lumen erat prope eum accensum.”

¹³⁰ ASB, Corone 2, 1288II, 3r–v: “Ugholinus de Gharsendis fuit inventus sine lumine post tertium sonum campane que pulsatur de sero sub porticu domus sue, tamen famulus qui erat cum eo habebat lumen. [...] Pieris condam Raynerii de cappella sancte Marie de Porta Ravenatis fuit inventus sine lumine ire per civitatem Bononie plus alonge a domo habitationis sue quam quinque domus.”

¹³¹ The Oseletti and Garisendi were old noble families, and Alegretto’s and Pietro’s fathers enjoyed the honorific title of “ser.”

¹³² For other examples, see ASB, Corone 1, 1286II, 24v–25r, 28r, 30r, 33r; Corone 25, 1318I (82 fols.), 10v, 12v.

¹³³ ASO, Podestà 2, reg. 8, 57r: “Lunge a domo sua per sex domos et ultra.”

¹³⁴ ASP, Capitano 5b, reg. 8, 12v. A similar case is on 26v.

watchmen, too) could make arrests in dubious circumstances, such as when local residents tried to give surety for someone already in custody. This was precisely the defense of four curfew suspects in a 1317 case, for example. According to one of their witnesses, a certain Giacomo, he had nearly come outside himself to give surety for their neighbor, Freddo, who had been detained for violating curfew. But when he saw the notary booking everyone who came outside, he thought better of it. According to Giacomo, everyone in that neighborhood spoke ill (*malum*) of the *familia*'s actions.¹³⁵ A resident of Perugia made a similar argument in 1283. He admitted that the *familia* had found him after dark without a light and wearing three pieces of armor. But he also pleaded that he had entered the street in front of his neighbors' houses—within three doors of his own—to guaranty for Pellolo di Ranalduccio, whom the *familia* had detained there. He also had a license for the armor.¹³⁶ Indeed, this probably happened more often than the sources let on. In a 1313 case, one of the witnesses testified he had stepped outside when he heard the *familia* arresting his neighbors—almost surely to guaranty for them—but the *familia* said to him, “Go inside and shut the door if you do not wish to be a hindrance.”¹³⁷ The only difference between a curfew breaker and someone giving surety was intent. In the cases above, the *familia* decided to make would-be guarantors for their neighbors prove their lawful intent in court.

Similarly, the *familia* sometimes charged individuals whose light had clearly gone out moments earlier. One night in 1310, for instance, two *berrovarii* reported finding Giacomo, the servant (*familiaris*) of a certain Bartolino, without a light, but added that “he had a candle in his hand, extinguished and smoking, which seemed to have been lit shortly before they found him.” The judge eventually ordered Giacomo's release “since he made his excuse”—almost certainly the one the *familia* had reported.¹³⁸ And one night in 1320, two *berrovarii* reported that Benvegnudo, a farrier's son, was out at night in the central marketplace with a burnt-out candle, in the company of two merchants on horseback. Benvegnudo could not give surety and was jailed accordingly. He was eventually released because, as the margin notes, “the podestà did not wish Benvegnudo to be condemned since he had a burnt-out candle in hand and was with the merchants,” who were probably carrying lights.¹³⁹ Again, the details of the *familia*'s accusation provided grounds for acquittal. The *familia*'s tendency for strict enforcement could make it hazardous even for neighbors to visit each other across the street. In October 1293, for instance, the neighbors of a certain Giovanni testified in his defense that the *familia* had arrested him immediately after the wind blew out his candle as he tried to return home from dinner at his neighbor's house across the street. The judge acquitted Giovanni accordingly.¹⁴⁰ Granted, the

¹³⁵ ASB, Corone 24, 1317I (46 fols.), 13r–v.

¹³⁶ ASP, Capitano 7b, reg. 7, 48r.

¹³⁷ ASB, Corone 19, 1313I (67 fols.), 14v–15r: “Et tunc familia dixit isti, ‘Intrate domum et firmate hostium si non vultis impedimentum.’” See also Corone 13, 1302II (102 fols.), 68r.

¹³⁸ ASB, Corone 18, 1310II (96 fols.), 7v: “Dixerunt tamen dicti berroarii quod infrascriptus Jacomus familiaris Bartolini habebat candelam in manu extinctam et fumantem, que paulo ante quam ipsum invenirent hostendebatur ipsam fuisse accensam.” For another case where the defendant, an 11-year-old boy, reportedly had a still-smoking candle, see ASB, Corone 11, 1300 (82 fols.), 11r, 13r–14r.

¹³⁹ ASB, Corone 28, 1320II (56 fols.), 21v: “Noluit potestas quod condepnaretur dictus Benvegnudus, quia habebat candelam extinctam in manu et erat cum dictis mercatoribus.”

¹⁴⁰ ASB, Corone 5, 1293II (48 fols.), 15v; 1293II (53 fols.), 19v–20r.

berrovarii were not wrong that someone holding a burnt-out candle was not, strictly speaking, *cum lumine*. But they also had the *de facto* discretion to let such individuals go.

Lastly, the curfew law allowed the *familia* to arrest individuals when they stepped outside at night to relieve themselves. In a December 1290 case, the butcher Tranchedino pleaded—after spending the night in jail—that he had exited his house to urinate when the *familia* arrested him, and went on to win his acquittal.¹⁴¹ Similar is the case of the merchant Paoletto of Spoleto, charged with violating curfew in Perugia in January 1279. He argued in his defense that he was staying as a guest in a certain house (perhaps an inn) and was attempting to urinate in the street in front of that house when the *familia* found him.¹⁴² In yet another case from Bologna, from 1294, Albergato of Tossignano claimed in his defense that three watchmen had arrested him after the wind blew out his candle as he was urinating near the door of the inn where he was staying.¹⁴³ Although the verdict is not given, his story—corroborated by two fellow lodgers—illustrates how potentially repressive the curfew laws could be, or at the very least, construed to be.

Conclusion: The Paradox of Impersonality

This chapter has deliberately focused on the *berrovarii*'s interpretation of the statutes rather than judges' and jurists', if one can equate the two. As we have seen, judges sometimes overruled their *berrovarii*, and it should be noted too that local jurists and doctors of law—many of them ensconced at Bologna's university—had a significant capacity to influence trial outcomes through their legal opinions (*consilia*).¹⁴⁴ Indeed, the leading jurists of the day took up many of the same problems of statutory interpretation that the *berrovarii* confronted on patrol in their academic writings, in particular through dialectical questions (*quaestiones disputatae*). Tommaso da Piperata, for example, asked who (if anyone) was to be penalized when the *berrovarii* discovered a weapon at the feet of a group of men, and Dino del Mugello asked whether an assailant who wounded his victim with a prohibited knife was also to be charged for the knife.¹⁴⁵ Their answers to such practical questions of law—and how those answers influenced trial outcomes—are in need of greater study.

Yet the opinions of professional jurists and even trial outcomes were in large part beside the point when it came to the *familia*'s patrols. If the examples above are any indication, the *berrovarii* had a penchant for strictly interpreting the statutes, to the point even of denouncing acts that the statutes explicitly allowed. Likewise, *familiaries* frequently ignored indicators of law-abiding intent and other mitigating factors that typically led judges to acquit defendants. Perhaps most surprisingly, they showed little regard for the social identity or political status of the individuals they policed, legal privileges and statutory exceptions notwithstanding. In sum, the *familia* exercised police discretion in a way that made government coercion a routine feature of urban life and effectively

¹⁴¹ ASB, Corone 3, 1290II (110 fols.), 83r, 84r–85v.

¹⁴² ASP, Capitano 5b, reg. 8, 1v.

¹⁴³ ASB, Corone 6, 1294I (84 fols.), 31r. For the *relatio*, see 1294I (118 fols.), 42v–43r.

¹⁴⁴ Vallerani, "Criminal Court Procedure," 46–49. On *consilia* see Menzinger, "*Consilium sapientum*"; Vallerani, "The Generation of *Moderni*"; Ascheri et al., eds., *Legal Consulting*.

¹⁴⁵ For these and other specific examples, see Bellomo, ed., *Quaestiones in iure civili disputatae*. More generally see Vallerani, "Il diritto in questione"; Bellomo, *I fatti e il diritto*; Fransen, "Les questions disputées."

diminished the personal autonomy of the communes' citizens, including elites. Paradoxically, it turned self-governing citizens into something closer to subjects.

The qualitative nature of the *familia*'s policing made their patrols coercive acts in their own right, regardless of how many alleged offenders they discovered. Their daily patrols projected the threat of the government's legitimate violence and made official interventions a routine part of life in the commune. Whatever legal protections existed, in practice there were few checks against the *familia*'s expansive powers of search and seizure. With their word alone, the podestà's men could compel locals to answer charges in court, where the deck was stacked against them by statutory presumptions, not least the presumption of guilt. While there is still ample potential today for police to abuse their powers and harass citizens, the power disparity was all the more acute in medieval Italy, where there were no legal standards like "reasonable suspicion" and no bill of rights to protect citizens from unreasonable searches and seizures.

Crucially, communal governments did not always possess this kind of police power. As noted in the last chapter, in the twelfth century and likely at the start of the thirteenth, most communes did not have blanket prohibitions against carrying knives in the street or playing dice games outside of publicly designated areas, let alone third-party enforcers to give such laws teeth. The amplification of government police power was a deliberate policy decision made by self-governing elites, and hardly an inevitable one. Of course, citizens could still choose to disobey the law, but they had granted the podestà the authority to discipline and punish them for that disobedience. The next three chapters will explore what motivated citizen-legislators to limit their personal autonomy in this way.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio per la custodia delle vigne, palancati e broili

Governo

Provvisgioni dei consigli minori

Archivio di Stato di Orvieto

Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

Archivio di Stato di Siena

Podestà, Malefizi

PUBLISHED PRIMARY SOURCES

Bellomo, Manlio, ed. *Quaestiones in iure civili disputatae: didattica e prassi colta nel sistema del diritto comune fra Duecento e Trecento*. Rome: ISIME, 2008.

Caprioli, Severino, ed. *Statuto del comune di Perugia del 1279*. 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.

Il costituito del comune di Siena, volgarizzato nel MCCCIX-MCCCX. 2 vols. Siena: Tip. e Lit. Sordmuti di L. Lazzeri, 1903.

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937-1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267*. 3 vols. Bologna: Regia Tipografia, 1869-1877.

Rizzi, Alessandra, ed. *Statuta de ludo: le leggi sul gioco nell'Italia di comune (secoli XIII-XVI)*. Treviso; Rome: Fondazione Benetton Studi Ricerche; Viella, 2012.

SECONDARY SOURCES

Ascheri, Mario, Ingrid Baumgärtner, and Julius Kirshner, eds. *Legal Consulting in the Civil Law Tradition*. Berkeley: Robbins Collection, 1999.

Bellomo, Manlio. *I fatti e il diritto: tra le certezze e i dubbi dei giuristi medievali (secoli XIII-XIV)*. Rome: Il Cigno Galileo Galilei, 2000.

- Bergonzoni, Franco. "Note sulle unità di misura bolognesi." In *I portici di Bologna e l'edilizia civile medievale*, edited by Francesca Bocchi, 161–70. Casalecchio di Reno: Grafis, 1990.
- Blanshei, Sarah Rubin. *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Carraway, Joanna. "Contumacy, Defense Strategy, and Criminal Law in Late Medieval Italy." *Law and History Review* 29 (2011): 99–132.
- Cavallar, Osvaldo. "Regulating Arms in Late Medieval and Renaissance Italian City-States." In *Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society*, edited by Julius Kirshner and Laurent Mayali, 57–126. Berkeley: Robbins Collection, 2002.
- Cortese, Ennio. *La norma giuridica: spunti teorici nel diritto comune classico*. 2 vols. Milan: A. Giuffrè, 1962.
- Davis, Kenneth Culp. *Police Discretion*. St. Paul: West Publishing Co., 1975.
- Fransen, Gérard. "Les questions disputées dans les facultés de droit." In *Les questions disputées et les questions quodlibétiques dans les facultés de théologie, de droit et de médecine*, edited by Bernardo C. Bazán, 225–77. Turnhout: Brepols, 1985.
- Geltner, Guy. "Fighting Corruption in the Italian City-State: Perugian Officers' End of Term Audit (*sindacato*) in the Fourteenth Century." In *Anticorruption in History: From Antiquity to the Modern Era*, edited by Ronald Kroeze, Guy Geltner, and André Vitória. Oxford: Oxford University Press, 2018.
- . "Finding Matter Out of Place: Bologna's Fango ('Dirt') Notary in the History of Premodern Public Health." In *The Far-Sighted Gaze of Capital Cities: Essays in Honor of Francesca Bocchi*, edited by Rosa Smurra, Houbert Houben, and Manuela Ghizzoni, 307–21. Rome: Viella, 2014.
- . *The Medieval Prison: A Social History*. Princeton: Princeton University Press, 2008.
- Giansante, Massimo. *L'usuraio onorato: credito e potere a Bologna in età comunale*. Bologna: Il Mulino, 2008.
- . *Patrimonio familiare e potere nel periodo tardo-comunale: il progetto signorile di Romeo Pepoli banchiere bolognese (1250 c.–1322)*. Bologna: La fotocromo emiliana, 1991.
- . "Romeo Pepoli. Patrimonio e potere a Bologna fra Comune e Signoria." *Quaderni medievali* 53 (2002): 87–112.
- Gouron, André. "La notion de privilège dans la doctrine juridique du douzième siècle." In *Das Privileg im europäischen Vergleich*, edited by Barbara Dölemeyer and Heinz Mohnhaupt, 2:1–16. Frankfurt am Main: V. Klostermann, 1999.
- Helmholz, Richard H., and W. David H. Sellar, eds. *The Law of Presumptions: Essays in Comparative Legal History*. Berlin: Duncker & Humblot, 2009.
- Meccarelli, Massimo. *Arbitrium. Un aspetto sistematico degli ordinamenti giuridici in età di diritto comune*. Milan: A. Giuffrè, 1998.
- Menzinger, Sara. "Consilium sapientum: Lawmen and the Italian Popular Communes." In *The Politics of Law in Late Medieval and Renaissance Italy: Essays in Honour of Lauro Martines*, edited by Lawrin D. Armstrong and Julius Kirshner, 40–54. Toronto: University of Toronto Press, 2011.
- Milani, Giuliano. "From One Conflict to Another (13th–14th Centuries)." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 239–59. Leiden: Brill, 2018.

- . “Il governo delle liste nel Comune di Bologna: Premesse e genesi di un libro di proscrizione duecentesco.” *Rivista storica italiana* 107 (1996): 149–229.
- . *L'esclusione dal comune: conflitti e bandi politici a Bologna e in altre città italiane tra XII e XIV secolo*. Rome: ISIME, 2003.
- Piano Mortari, Vincenzo. “Ius singulare e privilegium nel pensiero dei glossatori.” *Rivista italiana per la scienze giuridiche* 9 (1957–1958): 271–350.
- Ramponi, Lamberto. *La teoria generale delle presunzioni nel diritto civile italiano*. Turin: F. Bocca, 1890.
- Reggi, Roberto. “Presunzione a) diritto romano.” *Enciclopedia del diritto*. Turin: A. Giuffrè, 1986.
- Sabapathy, John. “A Medieval Officer and a Modern Mentality? Podestà and the Quality of Accountability.” *The Mediaeval Journal* 1 (2011): 43–80.
- Sella, Pietro. “Nomi latini di giuochi negli statuti italiani (sec. xiii–xvi).” *Archivum latinitatis medii aevi* 5 (1930): 199–214.
- Vallerani, Massimo. “L'arbitrio negli statuti cittadini del Trecento.” In *Tecniche di potere nel tardo Medioevo: regimi comunali e signorie in Italia*, edited by Massimo Vallerani, 117–48. Rome: Viella, 2010.
- . “Criminal Court Procedure in Late Medieval Bologna: Cultural and Social Contexts.” In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 27–54. Lanham, MD: Lexington Books, 2018.
- . “Il diritto in questione. Forme del dubbio e produzione del diritto nella seconda metà del Duecento.” *Studi medievali* 48 (2007): 1–40.
- . “The Generation of *Moderni* at Work: Jurists Between School and Politics in Medieval Bologna (1270–1300).” In *Europa und seine Regionen. 2000 Jahre Rechtsgeschichte*, edited by Andreas Bauer and Karl H.L. Welker, 139–56. Cologne: Böhlau, 2007.
- . “Giochi di posizione tra definizioni legali e pratiche sociali nelle fonti giudiziarie bolognesi del XIII secolo.” In *Gioco e giustizia nell'Italia di comune*, edited by Gherardo Ortalli, 13–34. Rome: Viella, 1993.
- . *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- . “Paradigmi dell'eccezione nel tardo medioevo.” *Storia del pensiero politico* 2 (2012): 185–212.
- Wallis, John Joseph. “Institutions, Organizations, Impersonality, and Interests: The Dynamics of Institutions.” *Journal of Economic Behavior & Organization* 79 (2011): 48–64.

Chapter 3: The Logic of Third-Party Policing

The last two chapters have illustrated the coercive capacity of the podestà's *familia*, both in terms of compelling individuals into court and projecting the threat of prosecution for all citizens. The *familia* made government police power pervasive in daily life and, to an important extent, turned self-governing citizens into subjects of the commune. The birth of third-party policing thus raises a fundamental question: why did citizen-legislators in cities like Bologna impose this kind of law enforcement upon themselves? After all, it is reasonable to assume that political elites would seek to maximize their personal autonomy, not constrain it. Bologna's lawmakers expressly stated their rationale in a 1260 statute, the earliest surviving law from that commune to deal expressly with the podestà's *berrovarii*:

Likewise we establish and ordain, for the advantage and good state of the commune of Bologna, and for this purpose, that criminals might be captured and led into the custody of the commune of Bologna, that the coming podestà within 15 days of the start of his rule should summon 20 good, lawful, and trustworthy foreign men, who ought to keep watch through the city and boroughs day and night, and search for men bearing prohibited arms, and pursue and capture outlawed criminals of the commune of Bologna, and do everything else according to the direction of the podestà and council of Bologna.¹

Although the lawmakers' own words are not sufficient to explain the growth of police power in this context, they are a logical and revealing place to start. This chapter unpacks the language of the statute above to help explain the shift toward impersonal rules and hegemonic justice.

The chapter opens by discussing how the *familia* served the commune's interest in bringing criminals, outlaws, and political rebels into official custody. Bologna's elites employed the podestà in part to capture wanted men, and he regularly sent his knights and *berrovarii*—sometimes accompanied by armed citizens—on manhunts in the *contado*. These expeditions show once again that criminal justice in the communes was more coercive than some historians imagine. Although it was difficult to bring outlaws into custody, that does not mean that citizen-legislators preferred for them to remain contumacious. Importantly, however, there was nothing inevitable about lawmakers' decision to hire foreign mercenaries to capture wanted men. As discussed below, the communes had other mechanisms of enforcement available to them; it was not obvious they had to employ a third party in this capacity.

In light of this, the chapter then explores why citizen-legislators chose to establish a dedicated police force composed of foreigners. The language of the resolution above provides two important clues. First, lawmakers ordered the *berrovarii* to patrol the city day and night and to search for illegal weapons, among other violations of statute, so as to

¹ *Statuti 1245*, 3:392: "Item statuimus et ordinamus pro utilitate et bono statu comunis Bononie et ad hoc, ut malefactores possint capi et in fortiam comunis Bononie deduci, quod potestas ventura, infra xv. dies ab ingressu sui regiminis, faciat venire xx. bonos et legales homines forenses et dignos fide, qui debeant custodire die noctuque per civitatem et burgos, et inquirere portantes arma vetita, et malefactores bannitos comunis Bononie prosequi et capere, et alia omnia facere secundum dispositionem potestatis et consilij Bononie."

better prevent crimes and uncover threats. The night watch and other local guards were limited in when and where they could enforce the laws, and the employment of a dedicated, around-the-clock police force overcame gaps in enforcement. Furthermore, lawmakers ordered the *familia* to search the city proactively for violators of statute to gain better knowledge of threats in the community. In this respect, lawmakers extended the logic of judicial inquisition, which became an increasingly prominent feature of public justice over the course of the thirteenth century. Police patrols effectively amplified the inquisitorial power of the criminal court by serving as “eyes on the street.”² Like judicial inquests, police patrols sought to identify and classify threats, not only to prosecute crimes already committed but also to prevent future crimes. This preventive logic will be the subject of the next two chapters, but for now it can be said that citizen-legislators were no longer content to react to crimes and punish them after the fact.

Second, lawmakers stipulated that the *berrovarii* had to be trustworthy foreigners—like their captain, the podestà—to mitigate the role of personal relations in law enforcement. The simple fact that local residents knew each other and had relationships of enmity and amity made it impossible for them to police their communities impartially and difficult for public officials to rely on locals for information about crime.³ In brief, friends tended not to denounce each other for legal infractions, and enemies often made spurious accusations against each other. This was especially true of statutory offenses, such as the bearing of prohibited arms, that caused no obvious harm to persons or property. Citizen-legislators evidently perceived this state of affairs as problematic and developed third-party policing as a logical extension of the podestarial model, designed to make public justice less subject to local prejudices.

There is still an underlying question, however, of why the communes’ political elites believed it was in their interest—or in the words of the 1260 resolution, “for the advantage and good state of the commune”—to augment the podestarial and inquisitorial models of law enforcement. Hence, this chapter concludes by discussing how more impersonal institutions—that is, rules and enforcement mechanisms that applied to everyone regardless of social status—could offer advantages in the context of intra-elite competition. For popular regimes like Bologna’s, the *popolo*’s formal entry into the constitutional order in many towns meant the expansion of the governing elite to include numerous “lesser” families. Individually, these families could not easily assert their political interests in the face of the customary privileges and military might of the great noble houses and their *consorterie*. However, through public laws and collective organizations such as guilds, militias, and the foreign magistracies of the podestà and capitano del popolo, the *popolo* could effectively coerce even the most powerful families and level the political playing field, so to speak. Thus, the *popolo* used written law and third-party enforcement to regulate and prevent the use of violence and maintain cohesion within their coalition. In *signorie*, too, municipal statutes and public organizations could be powerful tools for the ruling family to keep rival factions and coalitions in check. Thus, even as factional conflict continued unabated, the social order in northern Italy became less dependent on personality and

² For the concept of “eyes on the street,” see Jacobs, *The Death and Life of Great American Cities*.

³ On the importance of relationships of amity and enmity, see Zorzi, “Amici e nemici”; Gentile, “Amicizia e fazione”; Smail, “Hatred”; Garnier, *Amicus amicus, inimicus inimicus*; Miglio et al., eds., *Amicus (inimicus) hostis*.

more reliant on written law. The institutional change was far from neat, but one of its chief manifestations was the investment of greater police power in the organs of government.

The concluding discussion also highlights the underlying drivers and enabling factors for this institutional evolution, namely the pressures of urbanization and contemporaneous revolutions in written recordkeeping and legal science. Generally speaking, cities generate more sophisticated apparatuses of surveillance and control because their populations and economies are more complex and challenging for rulers to govern. For this reason, Foucault asserted that “to police and to urbanize is the same thing.”⁴ The towns of medieval Italy were no exception, and their massive demographic and economic growth in the thirteenth century spurred the growth of police power as municipal regimes strove to promote prosperity and order. At the same time, the rise of a new commercial and administrative elite, along with a politically influential cadre of professional jurists, introduced new technologies of power into government. Merchants, bankers, notaries, and lawyers all relied on written records, classification schemes, and rule enforcement in their professions, and they brought these tools with them as they entered politics. The rise of the new elite thus fostered the growth of rational-legal authority—including the apparatus of third-party policing—in the communes’ institutions.⁵ Beyond communal Italy as well, rulers enthusiastically adopted the administrative elite’s technologies of power to make complex communities more “legible” and therefore easier to manage and control. Spurred by these societal trends, the elites of Italy’s communes adopted third-party policing not out of a moral preference for more impersonal institutions, but out of the logic of political competition in a limited access order.

“To [...] Pursue and Capture Outlawed Criminals”

The most basic reason Bologna’s lawmakers gave for employing a foreign police force was to “pursue and capture outlawed criminals of the commune.” In general, the judicial records amply attest the commune’s desire to have criminals in its *fortia* or, less commonly, its *virtus*.⁶ Although *fortia* and *virtus* clearly meant “custody” in these contexts, it is significant that these words also meant “strength.” The commune’s elites did not merely want suspects in their custody; they wanted them in their power or grip. Such language appears consistently in statutes and council resolutions with regards to the podestà’s *berrovarii*. As part of his oath, for example, Bologna’s podestà swore to offer his *berrovarii* and officials “to capture outlaws and condemned criminals” as often as anyone asked him to.⁷ In 1295, Bologna’s lawmakers doubled the number of *berrovarii* from 20 to 40, in part, “so that the podestà of Bologna may be able to better pursue criminals.”⁸ And in 1311, when they again increased the number of *berrovarii* from 20 to 30, it was “so that [...] malefactors may be captured better and more quickly.”⁹ This line of thinking was common across northern Italy. Perugia’s statutes, for example, called for the podestà and capitano to

⁴ Foucault, *Security, Territory, Population*, 336–37.

⁵ On the concept of legibility, see Scott, *Seeing Like a State*.

⁶ For this usage of *virtus*, see *Statuti* 1245, 1:301; ASB, Corone 8, 1296I (80 fols.), 4v.

⁷ *Statuti* 1288, 1:12–13: “Ad capiendum banitos et malefactores condempnatos quociens fuero requisitus.”

⁸ *Statuti* 1288, 1:581: “Ad hoc ut potestas Bononie melius possit [...] persequi mallefactores.”

⁹ ASB, Provvigioni 4, reg. 213, 1v: “Ut malleficia cessent et malefactores melius et citius capiantur.”

secretly elect *berrovarii*, at public expense, to capture outlaws (*exbanniti*) as often as seemed necessary to them.¹⁰

Such language may seem definitional of policing and therefore unremarkable, but it bears emphasis for two reasons. First, historians have recently argued that medieval courts did not necessarily view contumacy as a problem, since it could allow disputing parties the opportunity to make peace out of court, spare judges the burden of deciding punishments in politically sensitive cases, or constitute a punishment for the accused in and of itself. Daniel Smail has even called high contumacy rates “key to the proper working of the system” in late medieval Marseille.¹¹ While contumacy certainly had its social uses, it is important to recognize that communal governments expended considerable resources attempting to bring outlaws into custody, as the evidence below will illustrate. At the same time the courts encouraged and welcomed peace accords, they also pursued outlaws who had yet to make peace with their victims because ongoing disputes represented a threat to public order.¹² The communes’ governing elite hired mercenaries expressly to capture criminals because they viewed contumacy as a problem to be mitigated.

Second, it was hardly inevitable that communal elites would turn to foreign mercenaries for purposes of law enforcement. In medieval Italy, it was risky to invite armed foreigners into a city; more typically, they were to be kept out.¹³ Moreover, apprehending criminals had traditionally been the responsibility of the community and local officials, not a specialized group of outsiders. If governments wished to improve the coercive capacity of their courts, they could have augmented any number of community-based institutions and organizations for detecting and apprehending criminals rather than create a new one. There is no space to detail these here, but generally they included the night watch and other specialized corps of guards; civic militias; parish and village officials; and neighborhoods and villages themselves, who, like their official representatives, could be legally obligated to raise the hue and cry.¹⁴ Communes also offered monetary rewards to encourage locals (both officials and private citizens) to deliver malefactors into custody.¹⁵

All of these community-based institutions remained in effect well after the podestà’s *familia* began patrolling the streets on a regular basis. Citizen-legislators clearly did not intend for the *familia* to replace them. However, lawmakers evidently believed existing

¹⁰ *Statuto* 1279, 1:278.

¹¹ Quotation from Smail, *The Consumption of Justice*, 173. See also Kumhera, *The Benefits of Peace*, 93–96; Carraway, “Contumacy.”

¹² Blanshei, “Bolognese Criminal Justice,” 70.

¹³ Hannelore Zug Tucci discusses the burdens of provisioning and housing foreign soldiers as prisoners of war in *Prigionia di guerra*, 107–34, 153–88.

¹⁴ In general, see Zorzi, “Contrôle social.” For Bologna’s civic militias, see Fasoli, “Le compagnie.” On the hue and cry in late medieval Italy, see Manikowska, “‘Accorr’uomo.” For the duty of *massarii* to deliver wanted men into custody, see *Statuti* 1245, 1:234–35; ASB, *Sindacato* 1, 1284II (46 fols.), 1r. For penalties against communities who failed to raise the hue and cry, see *Statuti* 1245, 3:561–63; *Statuti* 1288, 1:175, 578–79; ASB, *Provvisioni* 4, reg. 213, 2r–v. For sentences against communities, see ASB, *Accusationes* 2, reg. 8, 45r, 49r–v, 55r–56r; ASS, *Malefizi* 6, 20r–21r. On such penalties in general, see Lepsius, “Public Responsibility.”

¹⁵ For the evolution of the reward scale in Bologna, see *Statuti* 1245, 1:260; *Statuti* 1288, 1:580–81; ASB, *Cartacea* 216, reg. 5, 117v–118r; *Provvisioni* 4, reg. 213, 2v. For an ad hoc bounty issued in the wake of a high-profile assault, see ASB, *Sindacato* 8, 1291I (44 fols.), 29r. For bounties in Siena, see Pazzaglini, *The Criminal Ban*, 55–57. Siena and Bologna both generally exempted *berrovarii* and foreign officials from receiving such bounties. For records of bounty payments in Bologna, see ASB, *Cartacea* 216, reg. 5, 117v, 148v, 157r; *Tesoreria* 3, 27v, 44r; *Corone* 13, 1302II (152 fols.), 116r, 122v, 129v.

institutions were inadequate, or else they would not have hired armed foreigners to catch criminals. Though novel, their decision to apply military force to the problem is easy to comprehend when one considers the dangers communal officials faced in trying to apprehend wanted men. A vivid example comes from 1254, when Bologna's podestà dispatched two criers to Crevalcore, a fortified settlement at the northwestern edge of Bolognese territory. Their mission was to arrest the outlaw Girardino di Pietro Pippini, who belonged to one of the commune's elite families. The criers returned empty-handed, however, to denounce the men of Crevalcore for rescuing Girardino from their clutches and assaulting them with prohibited weapons. According to the crier Alberto, the Crevalcoresi "took [Girardino] from his hands and *fortia* by force and in a bad way, such that he could not lead him into the *fortia* of the podestà," even though he repeatedly ordered them on behalf of the podestà to allow him to arrest Girardino. The criers' report implicated some 29 individuals, including the *massarius* of Crevalcore.¹⁶ Such active resistance, whether from powerful families or rebellious communities in the *contado*, posed a real danger to the commune's officials and, more abstractly, to its writ of law.

Lawmakers hired soldiers to undertake the risks of arresting criminals, as a 1250 statute makes explicit. According to this law, the podestà was to deploy his knights or use any other means at his disposal to capture any outlaw "who, because of his strength (*fortia*) and power (*potentia*), cannot be captured by the criers of the commune of Bologna, or whom they do not dare to capture."¹⁷ It is not hard to find examples of such individuals in the records, as in a 1277 case from Perugia, where three men from a village in the countryside—probably local officials, but not explicitly identified as such—faced charges for failing to keep a detainee named Tornabene in their custody. In their defense they argued that Tornabene had escaped from their hands by force, even though they raised the hue and cry and gave chase, because he was "strong, robust, and stronger than they."¹⁸ Indeed, the communes' judicial records are peppered with cases in which captives managed to escape official custody. Early convictions of curfew violators in absentia, from the 1240s and 1250s, likewise indicate that the night watch had greater difficulty compelling offenders to appear in court and pay fines.¹⁹ It was virtually unheard of in the later Crowns and Arms registers for a curfew defendant to refuse summonses or otherwise fail to appear in court. Of course, the *berrovarii* were not immune from having suspects escape their official custody.²⁰ But the point remains that governing elites hired them to improve the coercive capacity of their courts, despite the multitude of community-based institutions already in existence. In other words, they saw a need to employ specialists in coercion to mitigate the problem of contumacy.

¹⁶ ASB, Inquisitiones 1, reg. 4, 2r–3v: "Et eum sibi acceperunt de suis manibus et fortia per vim et malo modo ita quod eum ducere nequivit in fortiam potestatis." On the Pippini family, see Blanshei, *Politics and Justice*, 131, 233–34, 262, 288.

¹⁷ *Statuti 1245*, 1:339–44: "Et si esset aliquis qui propter fortiam suam et potentiam capi non possit a nunciis comunis bononie, vel qui non auderent capere, teneatur potestas mittere de militibus suis et facere modis omnibus ita quod capiatur et detineatur in civitate vel in aliqua terra districtus bononie."

¹⁸ ASP, Capitano 4, reg. 6, 42r: "Item quod idem Tornabene est fortis rubustus et eis fortior et quolibet eorum."

¹⁹ For examples from 1237 and 1249, respectively, see ASB, Accusationes 1a, reg. 6, loose fragment; reg. 11, 1r.

²⁰ For examples of men who escaped the *familia*'s custody, see ASB, Corone 5, 1293II (48 fols.), 9v; Corone 18, 1310II (96 fols.), 45v, 47r; ASO, Podestà 2, reg. 3, 8v; reg. 8, 31r, 57r; reg. 9, 36v.

Beyond the stated rationale, archival evidence shows that the podestà's knights led their *berrovarii* on outlaw-hunting expeditions in the *contado* with some regularity. Records of payment from the second half of 1302 show that the podestà compensated heralds and criers for accompanying his officers on such expeditions. The podestà's knight led such expeditions on multiple occasions, and the judge of the criminal court even led one to Castel de' Britti.²¹ In January 1300, Bologna's podestà ordered his knight Guido to raze the properties of the Counts of Panico, a family of feudal lords in the Appenines, since they had recently murdered one of the commune's notaries.²² And in 1296, the podestà's knight led his *berrovarii* and some *cavalcatores* on an expedition to capture the outlaw Ghilino da Tignano.²³ Likewise, Siena's statutes required the podestà to send an outlaw-hunting expedition into the *contado* at least once a month, and Peter Raymond Pazzaglini has documented a report, in the form of a letter from one of the podestà's knights, about one such failed expedition in September 1279. In August 1285, Siena's council appropriated 300 lire for the podestà to spend on capturing outlaws, robbers, and men of ill repute, in part to defray the costs of such expeditions.²⁴ Furthermore, by 1279 Perugia had established a special force to capture outlaws in the *contado*, much like Bologna did in 1287. On four different occasions between December 1303 and February 1304, *familiars* of Perugia's capitano and podestà delivered captured outlaws under bans of 100-125 lire to the court.²⁵ Together, such records convey the impression that communal officials committed significant time and resources to capturing wanted men.

The case of Bartolomeo of Castel del Vescovo, captured by Bologna in April 1315, leaves little doubt that the pursuit of outlaws was a high priority for communal authorities. Bartolomeo had been banned in late 1306 for assault, robbery, and "other excesses." Now that he was finally in custody, the judge questioned him closely about his whereabouts during those eight and a half years. Bartolomeo revealed that he had lived in the same home in Castel del Vescovo, a hilltop fortress owned by the bishops of Bologna (today Sasso Marconi), for roughly eighteen years, and had been living there when he was placed under ban. He stayed there for another year after his ban and then returned to his home village of *terra Battiticcio*, living in a house behind his father's for three years. Bartolomeo then moved in with his father, who died about three years prior to his capture, and remained there until the podestà's knight and *familia* captured him in his home. Reading between the lines, Bartolomeo may have avoided capture after his initial ban by living on episcopal property, formally outside the commune's jurisdiction. The ecclesiastical authorities either did not know or did not wish to hand him over to the commune. Furthermore, Bologna's authorities seem not to have known his place of origin—the trial record lists him as being from Castel del Vescovo rather than *terra Battiticcio*—so they could not look for him there. Yet somehow, more than eight years after banning him, the Bolognese commune received intelligence on his location—or at least the presence of some outlaw(s) in *terra*

²¹ ASB, Corone 13, 1302II (152 fols.), 81v, 90v, 92r-v, 95v, 97r. The judge's expedition to Castel de' Britti is on 92v.

²² ASB, Corone 11, 1301I, 8r.

²³ ASB, Corone 8, 1296I (42 fols.), 23r.

²⁴ Pazzaglini, *The Criminal Ban*, 55, 172-73, 176-77. The podestà may have used some of these funds to pay bounties and bribe informants, but Pazzaglini also documented payments to communal officials, such as *nuntii*, who participated in these expeditions.

²⁵ ASP, Capitano 31, reg. 5, 6r-9r.

Battiticcio—and sent a raiding party to capture him.²⁶ His case is a testament to the effectiveness of the commune's recordkeeping, in particular the criminal court's. There were at least fourteen different podestà between the time Bartolomeo was banned and the time he was captured, yet the court never lost track of his case and proved eager to prosecute him when it had the opportunity.

The communes' preoccupation with apprehending criminals also animated patrols for illegal weapons, gamblers, and even curfew breakers. Military expeditions to capture outlaws may seem far removed from patrols for illegal weapons, but in fact they were two sides of the same coin. A 1295 report from Filippino Confalonieri, then "Captain of the Mountains" for Bologna, vividly illustrates how the two phenomena were interrelated in practice. His report survives as a transcription of a letter presented by two of his men—along with several captives and confiscated arms—to the podestà's court on 1 March of that year. Therein, Filippino related what happened when he and his men rode to the market at Savigno the previous Sunday (27 February) to search for illegal weapons and outlaws:

When I went into the market, I saw very many men coming to the market from the hills of the mountains, who were abandoning their weapons and fleeing because of them. My comrades all scaled the hills, pursuing them manfully every which way. Of these fugitives they captured Alberto Mellotis of Prunarolo and Pighino di Ugolino of Medelana, who are said to be outlaws—Alberto with a lance and knife and Pighino, who had abandoned his dagger and knife in the woods, with an iron helmet, shield, and iron gorget. We would have captured a much greater number of those fleeing if the paths had been straight, but they escaped completely because of the severe rises and falls of the mountains. I have sent the arms found in the woods and mountains by me and my comrades through this carrier. We might have had many more of these arms if not for the fact that my comrades and I had a greater desire to pursue and capture men. I, with my armed comrades, pursued them through the woods and mountains for so long that people had left the market and it was almost evening.²⁷

Filippino likely embellished some details, but his envoys presented an impressive haul of contraband that included six swords, five knives, six lances, four iron helmets, and six shields—27 items in total—which the court consigned for resale.²⁸ Similar evidence suggests this was not an isolated incident. Not long after Filippino raided the market at

²⁶ ASB, Corone 21, 1315I (102 fols.), 100v–101r. The interrogation makes clear that Bartolomeo was captured as an outlaw (*tamquam banitus*), rather than arrested for some other offense and discovered to be under ban.

²⁷ ASB, Corone 7, 1295I (30 fols.), 18v–19v: "Et cum ivissem in dictum merchatum, vidi quamplures venientes ad merchatum a colibus montanearum qui prohibebant arma et fugebant pro armis. Omnes mei socii colles montanarum ascenderunt, undique eos viriliter prosequendo, ex quibus ceperunt Albertum Mellotis de Promurolo et Piginum Ugolini de Medellana, qui dicuntur esse baniti, videlicet dictum Albertum cum lanzea et cultello, et dictum Piginum cum cervellera et tevlatio et colari ferreo, qui prohicerat spontonem et cutellum in nemore. Et ex ipsis fugentibus in quantitate maxima cepissemus si vie plane fuissent, qui fugendo penitus evaserunt propter mallos excessus et decessus montanarum. Et arma per me ac dictos socios inventa per nemus et montaneas vobis per latorem presentum destinavi. Et quamplura dictorum armorum habuissemus, nissi quod mei et sociorum meorum maior voluntas aderat in hominibus persequendis et capiendis. Tantum eos persecutus fui cum dictis armatis sociis per nemus et montaneas quod gentes de merchato recesserant et aderat [sic] quaxi erat sero."

²⁸ ASB, Corone 7, 1295I (135 fols.), 20r.

Savigno above, his men made another arrest for weapon possession at a market at Monteveglio, and in February 1296 the podestà's officers made arrests at another country market, where they went "in order to find men carrying weapons and capture outlaws of the commune."²⁹ Again, Bologna's police forces were not the only ones who targeted such markets on patrol. The 1277 case of an escaped detainee from Perugia noted that the capitano's notary had arrested him at a country market.³⁰ As seen in the previous chapter, the practice of policing in the *contado* bore a strong resemblance to predatory lordship; the primary difference was that the commune's mercenaries had written law on their side. But it is important to remember that the commune's lawmakers hired these mercenaries precisely in order to extend the writ of their statutes by force.

Indeed, the *familia* brought the same aggressive approach to law enforcement into the city, pursuing armed men, curfew breakers, and gamblers with enthusiasm. The Crowns and Arms registers describe *berrovarii* chasing after fleeing dice players with some regularity.³¹ As noted in the last chapter, many arms suspects also tried to flee the *familia* rather than submit to a search, since the statutes made the gambit worthwhile for guilty parties. Those who did flee, however, could expect a foot race. For example, in 1294 two *berrovarii* reportedly chased Giacomo of Pieve di Cento from near the church of Santa Maria Nuova to "outside the city, *borghi* and suburbs of Bologna as far as beyond the Reno" before they "finally" caught him, still carrying his weapons.³² The *berrovarii* also chased arms-bearing suspects into buildings. In three separate instances in 1308, the *familia* reportedly chased individuals into houses and found them hiding, one of them behind a bed with his knife still at his feet.³³ Once again, evidence from other communes mirrors that from Bologna. A 1306 conviction from Siena describes in detail how the *familia* pursued an arms suspect into his shop near the main piazza, where he locked himself in and refused to open the door for the podestà's men.³⁴

The *familia* even chased curfew breakers with zeal. One evening in Bologna in 1294, the *familia* reportedly pursued a certain Gerardo over a long distance after they found him without a light. Gerardo confessed as much, stating that "he did not want to fall under the penalty of the commune of Bologna."³⁵ In a 1313 curfew case, a defense witness testified that his two neighbors, Bonincontro and Tommasino, had just exited Bonincontro's house after dinner when the *familia* "came running toward" them. The two men quickly went inside. The defense witness then heard the *familia* at Bonincontro's door saying, "Open up! Where are those guys who just fled into this house?" The defendants complied and opened

²⁹ ASB, Corone 8, 1296I (42 fols.), 1r: "Per dominum Martinum militem domini potestatis et eius familiam, qui iverunt per comitatum Bononie causa inveniendi portantes arma et causa capiendi bannitos comunis Bononie." See also 15v-16r, 18r-19v. ASB, Corone 7, 1295I (30 fols.), 23r.

³⁰ ASP, Capitano 4, reg. 6, 42r.

³¹ ASB, Corone 1, 1286II, 8v, 44v; 1287I (34 fols.), 23v-24r; Corone 16, 1308I (45 fols.), 1bis r-v, 12r.

³² ASB, Corone 6, 1294I (118 fols.), 41r-v: "Et qui Jacobus similiter affugit ante ipsos baroarios extra civitatem et burgos et suburbia Bononie usque ultra Renum, et tandem predicti baroarii et allia familia domini potestatis eum ceperunt cum dictis armis." Giacomo had to pay a 30-lire fine for his sword, knife, and two pieces of armor. For a long chase through the Porta Saragozza, see Corone 28, 1320II (100 fols.), 71r-v.

³³ ASB, Corone 16, 1308I (64 fols.), 20r, 24v, 30r. For similar cases, see Corone 8, 1297I (46 fols.), 14r-14v; 28, 1320II (100 fols.), 27v.

³⁴ ASS, Malefizi 11, 89v. For another sentence where the suspect fled into his home, see 118r.

³⁵ ASB, Corone 6, 1294I (40 fols.), 7v: "Qui confessus fuit quod affugit coram dicte familie quia nolebat cadere in penam comunis Bononie."

the door, only to be arrested by the *familia*. Two other witnesses corroborated this story.³⁶ Although the defendants in this case seem to have been guilty of violating curfew, it is striking that the *familia* would give chase and make them present themselves for arrest, rather than simply allowing these town residents to comply with the law by going inside. In sum, the evidence suggests that, when Bologna's lawmakers enjoined the *berrovarii* to capture criminals, they meant all violators of statute, not merely outlaws and felons. They instituted third-party policing to enhance the coercive capacity of their courts, whether they were trying to exact justice from an infamous highway robber or an ordinary curfew breaker.

"To [...] Search for Men Bearing Prohibited Arms"

Another key reason Bologna's lawmakers gave for employing *berrovarii* was to "search for men bearing prohibited arms." The verb they chose to describe this duty of the *berrovarii*, *inquirere*, indicates the close link between the growth of policing and the growth of inquisition in the thirteenth century. The rise of inquisition was once a staple narrative of medieval historiography, but it has recently fallen out of favor as scholars have deconstructed the assumed dichotomy between "strong" public justice (embodied by inquisitorial procedure) and "weak" private justice (embodied by accusatorial procedure).³⁷ On the whole, this deconstruction has been a necessary and helpful corrective to historical understanding, but it has not reckoned with the police activity of the foreign magistrates' *familie*, which the sources present unequivocally as a form of inquisition. Besides the 1260 ordinance above, the earliest mentions of the *familia*'s patrols (from 1256) use the verb *inquirere* to describe their activity.³⁸ A patrol record from 1289 speaks of the *familia* "searching and conducting investigation" for gamblers and other lawbreakers.³⁹ And when lawmakers doubled the size of the police force in 1295, it was so the podestà could "more diligently search for—and have searched—men bearing arms."⁴⁰ Indeed, the judicial registers abound with "searching" verbs to describe the *familia*'s patrol activity. *Rimari*, *investigare*, *scrutari*, *perscrutari*, *cercare*, and *tentare* are all used in Bologna and other communes alike.⁴¹ The same language applied to the patrols of the dirt notary and the sumptuary inspections of the crowns notary.⁴² In effect, the *familia*'s patrols

³⁶ ASB, Corone 19, 1313I (67 fols.), 14r–15v: "Audivit dictum Bonincontrum esse extra cum dicto Thomaxino quando cenati fuerunt. Et tunc eis extra domum existentibus, familia venit currendo versus domus istius Bonincontri. Et tunc [...] audivit familiam domini potestatis ad hostium domus dicti Bonincontri dicentem, 'Aperiatis nobis. Ubi sunt isti qui hic aufugerunt in domum predictam?'"

³⁷ Much of the literature on negotiated justice cited in the Introduction and Chapter 5 is relevant, but Massimo Vallerani's work is perhaps most salient. For a classical narrative, see Pertile, *Storia del diritto italiano*.

³⁸ ASB, Accusationes 2, reg. 8, 26r. See also 40v, 41r.

³⁹ ASB, Corone 2, 1289II (58 fols.), 2v: "Inquirendo et inquisitionem faciendo pro ludentibus ad ludum tasillorum et alia facientibus contra formam statutorum comunis Bononie."

⁴⁰ *Statuti 1288*, 1:581: "Item ad hoc ut potestas Bononie melius possit per civitatem Bononie, burgos, et suburbia vel alibi ubi extiterit oportuno persequi mallefactores et diligencius inquirere et inquiri facere de portantibus arma."

⁴¹ ASB, Corone 16, 1308I (45 fols.), 17r: "Perscrutare." ASB, Corone 5, 1293II (48 fols.), 6v: "Cercare." ASB, Corone 16, 1308I (64 fols.), 30r: "Tentare." A 1303 patrol order from the podestà to his judges and knights uses *rimari*, *investigare*, and *scrutari* synonymously with *inquirere*; see ASB, Corone 13, 1303I (44 fols.), 1r–v. For examples from other communes see ASS, Malefizi 11, 137v; ASP, Capitano 2, reg. 1, 46v; ASO, Podestà 1, reg. 6, 43v.

⁴² ASB, Fango 1, 1285 (54 fols.), 11r; Corone 12, 1301II, 1r.

were roving inquisitions. The podestà's knight or judge, supported by a notary, played the role of inquisitor in the street, weighing evidence and interrogating suspects to determine if they should be put on trial.

Implicit in all this “searching” language was a desire for more perfect knowledge of crimes committed in the commune’s jurisdiction. In principle, the *familia* searched for everyone and everything that the commune banned. At the start of 1303, for example, the podestà ordered his retinue to search for illegal weapons, gamblers, pimps, prostitutes, and everything else that statute required them to police.⁴³ A register from the first semester of 1296 speaks of the *familia* “searching for things forbidden by the commune” and “investigating for gamblers, weapons, and other forbidden things.”⁴⁴ In another iteration from 1320, they were to search for “each and every person” bearing illicit arms, playing dice, breaking curfew, or “doing other things” contrary to statute.⁴⁵ Indeed, the *familia*’s patrols could focus on “prohibited persons” (*persone prohibite*) as much as prohibited things or behaviors, an important point that will be the theme of the next chapter.⁴⁶ Again, the language was much the same in other communes. In Orvieto, the *familia* searched “for those doing anything whatsoever against the form of the statutes.”⁴⁷

The communes’ lawmakers and magistrates justified this searching—and many other aspects of criminal law besides—in terms of the need to punish crime.⁴⁸ The maxim “It is in the interest of the republic that no crimes remain unpunished” (*rei publicae interest, ne crimina remaneant impunita*, or *ne crimina* for short) is a commonplace in the judicial sources. Borrowed from a 1203 decretal of Innocent III, this dictum expressed the age-old theory that exemplary punishment deterred crime, while a failure to punish encouraged criminal audacity. Nonetheless, it soon became, in Trevor Dean’s words, “the great mobilising rationale” of far-reaching changes in criminal law in thirteenth-century Europe.⁴⁹ Canon and civil lawyers adopted *ne crimina* to justify removing procedural impediments to the prosecution of crime. Over the course of the thirteenth century, jurists used it to erode defendants’ and witnesses’ rights, expand inquisitorial procedure and the use of torture, and allow circumstantial evidence, among other procedural innovations.⁵⁰

⁴³ ASB, Corone 13, 1303I (44 fols.), 1r–v. See also Corone 5, 1293I (66 fols.), 55r; 1293II (48 fols.), 44r; Corone 10, 1299 (8 fols.), 1r; Corone 11, 1300 (82 fols.), 1v.

⁴⁴ ASB, Corone 8, 1296I (80 fols.), 1r: “Circando de vetita comunis bononie.” ASB, Corone 8, 1296I (80 fols.), 6r: “Inquirendo de lusoribus et armis et aliis vetitis”; 6r. See also 53v, 59r. For the dirt notary’s searching for “prohibited things” (*de vetitis*), see ASB, Fango 7, 1296I (98 fols.), 65r. Note: folio 65 is marked “xvii.”

⁴⁵ ASB, Corone 28, 1320II (56 fols.), 2r: “De omnibus et singulis portantibus arma, ludentibus ad ludum taxillorum sive ad alium ludum, vel euntibus post tertium sonum campane que pulsatur de sero pro guardia civitatis Bononie, vel alia facientibus contra formam statutorum comunis et populi Bononie.” For similar language, see ASB, Corone 6, 1294I (118 fols.), 44r.

⁴⁶ ASB, Corone 13, 1302II (102 fols.), 1r: “Aliis personis prohybitis.” See also ASB, Corone 11, 1300 (82 fols.), 1v; Corone 13, 1303I (44 fols.), 1r–v.

⁴⁷ ASO, Podestà 2, reg. 10, 12r: “Pro portantibus arma et quocumque modo facientibus contra formam statutorum.” See also 12v.

⁴⁸ *Statuti 1288*, 1:578–79; ASB, Provvigioni 4, reg. 213, 1v.

⁴⁹ Dean, *Crime and Justice*, 87.

⁵⁰ Fraher, “IV Lateran’s Revolution”; “Preventing Crime”; “The Theoretical Justification.” For the origins of the maxim before Innocent III, see Jerouschek, “Ne crimina”; Landau, “Ne crimina maneat impunita.” Thank you to Anders Winroth for this last reference.

Thus, *ne crimina* epitomized and helped popularize a philosophy of hegemonic justice that favored retribution over negotiation.⁵¹

As the next chapter will further demonstrate, the growth of police power was part of this broader quest for deterrence through punishment. When Bologna increased the size of the police force in July 1311, it was in part “so that crimes might cease.”⁵² The language of the Crowns and Arms registers betrays a similar concern with unpunished crime. For example, in 1293 the podestà ordered his *familia* to scour the city for all sorts of criminals “so that they might capture, round up, and bring before his court all those who ought to be punished by the owed penalty.”⁵³ There is an implicit concern here that as-yet-undiscovered criminals were not paying the public debt they owed for their crimes. Similarly, the titles of several registers declare that records of “each and every man and person found and to be found” in violation of the curfew and weapons laws are contained in their pages.⁵⁴ Again, the court assumed it was unaware of all the crimes committed in its jurisdiction. This would be unremarkable in its own right, but the governing elites’ attempt to remedy this through policing drove, in part, a shift from reactive to proactive law enforcement in the thirteenth century.

Indeed, the *familia*’s basic function, besides apprehending criminals, was to detect crimes that would otherwise go unpunished. As discussed below, the *familia* differed fundamentally from the night watch and other community-based institutions in the broader scope of their patrol activity. Lawmakers asked them “to keep watch [...] day and night” and search for all manner of prohibited persons and things, which meant they could show up anywhere at any time and arrest anyone who appeared to be breaking the law. The *familia* also pursued evidence aggressively when they made discoveries in order to secure convictions. In October 1295, for instance, the *familia* was patrolling outside the city near San Giovanni in Persiceto when they saw someone toss a knife into a nearby stream. A *famulus* of the podestà went into the water to retrieve it, which later induced the suspect to confess in court that he had thrown his knife in the water “out of fear” of the *familia*.⁵⁵

The *familia*’s investigative function is also abundantly clear in the raids they executed on gambling houses, like the one from 1286 described at the start of this book. The *familia* probably executed planned raids more than the trial records let on. For example, in a March 1300 case, two *berrovarii* and a *domicellus* related how they and other *familiares* entered a house “violently” (*violenter*) and arrested some 13 individuals, confiscating their gambling paraphernalia as well.⁵⁶ It is hard to imagine that the raid would have been so successful without some degree of planning, but the trial record makes no indication of it. Yet other cases suggest the *familia* undertook raids with minimal planning after being tipped off on patrol. In an example from 1308, two *berrovarii* reported having to send for axes to open the door of a house “in which it was being said publicly that there were gamblers and they were playing an illegal game.” By the time they broke in,

⁵¹ See especially Sbriccoli: “Vidi communiter observari”; “Legislation”; “Tormentum.”

⁵² ASB, Provvisioni 4, reg. 213, 1v, 23 July 1311: “Ut malleficia cessent.”

⁵³ ASB, Corone 5, 1293I (66 fols.), 55r: “Ut eos omnes capiant et conquirant et coram eius curia conducant pena debita puniendos.”

⁵⁴ ASB, Corone 4, 1292II (11 fols.), 1r: “De omnibus et singulis hominibus et personis inventis et inveniendis.” For near identical language, see Corone 5, 1293I (66 fols.), 1r; Corone 6, 1294I (118 fols.), 1r.

⁵⁵ ASB, Corone 7, 1295II (32 fols.), 16v–17r. For a similar case, see ASB, Corone 6, 1294II (58 fols.), 12r.

⁵⁶ ASB, Corone 10, 1299–1300 (41 fols.), 37v–38r.

everyone had escaped through windows and other exits, with the exception of one hapless individual who was still “throwing himself” through a window and then resisted arrest.⁵⁷ All told, these raids attest the *familia* as an investigative body—an extension of the criminal court—that did not simply witness crime by chance but sought to uncover it proactively.

The crowns notaries’ written records were also crucial as an investigative tool, insofar as they could be used to legally coerce suspected offenders.⁵⁸ Like police today, the *familia* could use anything a suspect said at the moment of his detention against him later in court. For example, in August 1291, when Salvuccio Beccadelli denied before the judge that he had been caught gambling, the judge asked him if he had not confessed his guilt to the knight at the place of the *inventio*. Salvuccio admitted that he had and proceeded to give the names of two other men present at the dice game. Similarly, in a case from July 1320, the notary made a special note: before the defendant denied knowing whom the knife belonged to, he had confessed to the notary himself (presumably at the scene of the discovery) that the knife was his.⁵⁹ The coercive power of written records is also well-illustrated by a case from September 1289, in which a captain of the night watch accused Biagio Magnavacca of physically and verbally assaulting him when he tried to arrest him for breaking curfew. At his arraignment, Biagio denied the charge in its entirety. But a week later, when the court presented Biagio with a written copy of the witness testimony against him, Biagio changed his mind and confessed that everything in the inquisition was true.⁶⁰ Indeed, it was a common tactic of the criminal court to hear witness testimony in secret and then deliver it to the defendant.⁶¹ By using the written word coercively, these trials followed the same procedural logic as judicial torture, which likewise sought to use the accused’s own words against him (see Chapter 4). Thus, the *familia* not only served as the authorities’ “eyes on the street” but also extended the reach of the judicial apparatus itself, including its powers of investigation and prosecution. The governing elite gained both better knowledge of crimes and more convictions according to statute.

“Trustworthy Foreign Men”

Many of the same community-based institutions used to apprehend criminals could also be used to detect crime. Lawmakers could employ watchmen and guards elected from among the city residents to observe and report crime directly; question local officials about goings-on in their parishes and villages; and employ secret informants to denounce specific crimes. All of these institutions remained alive and well into the fourteenth century, long after the advent of third-party policing. Furthermore, all of them relied on (or at least were subject to the influence of) locals’ personal knowledge of their communities and relationships of amity and enmity with their neighbors. In this context, it is significant that lawmakers stipulated the *berrovarii* had to be “good, lawful, and trustworthy foreign men,” like the podestà himself. However “normal” it was in communal society for law enforcement to depend on local relationships, elites evidently wanted enforcers who would not know their subjects and therefore prosecute them impartially. In this sense, the growth

⁵⁷ ASB, Corone 16, 1308I (64 fols.), 10v–11r: “In qua domo publice dicebatur quod erant lusores et ludebant ad ludum prohibitum.”

⁵⁸ The coercive “technology of documentation” is a major theme in Given, *Inquisition*, 25–51.

⁵⁹ ASB, Corone 3, 1291II (56 fols.), 37r; Corone 28, 1320II (100 fols.), 23v.

⁶⁰ ASB, Corone 2, 1289II (58 fols.), 24v–25r, 27r–v.

⁶¹ For another example, see ASB, Corone 2, 1289II (74 fols.), 50r.

of government policing was a logical extension of the podestariat. Put another way, if the Italian city-republics were “face-to-face” communities where the leading citizens all knew each other, they employed the *familia* to circumvent that reality.⁶²

Again, third-party policing did not supplant or replace community-based institutions, and the authorities continued to rely on locals’ knowledge for law enforcement. The institution of the night watch, for example, explicitly hinged on the watchmen’s personal knowledge of their neighborhoods. The 1250 statute enjoined watchmen not to denounce anyone they found at night whom they knew and believed to be “without suspicion or malice.”⁶³ The 1288 statute elaborated on this principle, enjoining them to capture if they could anyone whom they did not know, and denounce the next morning those whom they knew but thought suspect.⁶⁴ In other words, watchmen were supposed to use their intimate knowledge of their neighborhoods and neighbors to keep them safe. Similarly, communes leaned on parish officials, called *ministrali* in Bologna, to denounce crimes in their neighborhoods. The statutes required *ministrali* to denounce local crime, and also required the podestà’s notaries to question *ministrali* regularly, usually on a monthly basis, in general inquests.⁶⁵ In principle, Bologna’s *ministrali* constituted a sizable force of publicly designated accusers, numbering close to 300 by the start of the fourteenth century.⁶⁶ Records of these general inquests suggest the podestà’s notaries expended considerable energy conducting them (see below).

The communes also made use of secret informants in a variety of contexts. Carol Lansing has shown how Orvieto used secret informants to some effect in prosecuting violations of the funeral and mourning laws; Orvieto even designated “secret guards” (*custodes celati* or *secreti*) to denounce stray animals.⁶⁷ Alternatively, communes might offer rewards for denunciations. Bologna, for example, offered the denouncer half the sum of the resulting conviction in cases of divination, throwing stones at houses at night, and not using the city gates to exit the city.⁶⁸ Such denunciations could pay off handsomely. The individual who denounced the gambling house raided at the start of this book came back to the podestà two months later to collect his reward, which amounted to some 125 lire, or half the sum of ten gambling convictions.⁶⁹ Many communes encouraged denunciations like these by setting up slotted lockboxes that allowed anyone to pass a note to the authorities in secret—and, in Bologna’s case, anonymously.⁷⁰ Lastly, the court could open an

⁶² For Italian cities as “face-to-face” communities, see Muir, “The Idea of Community”; Weissman, “The Importance of Being Ambiguous.” For the sociological theory behind this concept, see Goffman, *Interaction Ritual*.

⁶³ *Statuti 1245*, 3:106–07: “Sine suspicione et malicia.”

⁶⁴ *Statuti 1288*, 1:96.

⁶⁵ For example, *ministrali* had to report armed assaults and homicides within three days; see *Statuti 1288*, 1:175. The earlier statutes (1245–1267), with the exception of the emergency ordinances of 1261 and 1265, do not mention this obligation for *ministrali*, but the sources show them fulfilling it as early as 1254.

⁶⁶ The statutes did not specify the number of *ministrali* to be designated for each parish, but four or five seems to have been standard. The registers from 1301II and 1315II contain the names of 274 and 292 *ministrali*, respectively. See ASB, Corone 12, 1301II, 1v–7r; Corone 22, 1315II (38 fols.), 1bisv–8r.

⁶⁷ Lansing, *Passion and Order*. For *custodes secreti* denouncing stray pigs, see ASO, Podestà 2, reg. 8, 16v.

⁶⁸ *Statuti 1288*, 1:208, 211, 235.

⁶⁹ ASB, Corone 1, 1286II, 12r.

⁷⁰ On anonymous denunciations in Bologna, see Blanshei *Politics and Justice*, 46, 192, 350–51. Florence also allowed anonymous denunciations; see Terry-Fritsch, “Networks of Urban Secrecy”; Rocke, *Forbidden*

investigation on the basis of public rumor (*fama*) alone, obviating the need for any individual to denounce the crime.

However, insofar as all these mechanisms relied on locals' reporting, they were all vulnerable to the same weaknesses, namely that friends would not denounce each other to the authorities and enemies would denounce each other spuriously. Generally speaking, neighbors only denounced each other to the authorities when their dispute could not be resolved by other means or when they were enemies—or both. This was in keeping with the general trend in late medieval societies whereby individuals tended to use public courts to pursue feuds.⁷¹ Accusers did not necessarily expect the court to deliver a definitive verdict in their favor, but found public legal proceedings a useful mechanism to steer the dispute toward a more favorable settlement. Even within this norm, however, the initiation of a public accusation or lawsuit could be cause for enmity in and of itself. Medieval jurists even had a term for this hatred (*odium litis*).⁷² Thus, if enmity did not already define the relationship between two neighbors, a denunciation to the podestà was a reliable way to ensure it would.

Because of this reality, general inquests were of limited value in generating denunciations. Andrea Zorzi has found that Florence's parish-based system worked as intended when it came to the denunciation of violent crime, but in Bologna this did not hold for other types of crime.⁷³ In the vast majority of inquests, *ministrales* swore to the notary that they knew nothing about the contents of the inquisition. For example, in the first half of 1320, the notary conducted a 23-article general inquest every month, and every *ministralis* professed to know nothing.⁷⁴ In Perugia, too, records from 1279 show that one of the capitano's judges held a wide-ranging general inquest each month whereby he sought to identify sodomites, heretics, Jews, "sons who beat their father and mother," taverners and innkeepers who held dice games, anyone who aided outlaws of the commune, blasphemers, and violators of commercial and public health regulations. Every month, representatives from Perugia's parishes claimed not to know anyone fitting those descriptions.⁷⁵ As Carol Lansing has pointed out, the only delinquents whom *ministrales* seemed willing to denounce with any regularity were low-status individuals such as prostitutes and their procurers, whose presence "dishonored" their neighborhoods and

Friendships, 49, 54–55. In contrast, Venice's Maggior Consiglio prescribed in 1275 that all anonymous denunciations would be burned without exception, though this policy was softened starting in the late fourteenth century; see Preto, *I servizi segreti*, 168–69.

⁷¹ Zorzi calls this the "publicization" of vendetta in "The Judicial System," 53. For a broader historiographical discussion, see Smail, *The Consumption of Justice*, 9–13. Vallerani emphasizes the economic (rather than emotional) bases of conflicts pursued through *accusatio* procedure in "Criminal Court Procedure," 38–39.

⁷² Vallerani, "Criminal Court Procedure," 38.

⁷³ Zorzi found that Florence's *cappellani* accounted for a large percentage of assault and murder denunciations before the Black Death; see "Contrôle social," 1171–1174. For a local brawl denounced by Bologna's *ministrale* in June 1254, see ASB, Inquisitiones 1, reg. 4, 2r.

⁷⁴ ASB, Corone 27, 1320I (48 fols.), 25r–33v; 1320I (46 fols.), 26r–30v, 32r–35v. Monthly inquisitions into gambling from August to December 1294 likewise produced no denunciations; see ASB, Corone 6, 1294II (46 fols.), 9r, 11v, 14r, 16v, 19r.

⁷⁵ ASP, Capitano 5a, reg. 3, 9r, 17r, 25r, 73r, 124r, 145r–v, 153r, 177r–v, 193r–v, 233r–v, 249r–v, 305r–v: "Illos filios qui verberant patrem et matrem."

whose enmity would cost them little.⁷⁶ Although they may not capture denunciations of assaults and murders, the records of general inquisitions suggest a code of silence among neighbors.⁷⁷ The podestà was known to prosecute *ministrales* found to be negligent in their duties (see above), but this threat was not enough to overrule the logic of enmity and amity that underpinned neighborly relations. General inquests functioned more as a ritual reminder of the commune's statutes and the ideal of urban order those statutes codified, rather than an effective mechanism for uncovering crime.

Conversely, the potential for spurious denunciations is apparent in cases where watchmen seem to have abused their office in pursuit of personal or neighborhood agendas. For example, in July 1285 a captain of the night watch delivered a certain Bongiovanni into official custody, denouncing him as a thief, infamous person, son of a Lambertazzi, and "bad man" who had boasted of killing many men. Despite this, the judge allowed Bongiovanni to produce witnesses in his defense. When the judge asked one witness "if the man who detained [Bongiovanni] was his friend," he responded, "On the contrary, he is an enemy as much as one can be, and wishes him the greatest malice."⁷⁸ When the judge asked another witness if Bongiovanni had any enemies, he reported that Bongiovanni had come to blows with the man who detained him about three months earlier and been threatened by him many times.⁷⁹ Whatever the reason for their brawl, such an incident was virtually guaranteed to engender a relationship of enmity in communal society. Other watchmen could be subtler, denouncing their personal enemies only for violating curfew. In 1264, two watchmen, Mercadino and Pietrobello, denounced one Brugnolo for carrying a knife and javelin (*spitum*) around daybreak. According to Brugnolo's travel companion, Baruffaldo, Mercadino had greeted them with a mocking reference to Brugnolo's political support for Venedico, *anzianus* of the *popolo*, whom Mercadino hated. Mercadino therefore confiscated their weapons out of hatred "and for no other reason."⁸⁰ It is impossible to know the truth of the matter in such cases, but they illustrate the inherent flaw in asking community members to police each other. The watchmen could use their deep personal knowledge of their neighbors to identify suspicious individuals, but they could use that same personal knowledge to abuse their office. Although judges and lawmakers had methods to guard against dubious information, ultimately any trial that hinged on information from local residents—whether it came from *fama*, a secret denunciation, or a local official—could be undermined by personal enmities.

⁷⁶ Lansing, *Passion and Order*, 36. For prostitutes "dishonoring" (*dehonestare*) the parish of Sant'Arcangelo, see ASB, Accusationes 2, reg. 8, 16v. For other denunciations of prostitutes and their procurers, see ASB, Accusationes 2, reg. 8, 16v; Inquisitiones 1, reg. 16, 1r–4r; Inquisitiones 18, reg. 1, 13r; Corone 4, 1292II (11 fols.), 2r; Corone 13, 1302II, 86r–v; Corone 17, 1309II, 54v; Corone 18, 1310II (22 fols.), 4r–5r, 7v, 9v–10r, 17r; 1310II (96 fols.), 69v–70r; Corone 26, 1319II (42 fols.), 5r–v, 8r–v.

⁷⁷ For exceptions, see ASB, Inquisitiones 18, reg. 1, 13r–v; Corone 26, 1319II (42 fols.), 8r–v; Corone 12, 1301II, 8r; Corone 28, 1320II (22 fols.), 5r.

⁷⁸ ASB, Corone 1, 1285II (70 fols.), 10r: "Interrogatus si ille qui detinuit est suus amicus, respondit quod non immo inimicus quantum posset et vult sibi maximam maliciam."

⁷⁹ ASB, Corone 1, 1285II (70 fols.), 10v. For a similar case, see Corone 6, 1294II (58 fols.), 26v; 1294II (42 fols.), 24v–25r.

⁸⁰ ASB, Corone 1, 1264, 5v: "Et quando idem Mercadinus invenit eos dixit versus Brugnolum, 'Es tu Brugnolus? Tu mihi carus bene amore talis hominis de mondo.' Et hoc dixit causa quia odit Veneticum ancianum populi de cuius parte est Brugnolus. Et odio fecit et abstulit ei arma et non alia de causa."

This was all the more true when it came to statutes that criminalized common behaviors and whose violation left no obvious victim but the commune itself. Locals had little incentive to denounce their neighbors for breaking these rules unless they were already enemies. Indeed, the earliest evidence for the enforcement of arms-bearing and gambling laws—a set of criminal bans resulting from private accusations in the 1230s—suggests that, in the absence of third-party enforcers, accusations only served to further personal vendettas. In some of these cases, the purported victims of violent crimes appear to have tacked on arms-bearing or gambling to more serious charges. For example, in 1234, one Ubaldino accused one Damiano of attempting to murder him with a sword, knife, and armor at another man's request. He added that Damiano had carried the sword and knife illegally 100 times since the new year.⁸¹ Other examples suggest political motives. In April 1235, Matteo of Orvieto accused a member of the Lambertazzi house of gambling at least eight times, blaspheming God and Mary at least 20 times, and carrying a knife through the city at least six times since the previous Christmas. This accusation came just months after Alberto Lambertazzi caused a tumult in the city by killing the son of a tailor, and just two months before the podestà would place Alberto under perpetual ban for the same murder.⁸² I have found just one example, from June 1235, of an arms-bearing accusation accompanied by no other charge. In that case, the notary Antonio (no surname is given) accused Bonaventura Liazzari, from a family of urban magnates, of carrying a knife through the city ten times since the new year.⁸³ Perhaps Antonio was looking out for the public interest, but the accusation more likely was born of factional conflict. Together these cases suggest that community members tended to denounce each other for arms-bearing and gambling offenses only if they were already personal or political enemies.

The governing elite's decision to have foreign soldiers patrol their streets to enforce these laws strongly suggests they were not happy with this state of affairs, however "normal" it was for relationships of amity and enmity to drive litigation in communal society. Instead of expanding the police capabilities of the night watch or civic militias, they invested police power in a group of armed outsiders who could enforce the law impersonally. The contrast in enforcement is clear in the way the *familia* enforced the curfew law. Instead of denouncing suspicious persons only, like the night watch, *familiaries* were to denounce anyone they found in violation of curfew since they could not know (in theory) who belonged in a given neighborhood and who did not. This is not to say that *familiaries* never acted out of self-interest or abused their office, but in principle at least, they had neutral relationships with the people they policed and were less prone to such abuses. In effect, the same governing elites who pursued their enmities through public courts attempted to curb the excesses of this "culture of hatred" by making criminal justice more impersonal.⁸⁴

Furthermore, by effectively removing the need for local cooperation in criminal prosecutions, the *familia*'s patrols made the criminal court self-sufficient in detecting and

⁸¹ ASB, Accusationes 1a, reg. 4, 36v. Similar examples are on 34r-v, 35r, 40r.

⁸² ASB, Accusationes 1a, 1235, 3r. Alberto's June 1235 sentence is on 6r. For more on the homicide, see Blanshei, "Criminal Law," 8–9; Vanghi, "Il libro di banditi." For an arms-bearing accusation with even more explicit political overtones, see ASB, Accusationes 1a, 1235, 3r.

⁸³ ASB, Accusationes 1a, 1235, 6v. On the Liazzari family as magnates, see Blanshei, *Politics and Justice*, 101, 142.

⁸⁴ For the "culture of hatred," see Maire Vigueur, *Cavaliers et citoyens*, 307–35; Blanshei, "Homicide."

punishing crime. In conveying the *relatio*, the *familia* played the role not only of third-party accuser, but also of eyewitness for the prosecution. Indeed, *familiares* seem to have been quite conscious of their role as official witnesses. In a 1287 gambling *relatio*, for example, one *berrovarius* noted that his partner had found a die on the ground “with him present and seeing as a witness.”⁸⁵ In the first semester of 1296, the dirt notary prefaced a series of *inventiones* by noting he had discovered them “in [the] presence” of two *berrovarii* and one crier. These officers, moreover, “swore, solemnly asserting to tell the truth, and by their oath said they had seen” him, the dirt notary, find the things written below.⁸⁶ As we have seen time and again, the eyewitness testimony of *familiares* carried the weight of proof and was difficult for defendants to overcome. When foreign officials served as accusers, witnesses, and judges all at once, the trial tended to move swiftly toward a guilty verdict. That self-governing elites would cut themselves out of the legal process to such an extent and encourage judges to apply statutory punishments, often at their own expense, is the fundamental paradox in need of explanation.

“The Good State of the Commune”

At this point, it should be clear that the communes’ elites sought to improve their methods for surveying and controlling the populations under their rule. They wanted their courts to be able to detect more crime, physically coerce more outlaws and offenders, and successfully prosecute them according to statute. The question remains why, in the words of Bologna’s lawmakers, elites deemed it “for the advantage and good state of the commune” to subject themselves to such proactive, third-party policing.

By appealing to the “good state” of the commune, Bologna’s lawmakers were situating themselves squarely within the reigning political discourse of the day. Political thinkers across Latin Christendom generally subscribed to the ideal of the common good (*bonum commune* or *utilitas publica*) as the fundamental purpose of government. Although interpretations varied, this classical republican concept was generally understood to entail not only the peace and order of the polity but also the virtue and prosperity of its citizens.⁸⁷ The Italian communes in particular saw a thirteenth-century revival of republican political thought with authors such as Giovanni da Viterbo, Brunetto Latini, and Remigio de’ Girolami penning influential treatises and manuals on the good governance of cities.⁸⁸ Artists also contributed to this discourse by depicting good governance and related themes in public places, often in the chambers of government officials and magistrates. Ambrogio Lorenzetti’s *Allegory of Good and Bad Government* in Siena’s Palazzo Pubblico is the best-known example, but communal regimes across northern Italy commissioned public art for

⁸⁵ ASB, Corone 1, 1287I (34 fols.), 23v–24r: “Se teste presente et vidente.”

⁸⁶ ASB, Fango 7, 1296I (98 fols.), 65r: “Ego Ambroxius de Lavagna notarius [...] una cum Ugheto Cirexia [et] Bertolino de Pellarello baroariis domini potestatis et Martino Gratiani nontio comunis Bononie inveni in eorum presentia infrascriptos habere tenere et facere contra formam statutorum ut infra. Qui Bertolinus [et] Ugetus baroarii et Martinus nontius [...] dixerunt quod viderunt predictum Ambroxium notarium invenisse infrascripta et ipsos infrascriptos habere ut infra scriptum est per predictum.”

⁸⁷ *Il bene comune*; Lecuppre-Desjardin and van Bruaene, eds., *De bono communi*; Kempshall, *The Common Good*.

⁸⁸ Napolitano, “From Royal Court to City Hall”; Mineo, “Cose in comune”; Cox, “Ciceronian Rhetoric”; Artifoni, “Retorica e organizzazione”; Viroli, *From Politics to Reason of State*, 11–70; Skinner, *The Foundations*, 1:3–66.

similar political ends.⁸⁹ There is no space here to discuss these rich topics in depth, but it suffices to say that the good state of the commune was the rhetorical touchstone for the legitimacy of any policy—or indeed any regime—in thirteenth-century Italy.

The *popolo* regimes that rose to power in Bologna, Perugia, and many other communes in the thirteenth century were especially adept at deploying republican ideals to legitimate their policies, as in the 1260 ordinance above, and to vilify their enemies.⁹⁰ Indeed, such regimes typically styled themselves as the defenders of the common good against a violent and rapacious nobility. For example, when Bologna banished Alberto Lambertazzi for the murder of a tailor's son in 1235, the sentence decreed it was "for the public utility of the whole city," since Alberto was a belligerent man (*homo rixosus*) and it was "feared that, through him and his deeds, scandal might arise in the city and the city might have a bad state."⁹¹ Over the ensuing decades, Bologna's *popolo* regime would use republican rhetoric to justify a host of institutional innovations and expedient measures in government. Employing foreign soldiers as a police force was one of many policy decisions that the *popolo* legitimized by appealing to the good of the republic.

The question of why third-party policing emerged in communal Italy hinges at least in part, then, on the relationship between the *popolo's* rhetoric and its policies, which historians have debated for more than a century. One influential school of thought views the *popolo*-magnate conflict through the lens of class struggle, as an archetypal case of a new bourgeoisie rising up to challenge the landed aristocracy.⁹² Another school of thought holds that the *popolo*-magnate conflict was merely the continuation of factional warfare under a new guise. In this view, the *popolo* used republican ideals and institutions to legitimate their governments but ruled through violent domination, much like the traditional nobility.⁹³

These competing interpretations are not mutually exclusive, however, and each gets at important aspects of the historical reality. On the one hand, recent scholarship has made clear that there was indeed a class element to the conflict. For example, in Florence and Bologna, the *popolo's* chief antagonists, called *milites* in the first half of the thirteenth century and magnates in the second half, comprised the same noble families, with only a handful of newcomers over the decades. In other words, *miles* or magnate was not simply a label for a member of the opposing faction; it signified membership in a largely static (and ancient) group of urban aristocrats.⁹⁴ On the other hand, *popolani* could be just as violent as magnates, and their coalitions tended to evolve into oligarchic or signorial regimes

⁸⁹ The literature on Lorenzetti is vast, but an excellent starting point is Boucheron, *The Power of Images*. For public wall murals in other communes see Wartenberg, *Bilder der Rechtsprechung*.

⁹⁰ Mineo, *Popolo e bene comune*; Giansante, *Retorica e politica*.

⁹¹ ASB, Accusationes 1a, 1235, 6r: "Et quia dictus Albertus est homo rixosus, et timetur ne per ipsum et sua facta scandalum in civitate oriretur, et ne civitas malum statum haberet, ideo dominus Guido de Raule Bononie potestas et totum comune pro dictis et pro publica utilitate tocius civitatis posuerunt ipsum Albertum in banno perpetuo civitatis Bononie." For the statute, see *Statuti 1245*, 1:361–62.

⁹² The classic interpretation is Salvemini, *Magnati e popolani*. See also Raveggi et al., eds., *Ghibellini, guelfi e popolo grasso*; Koenig, *Il popolo*; Vallerani, "La città e le sue istituzioni"; Maire Vigueur, "Il problema storiografico"; Najemy, *A History of Florence*.

⁹³ The classic critique of Salvemini is Ottokar, *Il comune di Firenze*. See also Racine, "Le 'popolo'"; Jones, *The Italian City-State*; Heers, *Family Clans*.

⁹⁴ Diacciati, *Popolani e magnati*; Blanshei, *Politics and Justice*; Milani, "Da milites a magnati."

rather like the ones they originally opposed.⁹⁵ Indeed, popular regimes were still fundamentally exclusive, like the regimes of the nobility whose power they co-opted or usurped. In Bologna, for example, membership in a guild or popular militia was the sole determinant of *popolano* status, and therefore of one's political rights. Bologna's *popolo* limited membership in the popular societies on multiple fronts. They recognized the guilds of select trades only, and banned certain individuals and categories of people from membership in the guilds and popular militias. The *popolo* excluded people below them: marginal figures like gamblers, immigrants, and tax-paying peasants in the *contado* (*fumantes*), as well as menial workers like wine-porters. They also excluded people above them: nobles, magnates, knights, and anyone who pledged fealty to such individuals instead of the commune. After a 1274 civil war, exclusion also operated on a horizontal axis, as the victorious Geremei faction of the *popolo* sent their rivals, the Lambertazzi—approximately 4,000 citizens from a city of 50,000—into mass exile. To borrow Giuliano Milani's phrase, Bologna's *popolo* governed "by lists," controlling the political, social, and legal status of citizens and subjects—from magnates to exiles to *fumantes*—by placing their names in specific rolls.⁹⁶ Thus, under popular rule, the social order continued to be defined by elites' ability to exclude rivals and non-elites from political and economic privileges. By extension, the *bonum commune* was hardly common to everyone; it remained the province of a coalition of governing elites.

Yet, even as government under the *popolo* remained firmly grounded in the logic of a limited access order, it is undeniable that these regimes ushered in sweeping institutional changes that can be described as more impersonal in nature. They expanded political participation in civic councils, multiplied public offices, and subjected aristocrats to tax assessments for the first time. They also enacted judicial reforms such as the expanded use of judicial inquisition and harsher criminal penalties—not always enforced, but written into statute nonetheless.⁹⁷ Massimo Giansante has therefore argued that the *popolo*-magnate conflict is best understood as a clash of institutional norms rather than a clash of opposing classes or factions.⁹⁸

Insofar as the *popolo* championed impersonal institutions over the personal exercise of power, this must be explained by the political advantage it afforded them in the context of a limited access order. New written laws and public offices were critical tools in the *popolo*'s basic project of gaining access to and later consolidating power within the governing elite.⁹⁹ Although *popolo* regimes tended to become more exclusive over the decades, the *popolo* coalition originally sought to secure a role in government for commercial and professional elites. In this they were largely successful. In the early to mid-thirteenth century, bankers, merchants, and tradesmen in many communes gained political

⁹⁵ On *popolano* violence, see Zorzi, "Politica e giustizia"; Blanshei, *Politics and Justice*, 399.

⁹⁶ Giansante, "Ancora magnati e popolani"; Blanshei, *Politics and Justice*, 15–41; Milani, "Il governo delle liste."

⁹⁷ Poloni, "Il comune di popolo"; Artifoni, "I governi di 'popolo.'" For the case of Bologna see Blanshei, *Politics and Justice*, 69–133; Smurra, *Città, cittadini e imposta diretta*; Tamba, "Il Consiglio del popolo"; Tamba, "Consigli elettorali"; Bocchi, "Le imposte dirette."

⁹⁸ Giansante, "Ancora magnati e popolani," 556. John Najemy has argued similarly that the republican ideals espoused by the *popolo* represented the values of a new professional class who sought to overcome the traditional logic of faction. See "The Dialogue of Power"; "Brunetto Latini's 'Politica.'"

⁹⁹ On the instrumental use of law to achieve political hegemony, see Gamberini, *The Clash of Legitimacies*, 68–83.

representation in governments formerly dominated by a handful of noble families. In the context of this project, third-party policing allowed the *popolo* to exercise power in a way that mitigated the risk of violent conflict. By entrusting law enforcement and, to a lesser extent, the right to violence to public organizations such as the podestà's *familia*, the *popolo* coalition could indirectly coerce the lords and "great houses" of the city, who might otherwise hold a significant military advantage over them in a direct conflict. They could also deter members of their own party from resorting to violent self-help of the sort they typically blamed on magnates, encouraging them instead to work through public collectives (see Chapter 5).

In the same vein, *popolo* regimes used written laws to level the playing field against the urban aristocracy. Granted, some of the *popolo*'s new rules were far from impersonal, like the anti-magnate legislation of Bologna (1282) and Florence (1293). These laws made legal inferiors of certain families to repress an aristocratic way of life marked above all by recourse to violent self-help, which the *popolo* deemed antithetical to the commune. In effect, anti-magnate legislation sought to command respect for civic institutions through legal rather than military coercion. Yet many of the rules that the *familia* enforced, such as who could carry weapons in the city and under what circumstances, applied more or less equally to everyone—especially in the middle decades of the thirteenth century, before legal immunities became widespread (see Chapters 2 and 6). Statutes promoting peace and order, public health, commercial standards, and the free circulation of goods undoubtedly benefited the bankers, merchants, and artisans who comprised the *popolo*'s base, but they also constituted a credible effort to create genuine public goods. Thus, the *popolo* used written rules, backed by a credible threat of enforcement by neutral public officials, not just to repress political opponents but also to promote the security and prosperity of their cities and thereby legitimate their rule. The cost of this was that the *popolo*'s elites too were sometimes subjected to punishment and more mundane forms of coercion at the hands of neutral public officials, but this was evidently a tolerable price to pay, especially as those same elites developed strategies to shield themselves from it.

Popolo regimes were not the only ones to calculate that more impersonal institutions offered them some political advantage. Urban statutes and enforcement mechanisms developed in a broadly similar fashion across northern Italy, even in towns that never experienced popular government. By the 1280s, signorial rule had become the norm across the towns of the Po Valley. In Ferrara, for example, the Salinguerra and Estensi families dominated the podestariat from 1195, and from 1240 the Estensi enjoyed de facto lordship over the city, which would become de jure before the end of the century. The endurance of popular institutions at Bologna well into the fourteenth century—even through Romeo Pepoli's political ascendancy in the 1310s—was exceptional.¹⁰⁰ Yet Ferrara's rulers, like Bologna's, banned weapons within their town walls (among other police measures) and employed foreign police forces to enforce the writ of law.¹⁰¹ In a signorial context, a ruler might find impersonal institutions advantageous considering that, though he was the most powerful individual in the commune, he was not more powerful

¹⁰⁰ Waley and Dean, *The Italian City-Republics*, 171–72, 177, 182.

¹⁰¹ Ferrara's 1287 statutes explicitly refer to the podestà's *familia* searching the city for prohibited arms and other crimes; see Montorsi, ed., *Statuta Ferrariae*, 45. For the statutes concerning the bearing of arms, curfew, and gambling, see 258–59, 272–74.

than a coalition of his peers. By governing indirectly through ostensibly neutral laws and officials, the lord of a city could conserve personal resources and avoid antagonizing other powerful families. Indeed, the distinction between *signoria* and city-republic was not always clear, as many *signori* secured their grip on power gradually through legitimately held public office.

That said, it was not merely the cold calculation of political advantage that led urban governments to see the public utility of third-party policing. On a more basic level, increased policing was driven at least in part by the pressures of urbanization. As noted above, Foucault viewed police as a distinctly urban mode of governance for the simple reason that dense population and market centers invite greater regulation by local authorities. In this paradigm, urban communities, with all their complexities and potential for conflict, must be managed at the population level if they are to thrive and not merely survive. Hence police, beyond its negative function of suppressing threats to elite interests, also has the positive function of promoting the health, productivity, and general well-being of the community—the “coexistence and communication of men,” in Foucault’s phrase of choice.¹⁰² The urgency of this task only increases as the size of the population and economy increases, and in this basic way, the growth of northern Italy’s cities drove the growth of policing. Indeed, cities like Padua and Florence practically doubled in size over the course of the thirteenth century, as seen in the outward expansion of their walls, and commerce grew commensurately with the population.¹⁰³ This growth in turn fueled a proliferation of public regulations and, ultimately, of public officials to enforce them. Municipal regimes created new rules and interventions to promote urban health and the free circulation of goods and people while staving off threats to their security, whether they came in the form of political enemies, competing products from neighboring towns, or “unproductive” social types such as vagabonds and gamblers. Thus, government police power grew as the need to regulate urban communities also grew.

Two other sweeping trends enabled the growth of policing: the cultural shift “from memory to written record” and the revival of jurisprudence, both of which accelerated in the twelfth century. Across Western Europe, elites came to rely less on unwritten custom in their exercise of power and more on written rules and records, as well as the administrative officials who produced them. Clerics and notaries—who played a prominent role in communal regimes—drove a documentary revolution that saw an exponential increase in official recordkeeping, now in paper registers rather than on more expensive parchment.¹⁰⁴ Elites’ newfound capacity to publicize rules in writing, document violations of those rules, and keep public records of proceedings against alleged rule-breakers was fundamental to the growth of policing.¹⁰⁵ The revival of jurisprudence also contributed substantially to the toolkit of governance. As jurists rediscovered and developed Roman

¹⁰² Foucault, *Security, Territory, Population*, 326–28.

¹⁰³ Waley and Dean, *The Italian City-Republics*, 12–30. For Bologna’s thirteenth-century growth, see Giusberti and Roversi Monaco, “Economy and Demography.”

¹⁰⁴ Clanchy, *From Memory to Written Record*; Skoda, “Legal Performances,” 281–83. For communal Italy, see Maire Vigueur, “Révolution documentaire”; Albini, ed., *Le Scritture*; Cammarosano, *Italia medievale*. As Smail notes, this was not a simple shift so much as one of scale, defined by a massive increase in notarial activity. The “public archive” of memory and gossip still played a fundamental role in legal proceedings. See *Imaginary Cartographies*, 24–25; *The Consumption of Justice*, 210–11.

¹⁰⁵ On the importance of “publicness” in rule enforcement, see Wallis and North, “Coordination and Coercion.”

and canon law, concepts and procedures from these burgeoning disciplines quickly made their way into local statutes and legal practice. Secular governments followed after churchmen in using *inquisitio* procedure to uncover hidden crimes, for example, and used flexible concepts such as infamy and the deserving poor (*miserabiles*) to categorize imputed individuals and deal with them accordingly.¹⁰⁶ Indeed, the jurists, lawyers, and notaries who codified and interpreted civic statutes were active members of the political elite in Italy's communes and used the law to reinforce their hegemony.¹⁰⁷ In this way, written law gave ruling elites new tools to make their polities more "legible" and therefore more amenable to regulation.¹⁰⁸

Of course, these macro-trends of the central and late Middle Ages—urbanization, the documentary revolution, and the revival of legal science—were hardly limited to northern Italy. It should not be surprising, then, that the growth of police power is evident across Western Europe in the later Middle Ages. Royal officials increasingly carried out police functions throughout the kingdoms of France and England, and towns across the continent experimented with using various sergeants, guards, and militias to maintain order in their streets.¹⁰⁹ In this sense, the growth of policing in Italy and elsewhere was emblematic of the general trend toward what Thomas Bisson and John Sabapathy have termed accountability in governance.¹¹⁰ Written laws, written records, and professional administrators allowed governments to surveil and discipline their communities to an unprecedented extent, and became the default means of domination for elites in a range of political contexts. If the Italian communes were especially innovative in devising new mechanisms of policing—including the third-party model, which appears to have been unique—it may be owing to the intractability and violence of their political conflicts, as well as their status as the intellectual epicenter of the new legal science, above all at Bologna's *studium*. As the communes' internecine warfare and repeated political crises created new exigencies, politically active jurists, lawyers, and notaries provided the capacity to ground expedient measures in an acceptable legal framework.

Yet the important point is not to highlight what was supposedly unique about the Italian communes, but to recognize that its institutional innovations were born of the exclusionary logic of its social order. Impersonal rules and officials could be valuable tools for elites in *popolo* and signorial governments alike, allowing them to avoid costly direct conflicts while still maintaining their dominance. For all their stated concern for the common good, the communes' elites tended to do what was expedient to secure and maximize their interests, even if that meant discarding or politicizing institutions that were designed to be impersonal. To take one illustrative example, in the aftermath of a 1306 coup plot that left the city without a podestà or capitano del popolo, Bologna's Council of the *Popolo* gave their own *anziani*, consuls, and guild officials full *regimen* of the city and

¹⁰⁶ On the use of *fama* and treatment of *miserabiles* in court, see Vallerani, *Medieval Public Justice*, 108–12, 343–46. The literature on the revival of jurisprudence is vast, but a good point of departure is Brundage, *The Medieval Origins*.

¹⁰⁷ Menzinger, *Giuristi e politica*; Sbriccoli, *L'interpretazione dello statuto*.

¹⁰⁸ On the concept of legibility, see Scott, *Seeing Like a State*.

¹⁰⁹ For urban police forces outside of Italy, see Nicholas, "Crime and Punishment," 307–10; Nicholas, *The Later Medieval City*, 156–63; Gonthier, *Le châtement du crime*; Bellamy, *Crime and Public Order*; García Fernández, "Las Hermandades."

¹¹⁰ Sabapathy, *Officers and Accountability*; Bisson, *The Crisis of the Twelfth Century*.

contado, and placed judges, notaries, *berrovarii*, and criers at their disposal.¹¹¹ The Council likewise gave them full authority to investigate, prosecute, and punish all robberies, assaults, arsons, and homicides past and future, lest their republic suffer any more harm from the “men of ill condition and repute who hate the stability and liberty of the people of Bologna, and who disparage the honor, state, and laudable reputation of the people of Bologna.”¹¹² In the exercise of police power, the podestà and his retinue were ultimately stand-ins for local elites, who occasionally conducted patrols themselves. For example, on 5 October 1297, when Bologna was temporarily without a podestà, an *anzianus* led some *berrovarii* on a curfew patrol and rounded up eight suspects, who subsequently stood trial before the *anziani* and consuls.¹¹³ Thus, if police power grew in service to the “good state of the commune,” it also grew in service to the elites who defined that *status* according to their interests, rather than any republican concern for institutions that treated people more equitably.

Conclusion: A Preventive Police

This chapter has highlighted how the investment of police power in the podestà's *familia* reflected a newly preventive mentality in criminal justice. Communal regimes designated full-time police forces not only to bring more outlaws into custody, but also to discipline statutory offenses aggressively. Their proactive patrols helped to detect and investigate threats in a very direct way, functioning in effect as a roving inquisition. As foreigners, these forces could circumvent local relationships of amity and enmity in their work, allowing the authorities to administer justice according to statute. This combination of enhanced coercion, proactivity, and impersonality made public justice in the communes not only more punitive but also preventive in nature.

In his classic essay “The City,” Max Weber characterizes the new political associations in late twelfth- and thirteenth-century Italian cities as self-conscious of their illegitimacy. The corporations of merchants and artisans who made up popular governments were aware of their revolutionary status, having laid claim to political powers previously reserved only for nobles and churchmen.¹¹⁴ Ultimately, this basic insecurity may be the best explanation for the growth of policing in medieval Italy. As Markus Dubber points out, police power's most basic aim is “the maintenance of national existence,” which was frequently under threat in Italy's communes.¹¹⁵ Amidst such instability, urban elites could not afford to maintain a reactive stance. It was far safer to prevent threats from manifesting, whether in the form of a direct challenge to their political authority (e.g., a rebellion) or a more oblique challenge to their precarious claim to legitimate governance (e.g., the proliferation of gambling houses outside the *baratarie*).

Indeed, municipal statutes betray the preventive mentality of the governing elite more fundamentally than their methods of enforcement. Lawmakers used the imperative of preserving the *bonus status communis* to justify police measures aimed at a wide range of threats to public order, health, and morals. Their statutes treated various acts of omission

¹¹¹ ASB, Cartacea 218, reg. 20, 4v.

¹¹² ASB, Cartacea 218, reg. 20, 1r: “Homines male conditionis et fame hodie firmitatem et libertatem populli Bononie que honori et statui ac laudabili fame populli Bononie derogant.”

¹¹³ ASB, Corone 8, 1297II (4 fols.), 1r–4v.

¹¹⁴ Weber, *Economy and Society*, 1301–07.

¹¹⁵ Dubber, *The Police Power*, 158.

or commission (obstructing public pathways, allowing livestock to roam the city, creating fire hazards); persons (common scolds, ribalds, gypsies); or inanimate objects (inns, taverns, gaming houses) as threats to be corrected or removed. Lawmakers did not require these “public nuisances,” as they would be termed in English common law, to have criminal intent (*mens rea*) or constitute a criminal act (*actus reus*) in the traditional sense of causing harm to a person or property. Rather, “guilt” was a simple matter of nonconformity with law.¹¹⁶ Lawmakers also tried to anticipate “real” crime to an unprecedented degree. The arms-bearing laws are a clear example of this, as they criminalized the bearing of arms that might be used to attempt assault or robbery. In this shift toward preventive justice, the communes’ citizen-legislators anticipated the police science of early modern Europe.¹¹⁷ The next two chapters will explore in greater depth this preventive mentality, and how lawmakers used third-party policing to discipline perceived threats to their power and legitimacy.

¹¹⁶ For the labeling of nuisances, see Dubber, *The Police Power*, 56–57, 95–104. For *mens rea* and *actus reus*, see 136, 147, 169–70, 176–77.

¹¹⁷ On the concept of preventive justice, see Ashworth and Zedner, *Preventive Justice*.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Camera del comune, Tesoreria e contraltatore di tesoreria

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio del giudice al sindacato

Ufficio delle acque, strade, ponti, calanchi, selciate e fango

Governo

Provvisgioni dei consigli minori

Riformagioni e provvisgioni, serie cartacea

Archivio di Stato di Orvieto

Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

Archivio di Stato di Siena

Podestà, Malefizi

PUBLISHED PRIMARY SOURCES

Caprioli, Severino, ed. *Statuto del comune di Perugia del 1279*. 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267*. 3 vols. Bologna: Regia Tipografia, 1869–1877.

Montorsi, William, ed. *Statuta Ferrariae, anno MCCLXXXVII*. Ferrara: Cassa di risparmio di Ferrara, 1955.

SECONDARY SOURCES

Albini, Giovanni, ed. *Le Scritture del comune: amministrazione e memoria delle città dei secoli XII e XIII*. Turin: Scriptorium, 1998.

Artifoni, Enrico. "I governi di 'popolo' e le istituzioni comunali nella seconda metà del secolo XIII." *Reti Medievali Rivista* 4 (2003): 3.

———. "Retorica e organizzazione del linguaggio politico nel Duecento italiano." *Publications de l'École Française de Rome* 201 (1994): 157–82.

- Ashworth, Andrew, and Lucia Zedner. *Preventive Justice*. Oxford: Oxford University Press, 2014.
- Bellamy, John G. *Crime and Public Order in England in the Later Middle Ages*. London: Routledge and Kegan Paul, 1973.
- Bisson, Thomas N. *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government*. Princeton: Princeton University Press, 2009.
- Blanshei, Sarah Rubin. "Bolognese Criminal Justice: From Medieval Commune to Renaissance Signoria." In *Violence and Justice in Bologna: 1250-1700*, edited by Sarah Rubin Blanshei, 55-82. Lanham, MD: Lexington Books, 2018.
- . "Criminal Law and Politics in Medieval Bologna." *Criminal Justice History* 2 (1981): 1-30.
- . "Homicide in a Culture of Hatred." In *Murder in Renaissance Italy*, edited by Trevor Dean and K.J.P. Lowe, 106-22. Cambridge: Cambridge University Press, 2017.
- . *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Bocchi, Francesca. "Le imposte dirette a Bologna nei secoli XII-XIII." *Nuova rivista storica* 57 (1973): 273-312.
- Boucheron, Patrick. *The Power of Images: Siena, 1338*. Translated by Andrew Brown. Medford, Mass.: Polity, 2018.
- Brundage, James A. *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*. Chicago: University of Chicago Press, 2008.
- Cammarosano, Paolo. *Italia medievale: struttura e geografia delle fonti scritte*. Rome: La Nuova Italia scientifica, 1991.
- Carraway, Joanna. "Contumacy, Defense Strategy, and Criminal Law in Late Medieval Italy." *Law and History Review* 29 (2011): 99-132.
- Centro italiano di studi sul basso Medioevo (Accademia tudertina), ed. *Il bene comune: forme di governo e gerarchie sociali nel basso Medioevo: atti del XLVIII Convegno storico internazionale, Todi, 9-12 ottobre 2011*. Spoleto: Fondazione Centro italiano di studi sull'alto Medioevo, 2012.
- Clanchy, M.T. *From Memory to Written Record: England, 1066-1307*. 3rd ed. Malden, Mass.: John Wiley & Sons, 2013.
- Cox, Virginia. "Ciceronian Rhetoric in Late Medieval Italy." In *The Rhetoric of Cicero in its Medieval and Early Renaissance Commentary Tradition*, edited by Virginia Cox and John Ward, 109-43. Leiden: Brill, 2006.
- Dean, Trevor. *Crime and Justice in Late Medieval Italy*. New York: Cambridge University Press, 2007.
- Diacciati, Silvia. *Popolani e magnati: società e politica nella Firenze del Duecento*. Spoleto: Fondazione Centro italiano di studi sull'alto Medioevo, 2011.
- Dubber, Markus. *The Police Power: Patriarchy and the Foundations of American Government*. New York: Columbia University Press, 2005.
- Fasoli, Gina. "Le compagnie delle armi a Bologna." *L'Archiginnasio* 28 (1933): 158-83, 323-40.
- Foucault, Michel. *Security, Territory, Population: Lectures at the Collège de France, 1977-78*. Edited by Michel Senellart. Translated by Graham Burchell. Basingstoke; New York: Palgrave Macmillan; République Française, 2007.
- Fraher, Richard. "IV Lateran's Revolution in Criminal Procedure: The Birth of the Inquisitio, the End of Ordeals, and Innocent III's Vision of Ecclesiastical Politics." In *Studia in*

- honorem eminentissimi cardinalis Alphonsi M. Stickler*, edited by Castillo Lara and Rosalio Iosepho, 97–111. Rome: LAS, 1992.
- . “Preventing Crime in the High Middle Ages: The Medieval Lawyers’ Search for Deterrence.” In *Popes, Teachers, and Canon Law in the Middle Ages*, edited by James Ross Sweeney and Stanley Chodorow, 212–33. Ithaca: Cornell University Press, 1989.
- . “The Theoretical Justification for the New Criminal Law of the High Middle Ages: ‘Rei Publicae Interest, Ne Crimina Remaneant Impunita.’” *University of Illinois Law Review*, 1984, 577–95.
- Gamberini, Andrea. *The Clash of Legitimacies: The State-Building Process in Late Medieval Lombardy*. New York: Oxford University Press, 2018.
- García Fernández, Manuel. “Las Hermandades municipales andaluzas en tiempos de Alfonso XI.” *Anuario de Estudios Medievales* 19 (1989): 329–43.
- Garnier, Claudia. *Amicus amicis, inimicus inimicis: politische Freundschaft und fürstliche Netzwerke im 13. Jahrhundert*. Stuttgart: Hiersemann, 2000.
- Gentile, Marco. “Amicizia e fazione. A proposito di un’endiadi ricorrente nel lessico politico lombardo del tardo medioevo.” In *Parole e realtà dell’amicizia medievale: atti del convegno di studio svoltosi in occasione della XXII edizione del Premio internazionale Ascoli Piceno (Ascoli Piceno, Palazzo dei Capitani, 2–4 dicembre 2010)*, edited by Isa Lori Sanfilippo and Antonio Rigon, 171–87. Rome: ISIME, 2012.
- Giansante, Massimo. “Ancora magnati e popolani. Riflessioni in margine a *Politics and Justice* di Sarah R. Blanshei.” *Archivio storico italiano* 171 (2013): 543–70.
- . *Retorica e politica nel Duecento: i notai bolognese e l’ideologia comunale*. Rome: ISIME, 1998.
- Giusberti, Fabio, and Francesca Roversi Monaco. “Economy and Demography.” In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 154–84. Leiden: Brill, 2018.
- Given, James B. *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc*. Ithaca: Cornell University Press, 1997.
- Goffman, Erving. *Interaction Ritual: Essays on Face-to-Face Behavior*. Garden City, NY: Anchor Books, 1967.
- Gonthier, Nicole. *Le châtement du crime au Moyen Age: XIIe–XVIe siècles*. Rennes: Presses universitaires de Rennes, 1998.
- Heers, Jacques. *Family Clans in the Middle Ages: A Study of Political and Social Structures in Urban Areas*. Amsterdam: North-Holland, 1977.
- Jacobs, Jane. *The Death and Life of Great American Cities*. New York: Random House, 1961.
- Jerouschek, Günter. “‘Ne crimina remaneant impunita.’ Auf daß Verbrechen nicht ungestraft bleiben: Überlegungen zur Begründung öffentlicher Strafverfolgung im Mittelalter.” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 89 (2003): 323–64.
- Jones, Philip. *The Italian City-State: From Commune to Signoria*. New York: Oxford University Press, 1997.
- Kempshall, Matthew S. *The Common Good in Late Medieval Political Thought*. Oxford: Clarendon Press, 1999.
- Koenig, John. *Il popolo dell’Italia del nord nel XIII secolo*. Bologna: Il Mulino, 1986.

- Landau, Peter. "'Ne crimina maneant impunita.' Zur Entstehung des öffentlichen Strafanspruchs in der Rechtswissenschaft des 12. Jahrhunderts." In *Der Einfluss der Kanonistik auf die europäische Rechtskultur: Straf- und Strafprozessrecht*, edited by Mathias Schmoeckel, Orazio Condorelli, and Franck Roumy, 3:23–35. Cologne: Böhlau, 2012.
- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Lecuppre-Desjardin, Elodie and Anne-Laure van Bruaene, eds. *De bono communi: The Discourse and Practice of the Common Good in the European City (13th–16th c.)*. Turnhout: Brepols, 2010.
- Lepsius, Susanne. "Public Responsibility for Failure to Prosecute Crime? An Inquiry into an Umbrian Case by Bartolo Da Sassoferrato." In *A Renaissance of Conflicts: Visions and Revisions of Law and Society in Italy and Spain*, edited by John A. Marino and Thomas Kuehn, 131–70. Toronto: Centre for Reformation and Renaissance Studies, 2004.
- Maire Vigueur, Jean-Claude. *Cavaliers et citoyens. Guerre, conflits et société dans l'Italie communale, XIIe–XIIIe siècles*. Paris: Ecole des hautes études en sciences sociales, 2003.
- . "Il problema storiografico: Firenze come modello (e mito) di regime popolare." In *Magnati e popolani nell'Italia comunale: quindicesimo convegno di studi, Pistoia, 15–18 maggio 1995*, 1–16. Pistoia: Centro italiano di studi di storia e d'arte, 1997.
- . "Révolution documentaire et révolution scripturaire: le cas de l'Italie médiévale." *Bibliothèque de l'École des chartes* 152 (1995): 177–85.
- Manikowska, Halina. "'Accorr'uomo'. Il popolo nell'amministrazione della giustizia a Firenze durante il XIV secolo." *Ricerche storiche* 18 (1988): 523–50.
- Menzinger, Sara. *Giuristi e politica nei comuni di popolo: Siena, Perugia e Bologna, tre governi a confronto*. Rome: Viella, 2006.
- Miglio, Gianfranco, Moreno Morani, Pier Paolo Portinaro, and Alessandro Vitale, eds. *Amicus (inimicus) hostis: le radici concettuali della conflittualità "privata" e della conflittualità "politica"*. Milan: A. Giuffrè, 1992.
- Milani, Giuliano. "Da milites a magnati: Appunti sulle famiglie aristocratiche bolognesi nell'età di Re Enzo." In *Bologna, re Enzo e il suo mito: atti della giornata di studio, Bologna, 11 giugno 2000*, edited by Antonio Ivan Pini and Anna Laura Trombetti Budriesi, 125–55. Bologna: Deputazione di storia patria per le province di Romagna, 2001.
- . "Il governo delle liste nel Comune di Bologna: Premesse e genesi di un libro di proscrizione duecentesco." *Rivista storica italiana* 107 (1996): 149–229.
- Mineo, E. Igor. "Cose in comune e bene comune. L'ideologia della comunità in Italia nel tardo medioevo." In *The Languages of Political Society: Western Europe, 14th–17th Centuries*, edited by Andrea Gamberini, Jean-Philippe Genêt, and Andrea Zorzi, 39–67. Rome: Viella, 2011.
- . *Popolo e bene comune in Italia fra XIII e XIV secolo*. Rome: Viella, 2018.
- Muir, Edward. "The Idea of Community in Renaissance Italy." *Renaissance Quarterly* 55 (Spring 2002): 1–18.
- Najemy, John M. *A History of Florence, 1200–1575*. Malden, Mass.: Blackwell, 2006.
- . "Brunetto Latini's 'Politica.'" *Dante Studies, with the Annual Report of the Dante Society* 112 (1994): 33–51.

- . "The Dialogue of Power in Florentine Politics." In *City States in Classical Antiquity and Medieval Italy*, edited by Anthony Molho, Kurt A. Raaflaub, and Julia Emlen, 269–88. Ann Arbor: University of Michigan Press, 1991.
- Napolitano, David. "From Royal Court to City Hall. The Podestà Literature: A Republican Variant on the Mirrors for Princes?" In *Concepts of Ideal Rulership from Antiquity to the Renaissance*, edited by Geert Roskam and Stefan Schorn, 383–416. Turnhout: Brepols, 2018.
- Nicholas, David. "Crime and Punishment in Fourteenth-Century Ghent (First Part)." *Revue Belge de Philologie et d'Histoire* 48 (1970): 289–334.
- . *The Later Medieval City: 1300–1500*. New York: Routledge, 2014.
- Ottokar, Nicola. *Il comune di Firenze alla fine del Dugento*. Florence: Vallecchi, 1926.
- Pazzaglini, Peter Raymond. *The Criminal Ban of the Sienese Commune: 1225–1310*. Milan: A. Giuffrè, 1979.
- Pertile, Antonio. *Storia del diritto italiano, dalla caduta dell'Impero romano alla codificazione*. 2nd ed. Vol. 5, *Storia del diritto penale*. Turin: Unione tipografico-editrice, 1892.
- Poloni, Alma. "Il comune di popolo e le sue istituzioni tra Due e Trecento. Alcune riflessioni a partire dalla storiografia dell'ultimo quindicennio." *Reti Medievali Rivista* 13 (2012): 3–25.
- Preto, Paolo. *I servizi segreti di Venezia*. Milan: Il Saggiatore, 1994.
- Racine, Pierre. "Le 'popolo,' groupe social ou groupe de pression?" *Nuova Rivista Storica* 73 (1989): 133–50.
- Raveggi, Sergio, Massimo Tarassi, Daniela Medici, and Patrizia Parenti, eds. *Ghibellini, guelfi e popolo grasso: i detentori del potere politico a Firenze nella seconda metà del Dugento*. Florence: La nuova Italia, 1978.
- Rocke, Michael. *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence*. New York: Oxford University Press, 1996.
- Sabapathy, John. *Officers and Accountability in Medieval England, 1170–1300*. Oxford: Oxford University Press, 2014.
- Salvemini, Gaetano. *Magnati e popolani in Firenze dal 1280 al 1295*. Florence: Carnesecchi, 1899.
- Sbriccoli, Mario. *L'interpretazione dello statuto: contributo allo studio della funzione dei giuristi nell'età comunale*. Milan: A. Giuffrè, 1969.
- . "Legislation, Justice, and Political Power in Italian Cities, 1200–1400." In *Legislation and Justice*, edited by Antonio Padoa Schioppa, 37–56. Oxford: Clarendon Press, 1997.
- . "'Tormentum idest torquere mentem.' Processo inquisitorio e interrogatorio per tortura nell'Italia comunale." In *La parola all'accusato*, edited by Jean-Louis Biget, Jean-Claude Maire Vigueur, and Agostino Paravicini Bagliani, 17–32. Prisma 139. Palermo: Sellerio, 1991.
- . "'Vidi communiter observari.' L'emersione di un ordine penale pubblico nelle città italiane del secolo XIII." *Quaderni fiorentini per la storia del pensiero giuridico moderno* 27 (1998): 231–68.
- Scott, James C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press, 1998.

- Skinner, Quentin. *The Foundations of Modern Political Thought*. Vol. 1, *The Renaissance*. Cambridge: Cambridge University Press, 1978.
- Skoda, Hannah. "Legal Performances in Late Medieval France." In *Legalism: Anthropology and History*, edited by Paul Dresch and Hannah Skoda, 279–306. Oxford: Oxford University Press, 2012.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- . "Hatred as a Social Institution in Late-Medieval Society." *Speculum* 76 (2001): 90–126.
- . *Imaginary Cartographies: Possession and Identity in Late Medieval Marseille*. Ithaca: Cornell University Press, 2000.
- Smurra, Rosa. *Città, cittadini e imposta diretta a Bologna alla fine del Duecento: ricerche preliminari*. Bologna: CLUEB, 2007.
- Tamba, Giorgio. "Consigli elettorali degli ufficiali del Comune bolognese alla fine del secolo XIII." *Rassegna degli Archivi di Stato* 42 (1982): 34–95.
- . "Il Consiglio del popolo di Bologna dagli Ordinamenti popolari alla signoria (1283–1336)." *Rivista di storia del diritto italiano* 69 (1996): 49–93.
- Terry-Fritsch, Allie. "Networks of Urban Secrecy: Tamburi, Anonymous Denunciations, and the Production of the Gaze in Fifteenth-Century Florence." In *Visual Cultures of Secrecy in Early Modern Europe*, edited by Timothy McCall, Sean E. Roberts, and Giancarlo Fiorenza, 162–81. Kirksville, MO: Truman State University Press, 2013.
- Vallerani, Massimo. "La città e le sue istituzioni. Ceti dirigenti, oligarchia e politica nella storiografia medievale." *Annali dell'Istituto storico italo-germanico in Trento* 20 (1994): 165–230.
- . "Criminal Court Procedure in Late Medieval Bologna: Cultural and Social Contexts." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 27–54. Lanham, MD: Lexington Books, 2018.
- . *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- Vanghi, Donatella. "Il libro di banditi nel primo semestre del 1234 sotto la podestaria bolognese di Guido Raule da Faenza." *Atti della Accademia delle scienze dell'Istituto di Bologna. Classe di scienze morali* 67 (1978–1979): 143–50.
- Viroli, Maurizio. *From Politics to Reason of State: The Acquisition and Transformation of the Language of Politics, 1250–1600*. Cambridge: Cambridge University Press, 1992.
- Waley, Daniel, and Trevor Dean. *The Italian City-Republics*. 4th ed. Harlow: Longman, 2010.
- Wallis, John Joseph, and Douglass C. North. "Coordination and Coercion: The Nature of Rules, Governments, States, and Social Dynamics." Working Paper, 2013.
- Wartenberg, Imke. *Bilder der Rechtsprechung: Spätmittelalterliche Wandmalereien in Regierungsräumen italienischer Kommunen*. Boston: De Gruyter, 2015.
- Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. Edited by Guenther Roth and Claus Wittich. Berkeley: University of California Press, 1978.
- Weissman, Ronald F.E. "The Importance of Being Ambiguous: Social Relations, Individualism, and Identity in Renaissance Florence." In *Urban Life in the Renaissance*, edited by Susan Zimmerman and Ronald F.E. Weissman. Newark: University of Delaware Press, 1989.

- Zorzi, Andrea. "Amici e nemici: i conflitti nelle città comunali italiane." In *Agon und Distinktion: soziale Räume des Zweikampfs zwischen Mittelalter und Neuzeit*, edited by Uwe Israel and Christian Jaser, 267–78. Berlin: Lit Verlag, 2016.
- . "Contrôle social, ordre public et répression judiciaire à Florence à l'époque communale: éléments et problèmes." *Annales. Économies, Sociétés, Civilisations* 45 (1990): 1169–88.
- . "The Judicial System in Florence in the Fourteenth and Fifteenth Centuries." In *Crime, Society, and the Law in Renaissance Italy*, edited by Trevor Dean and K.J.P. Lowe, 40–58. Cambridge: Cambridge University Press, 1994.
- . "Politica e giustizia a Firenze al tempo degli Ordinamenti antimagnatizi." In *Ordinamenti di giustizia fiorentina. Studi in occasione del VII centenario. Atti dell'incontro di studio organizzato dall'Archivio di Stato di Firenze (Firenze, 14 dicembre 1993)*, edited by Vanna Arrighi, 105–47. Florence: Edifir, 1995.
- Zug Tucci, Hannelore. *Prigione di guerra nel Medioevo. Un'altura in mezzo alla pianura: l'Italia dell'incivilimento*. Venice: Istituto veneto di scienze, lettere ed arti, 2016.

Chapter 4: External Threats: Policing Out-Groups and Criminality

Early one morning in July 1286, not long after the cathedral bell tolled daybreak, the *familia* discovered three men of Bologna—Bertolino, Bernabè, and a tailor named Giacomo the Mute—each carrying a knife. Besides the weapon, Giacomo had his clothes stuffed full of pears and other fruits. Two days later the podestà's judge, named Ugo, opened an inquest against the three men as “malefactors who are said to be robbers, thieves, assassins, and despoilers of the vineyards and orchards of the city of Bologna.” He questioned Bertolino accordingly: Do you go to vineyards by night to despoil them of grapes and fruits? Were you out at night to put ladders to the houses of the good men of the city of Bologna in order to steal from them? Were you carrying weapons in order to assassinate anyone? Are you an assassin? Bertolino confessed to carrying the knife, but he denied the rest of these allegations. Bernabè faced a similar battery of questions, but likewise denied being a thief or assassin.¹

The perceived link between thieves and the night is ancient, of course, and partially explains the judge's line of questioning.² These defendants had apparently been out at night armed and, in at least one case, picking fruit in someone's orchard. However, the interrogation of another resident of Bologna named Franco—discovered bearing prohibited arms on the same day as the three wayfarers above, but during the daytime and without suspicious cargo—points to other factors at work. Judge Ugo subjected him, too, to an inquest as an alleged “thief, harbinger of thieves, murderer, and assassin.” Franco's interrogation followed a similar trajectory: Have you been outlawed for anything by the commune? Have you ever committed theft or robbery or harbored thieves? Have you ever assassinated anyone? Are you an assassin? One week later, Judge Ugo would ask a certain Tura of Siena, discovered by the *familia* with a dagger in broad daylight, if he was a thief or assassin.³ Clearly, then, the three men above were not interrogated as thieves and assassins merely because they had been discovered at night armed and, in one case, carrying fruit.

Judge Ugo's questions make more sense in light of the confessions he heard from so-called men of ill repute. A case in point is the confession of Dino di Petrizzandello, resident of Bologna, who was tortured as a suspected thief in July 1286, around the time of the interrogations above. Dino confessed to at least seven different crimes—five burglaries (some of them armed), one attempted burglary, and one agreement to execute a contract killing—all committed within the previous few months and described in remarkable detail. According to his confession, four of the crimes, including the murder-for-hire conspiracy, were facilitated by Marino Carbonesi, whose family belonged to the exiled Lambertazzi party. Two of the burglaries targeted students who lodged in houses owned by the magnate da Sala family, with Federico da Sala complicit in at least one of those cases. Four of the six

¹ ASB, Corone 1, 1286II, 3r-v: “Inquisitio facta per dominum Ugonem iudicem domini potestatis super infrascriptis malefactoribus, qui dicuntur esse robatores et fures et asasinos et depopulatores vinearum et broliorum civitatis Bononie.” The notary did not record Giacomo's interrogation, perhaps because he was indeed mute.

² For the night as *tempus malae praesumptionis*, see Sbriccoli, “Nox quia nocet.” For the legal archetype of the *furs nocturnus*, see Lacchè, “Loca occulta.” More broadly, see Ekirch, *At Day's Close*; Verdon, *Night in the Middle Ages*.

³ ASB, Corone 1, 1286II, 4v, 5v.

burglary attempts targeted university students; the other two targeted women. At least one (but likely two) of the burglaries was inspired by the thieves' gambling debts. And in four of the burglary attempts Dino and his accomplices carried a ladder through the streets at night in order to climb through the windows of their targets' lodgings.⁴ After confessing to these capital crimes under torture, Dino "persevered" in his confession rather than recant and risk a second round of torture (see below on the procedural norms). The podestà sentenced Dino to be hanged, "since it is a shameful thing and a bad example to do and commit so many thefts and robberies."⁵

The records of Dino's torture and sentencing do not reveal how he fell into the commune's custody, but it is possible he was picked up by a curfew patrol. This is explicit in the case of another convicted thief described later in this chapter. Moreover, in the one failed attempt at burglary he described, Dino and his ladder-toting accomplices were turned back by an encounter with the night watch. However he came to be arrested, Dino's confession reveals the perceived links among minor offenses, such as breaking curfew, gambling, and bearing illegal arms, and major crimes like theft, robbery, and murder. It also suggests that the kind of men who went burgling at night were believed to associate with the commune's political enemies, such as Marino Carbonesi. By extension, Dino's confession explains why Judge Ugo would regard men whom the *familia* found at night carrying weapons or fruits from an orchard, as capital suspects. Indeed, it was hardly outlandish to ask curfew suspects if they put ladders to the houses of the "good men" of the city at night if, as Dino's confession suggests, ladders were commonly used as burglars' tools in medieval towns. When juxtaposed with Dino's confession, Judge Ugo's aggressive interrogation of the suspects above suddenly appears more rational.

This chapter explains how the growth of police power in the communes followed logically from the criminology of the day. The "good men" of the city proscribed going out under cover of darkness, carrying knives, and playing games of chance because those were the habitual behaviors of men of ill repute who also committed burglaries, assaults, and homicides. Police patrols functioned as a dragnet to apprehend such men. Whereas it was difficult to catch someone perpetrating a capital offense, it was relatively easy to catch someone prowling at night, carrying an illegal weapon, or playing a dice game. Granted, most of the men caught committing these latter crimes were guilty of no worse, but their detention allowed the *familia*—especially the judge of the criminal court—to determine if they had netted a so-called "man of ill repute" and prosecute him accordingly.⁶ In principle, this meant that virtually anyone whom the *familia* detained could be interrogated as a capital suspect, as happened in the cases above. For members of the governing coalition or anyone else with a legitimate place in the social order, this judicial scrutiny amounted to little more than a legal hassle or, at worst, a financial burden. But for those who lacked social standing or were deemed to be members of an out-group, the same judicial scrutiny could be a matter of life and death. Thus, the *familia*'s patrols not only disciplined

⁴ ASB, Inquisitiones 8, reg. 11, 2r–4r. For the Carbonesi as Lambertazzi, see Milani, *L'esclusione*, 194. For the da Sala's magnate status, see Blanshei, *Politics and Justice*.

⁵ ASB, Accusationes 5b, 16, 3v–4v: "Unde cum res sit turpis et mali exempli tot et tanta furta et robarias facere et comitere." A record of payment confirms that Dino was hanged by 7 August; see ASB, Sindacato 3, 1286II, 54r.

⁶ On the legal concepts of *fama* and ill repute, see Fenster and Smail, eds., *Fama*; Peters, "Wounded Names"; Migliorino, *Fama e infamia*.

individuals who broke the rules of public order but also aimed to catch felons and enemies of the commune who threatened the established order.

Arguing that policing grew in part out of a desire to punish may strike some historians as reactionary. Decades of careful scholarship has shown that medieval magistrates were not the menacing inquisitors and sadistic torturers of popular imagination.⁷ Although torture and corporal punishment played a role in public justice, judges followed through on these threats only in a small percentage of cases. By highlighting these, this study might appear to fall prey to what Trevor Dean has called the “sensationalist trap”: cherry-picking the juiciest but least representative cases in the interest of better storytelling.⁸ Moreover, as discussed in earlier chapters, the recent historiography of medieval justice has emphasized the restorative role of public courts over the retributive, and their tendency to facilitate negotiation rather than mete out punishment.

Nevertheless, Bologna’s court records show that torture and judicial violence of the sort suffered by Dino were hardly extraordinary events. The sources indicate that the commune publicly executed or maimed individuals every week or two, and these spectacles played an outsized role in civic life.⁹ While judicial violence occurred in only a small percentage of the criminal court’s overall case load, this owed much to the problem of contumacy, and even then, it occurred too frequently to be considered a rarity. Exemplary punishment served not only as a criminal deterrent but as propaganda for the communal regime in its role as guarantor of public safety and order.¹⁰

This chapter shows how government police power grew out of the same impulse to deter and eliminate perceived threats to the social order. It first establishes the relative “normalcy” of judicial violence in medieval Bologna, then explains how this violence was driven—at least on the surface—by elites’ quest for deterrence. Judicial violence explicitly aimed to instill the fear of punishment in would-be criminals so as to prevent socially or politically unacceptable behavior. After examining the stated justifications for judicial violence, the chapter explores the underlying sources of the punitive mentality displayed by many judges and lawmakers. At base, this mentality reflected the new political elite’s anxieties over maintaining their grip on power. Communal governments were essentially one-party systems, whose security and legitimacy depended on the suppression of outsiders. The ruling elite therefore used criminal law to categorize and label various threats, whether political, economic, or moral. And they treated a wide range of them—from highway robbers and political rebels to vagabonds and sodomites—with similar severity. Finally, this chapter shows how police patrols grew out of the same urge to

⁷ For low incidences of torture, see Gauvard, *De grace especial*, 1:132–35, 155–62, 178–81; Vallerani, “Conflitti e modelli procedurali,” 279; Vallerani, *Medieval Public Justice*, 118–22. Other studies emphasize the legal limitations on the application of torture in the Middle Ages to suggest that judges did not resort to it as frequently as imagined: Remensnyder, “Torture and Truth,” 157; Peters, *Torture*; Pennington, *The Prince and the Law*, 42–44, 159–60; Fiorelli, *La tortura giudiziaria*, 1:91–94. For popular misconceptions about medieval torture and corporal punishment, see Tracy, *Torture and Brutality*, 11–18; Caviness, “Giving ‘the Middle Ages’ a Bad Name.” Cf. Peters, *Torture*, 62–71.

⁸ Dean, *Crime and Justice*, 8. See also Cohn, “Criminality.”

⁹ Cohen, “‘To Die a Criminal.’”

¹⁰ On capital punishment in the communes, see Ascheri, “La pena di morte”; Mazzi, *Gente a cui si fa notte*; Guerra, *Una eterna condanna*. On the spectacle of corporal punishment more generally, see Geltner, *Flogging Others*; Mills, *Suspended Animation*; Merback, *The Thief, the Cross, and the Wheel*.

identify and discipline threats before they caused real harm to the social order. Under the assumption that minor forms of delinquency could indicate more serious criminality, police patrols subjected a wide range of persons to judicial scrutiny in order to ferret out threatening individuals. The defendant may have done nothing worse than violate the curfew law, but once he was in court, the judge could investigate his character and personal history through inquisitorial procedure. Police patrols were highly inefficient as a dragnet, but they did, from time to time, allow the governing elite to publicly legitimate their role as defenders of the communal order against external threats.

Judicial Violence

Given the historiography's recent emphasis on negotiated justice, it should first be established that Dino's case above was not out of the ordinary. Indeed, Bologna's judicial records indicate that corporal punishment was a central feature of its criminal justice system. The podestà's court recorded corporal sentences separately from pecuniary ones, and these survive in some quantity for this period of study. Although the record is far from complete, Sarah Blanshei has counted some 369 corporal sentences in these registers for the period 1286 to 1325.¹¹ In the second semester of 1286, for example, 20 individuals suffered corporal punishment, about one person every nine days.¹² For 1288, payment records show 16 corporal punishments carried out in the first five months of that year—again, a rate of about one person every nine days.¹³ The commune also carried out less spectacular punishments on a regular basis, such as the routine but still exemplary flogging of public gamblers and petty thieves.¹⁴

Besides their juridical function, corporal sentences functioned as public propaganda for the government. The sentences themselves tend to follow a standard formula, starting with a preamble stating the convict's name, that he is in the podestà's custody, and that his crime has been legally proven. Then follow his crime(s), usually in the form of a confession; the ordained punishment; and the legal rationale for the punishment. Each corporal sentence served to underscore the efficacy of the commune's justice since, by definition, it meant the accused was in custody; otherwise the court would issue a ban. Furthermore, the presentation of the condemned was a very public ritual: the palace bell would be rung and the trumpets sounded, the convict presented to the crowd in the piazza below, and his sentence read aloud.¹⁵

Payment records leave little doubt that these punishments, or "justices" (*justitie*) as the sources refer to them, were in fact carried out. Bologna's government carried out bloody punishments in the Campo del Mercato, an open field on the northern edge of town that also hosted markets (today Piazza VIII Agosto), and hangings from a bridge over the river Reno. The statutes generally prohibited public executions in the main piazza.¹⁶ Records of payment to locals—usually criers, jailers, or physicians—who assisted with or

¹¹ Blanshei, *Politics and Justice*, 335. Some of the registers are fragmentary and a number of semesters are undocumented; no registers survive from 1296 through 1299, for example.

¹² Blanshei, "Crime and Law Enforcement," 123. Payment records may attest 21 corporal punishments: ASB, Sindacato 3, 1286II.

¹³ ASB, Sindacato 5, 1288I (96 fols.).

¹⁴ For the 1292 flogging of two thieves see ASB, Accusationes 10, reg. 14, 12r.

¹⁵ For typical examples, see ASB, Accusationes 22b, reg. 21, 1v, 8v; Accusationes 30b, reg. 29, 10v–11r.

¹⁶ *Statuti 1288*, 1:237.

provided materials used in corporal punishments suggest that these events were not merely community spectacles but community efforts.¹⁷ For example, to have Niccolò Marchesini “cooked” before he was burned in 1288 (see below), the podestà paid 12 soldi to borrow the cauldron and 8 soldi to several *baraterii* to carry it to the Campo del Mercato.¹⁸ Lest anyone forget these spectacular occasions, the commune might also have the condemned’s portrait painted on the palace wall.¹⁹ In June 1295, for example, the podestà found three women guilty—after having them tortured—of false testimony in a murder trial. He sentenced all of them to lose their right hands and two of them to lose their tongues, and decreed that their portraits were to be displayed publicly.²⁰

Ritual aspects aside, the spectacle of these events lay in their gruesomeness, which was clearly calculated to leave an impression on the public. In the second semester of 1286, there were nine decapitations, seven hangings, two burnings, and three amputations of the hand or foot. Those burned were an arsonist (the punishment fit the crime) and a woman convicted of strangling her own daughter to death, perhaps an infanticide.²¹ Some of those condemned were first dragged by a horse (*traynatus*) to their place of execution.²² Of the 16 punishments carried out between January and May 1288, three men were decapitated and another two lost a foot. Three other convicts lost an eye, a nose, and a tongue, respectively.²³ In the case of a woman named Bonora, who lost her tongue for giving false testimony, the podestà had “moderated” her penalty on account of her age, sex, and “the lowliness of her person.”²⁴ Likewise in the case of Petruccio da Monteveglio, who was caught in the midst of a burglary after a barking dog gave him away, the podestà “mitigated” his penalty “since he did not complete the said theft and on account of the condition of his person.”²⁵ Instead of losing his life, he simply lost his eye. Others were not so lucky. The podestà had one man pressed to death and two others “planted” (*plantati*), which is to say buried head first in the ground.²⁶ One of these “plantings” resulted from a case in which two men from Ferrara were convicted of assassinating a woman at the behest of her husband and his mistress. His partner in crime, who confessed to numerous other delicts, was burned.²⁷ The podestà in this period (early 1288) must have thought immolations particularly effective, because he sentenced four other convicts to this penalty. One of these was a crier (*nuntius*) named Martino who accepted a payment of 25 lire to

¹⁷ For examples, see ASB, Corone 13, 1302II (152 fols.), 12v, 76r, 98r, 113r–v; Sindacato 3, 1286II, 45r, 57v; Sindacato 5, 1288I (96 fols.), 51v; ASB, Tesoreria 1, 2v–3r, 12r. For what such payments can tell historians more generally, see Jordan, “Expenses.”

¹⁸ ASB, Sindacato 5, 1288I (96 fols.), 65v

¹⁹ Behrmann, ed., *Images of Shame*; Ferrari, “Avaro, traditore”; Milani, “Avidité et trahison”; Lansing, *Passion and Order*, 36–37; Ortalli, *La pittura infamante*.

²⁰ ASB, Accusationes 16a, reg. 3, 1r–2r. Their confessions are on 9v–10v.

²¹ ASB, Accusationes 5b, reg. 16, 7r, 14v. Blanshei mentions the case of the woman, Giacobina, in *Politics and Justice*, 336.

²² ASB, Sindacato 3, 1286II, 64r.

²³ ASB, Sindacato 5, 1288I (96 fols.), 9v, 10r, 40r.

²⁴ ASB, Accusationes 7a, reg. 4, 1v: “Condenpnamus quod sibi lingua tronchetur, moderata pena propter etatem ipsius Bonore et propter vilitatem personam et sexum ipsius Bonore.”

²⁵ ASB, Accusationes 7a, reg. 4, 1v: “Condepnamus quod sibi dester oculus eruatur de capite, mitigata pena quia non perfecit dictum furtum et propter conductionem persone.”

²⁶ ASB, Sindacato 5, 1288I (96 fols.), 56r.

²⁷ ASB, Accusationes 7a, reg. 4, 3v–4v.

falsely accuse five men from Borgo Panigale of assault, which had resulted in their being banned. The podestà punished this venality and abuse of communal office—which had placed other men’s lives and limbs in jeopardy—by having him skinned alive before burning.²⁸ Nor was Martino the first convict to receive this excruciating punishment.²⁹ Equally unlucky were two men from Ferrara’s *contado* convicted of counterfeiting. One of them was “placed in a cauldron to cook” before having his body burned.³⁰ The other saw the counterfeit coins melted and poured down his throat before he too was delivered to the fire.³¹

The next podestà, Corso Donati of Florence, famous as the leader of that city’s Black Guefs, continued a similar policy of gruesome executions. In July he had Bertolino of Prato, convicted of slaying someone in the commune’s piazza, dragged behind a cart to the place of execution, where his flesh was plucked away with hot pincers before he was finally decapitated. Similarly, he had one Niccolò of Piacenza, who confessed to abducting, sodomizing, and ransoming the son of one Pietro Uguccio, dragged behind a cart and then burned alive.³² Perhaps most cruel of all was the 1300 execution of the magnate Ghidino Riosti, convicted in August of that year of assassinating a Florentine student for the sum of 400 lire. By sentence of the podestà, Ghidino’s executioners first cut away chunks of flesh from his back in the commune’s piazza, then took him to the scene of the murder to chop off his hand, before bringing him to the Campo del Mercato to be “planted” in the ground. They then dug up his corpse, had him dragged by a horse (presumably to the bridge over the river Reno), and hanged him by the neck. Lest anyone forget his infamy, his portrait was also painted on the palace wall.³³

Ghidino’s case was exceptional, but this does not diminish the fact that podestà and their judges were capable of extraordinary brutality in the name of justice. As Blanshei has pointed out, gruesome, nonstatutory punishments—though rare—were a fixture of public justice in Bologna.³⁴ How a podestà exercised his *arbitrium* to punish surely had much to do with his personality and the political situation during his term in office. Political unrest, for example, might require the podestà to make a more fearsome impression on his public audience.³⁵ A prime example is the case of Aghinolfo da Ozzano, an outlaw captured in September 1292 and convicted of leading Lambertazzi forces in an attack on Castello Ozzano, in the course of which they kidnapped, robbed, murdered, and burned houses. Aghinolfo was decapitated in the piazza by the podestà’s knight on what must have been a grand occasion, despite the statutory prohibition against performing such executions in the city center.³⁶ In fact, this rule could be suspended whenever the crime was deemed

²⁸ ASB, Accusationes 7a, reg. 4, 2r.

²⁹ ASB, Sindacato 5, 1288I (96 fols.), 28r, 30r.

³⁰ ASB, Sindacato 5, 1288I (96 fols.), 63v: “Qui missus fuit in caldarium ad coquinandum et postea fuit combustus.”

³¹ ASB, Accusationes 7a, reg. 4, 5r.

³² ASB, Accusationes 7a, reg. 5, 1r.

³³ ASB, Accusationes 22b, reg. 21, 7v–8v.

³⁴ Blanshei, “Gruesome Penalties.”

³⁵ For the link between executions and partisan politics in later centuries, see Terpstra, “Theory into Practice.”

³⁶ ASB, Accusationes 10, reg. 14, 14v–15r.

egregious enough.³⁷ To be sure, podestà could also use their *arbitrium* to show leniency, as seen in the “mitigated” penalties above. But legal discretion also increased the criminal court’s capacity for judicial violence.

To make spectacular examples of criminals, of course, podestà and judges first had to condemn them. To facilitate this, magistrates applied torture during the course of the trial more than some historians have allowed. Trial records say remarkably little about methods of torture, but the *strappado* seems to have been the most common technique used in communal Italy.³⁸ Sarah Blanshei has shown that, in late thirteenth- and early fourteenth-century Bologna, torture was rare only insofar as having presumed criminals in custody was rare. Anywhere from one quarter to more than one half of those corporally punished were tortured in the course of their trials. In Perugia, the rate was also around 25 percent in cases where the imputed was actually in custody.³⁹ Many communes’ statutes protected citizens of good repute from torture, allowing only “infamous” criminals to be tortured and for certain crimes.⁴⁰ Bologna’s statutes, however, protected only reputable members of the guilds and popular militias (i.e., of the ruling party), leaving other citizens, such as magnates, open to torture.⁴¹ It is no surprise, then, that community outsiders, such as foreigners and marginal figures who had no one to vouch for their good *fama* accounted for a significant majority of torturees.⁴²

Nonetheless, torture was hardly a marginal part of public justice. Torture can be found among the earliest records of Bologna’s criminal court, for example, in an April 1242 case of cattle rustling that may be the earliest recorded case of judicial torture in Western Europe.⁴³ The notary Filippo da Ponzano—hardly a common thief—was tortured twice in February 1292, and confessed during the second round to having forged a public document.⁴⁴ And starting in 1317, there is a surge in formal complaints (*protestaciones*) against the podestà by *popolani* claiming they had been unjustly tortured.⁴⁵ For a time, Bologna’s *popolo* regime employed a special “torture notary” whose express job was to record the confessions of torturees. Most cases of torture treated in this chapter come from the four registers to survive from this office. Although the office was discontinued in 1292 as an inefficient use of public funds, its mere existence speaks volumes about the centrality of torture to judicial practice.⁴⁶ In short, there is good reason to believe the author(s) of the

³⁷ For another example, see Domenico di Pietro who was hanged in the crossroads of Porta Ravegnana in December 1291: ASB, Sindacato 8, 1291II (60 fols.), 5v.

³⁸ Cohen, *The Modulated Scream*, 76–77. In Bologna’s 1250 statute, the rope and pulley system (*tondolum* or *tirellum*) is the only type of torture referred to by name; see *Statuti 1245*, 1:296–98. Trial records also speak of suspects being “set down” (*depositus*) from torture. See ASB, Inquisitiones 1, reg. 1, 7r; Inquisitiones 7, reg. 1, 2r–v, 7v; Inquisitiones 8, reg. 11, 2r; Inquisitiones 10, reg. 8, 5v. Blanshei, however, has found references to torture involving water and stones; see *Politics and Justice*, 324.

³⁹ Blanshei, *Politics and Justice*, 333–37. Cf. Vallerani, “Conflitti e modelli procedurali,” 279–81.

⁴⁰ Pennington, *The Prince and the Law*, 159–60; Fiorelli, *La tortura giudiziaria*.

⁴¹ Blanshei, *Politics and Justice*, 320–22. *Popolani* could only be tortured with special permission from the capitano del popolo and in the presence of six *anziani*.

⁴² Blanshei, 362–63; Smail, *The Consumption of Justice*, 181–82.

⁴³ ASB, Inquisitiones 1, reg. 1, 6v–7r. The same register contains two other cases of judicial torture from 1242 and 1243.

⁴⁴ ASB, Accusationes 10, reg. 6, 2v–3v.

⁴⁵ Blanshei, *Politics and Justice*, 373–77.

⁴⁶ Blanshei, *Politics and Justice*, 327.

Oculus pastoralis, a handbook for podestà from the 1220s, when they alleged that indiscriminate use of torture was the “collective vice” of podestà.⁴⁷ When they had suspected criminals in custody and other proofs were lacking, podestà and judges were likely to subject the imputed to the *strappado* to induce a confession.

Indeed, the archival record suggests that the authorities were more interested in using torture to secure convictions—and in turn making public examples of suspects—than in finding the truth, the ostensible purpose of torture.⁴⁸ Exemplary in this regard is the case of four alleged thieves—Martino, Ventura, Pietro, and Niccolò, nicknamed “the Trumpet”—whom the *familia* netted in March 1287 on a routine curfew patrol. It is not clear what indications the court had against them, but the court seems to have suspected them of conspiring with the magnate Caprezino Lambertini to commit (separately) kidnapping and burglary.⁴⁹ Their confessions are recorded in a register of the torture notary, and are notable for the lack of concord. Virtually the only thing these suspects agreed on in their initial confessions was that they had planted a ladder at a church near the house where the woman they planned to abduct resided. Martino and Ventura disagreed completely as to the name of this woman; Niccolò claimed they were never told her name, and Pietro did not seem to know it either. Ventura and Pietro did agree at least that this woman resided in a house owned by the Magnani, an eminent family of notaries. Their stories also did not match with regards to the burglary (or burglaries) they were allegedly planning. Initially, Pietro was the only one to mention a plan to rob both Ugolino and Lanza Garisendi in his confession. Niccolò and Ventura each acknowledged it when they were tortured a second time, but Niccolò could not say which Garisendi they planned to target, and Ventura disagreed with Pietro about what they planned to steal from them.

Their lack of agreement on details strongly suggests that the contours of their confessions were suggested to them based on what the magistrates had heard from their alleged accomplices.⁵⁰ Importantly, Niccolò and Ventura were the only two suspects who were tortured twice, and they were also the only two who did not confess to additional crimes (besides the kidnapping plot) initially. Martino, for his part, had confessed to five previous thefts, and Pietro had confessed to one count of armed robbery and one of armed assault. The judges seem to have been hoping for similar admissions from the other two, so as to better classify them as “common” thieves and criminals. Ventura indeed obliged them during his second torture, confessing that one year ago in Florence he had killed the man who had killed his brother. Niccolò, remarkably, endured both rounds of torture without admitting to anything more than his involvement with Caprezino.⁵¹ The record does not give the respective fates of these four suspects, so it is unclear whether this earned Niccolò a lighter punishment. But it is significant that the second round of torture seems to have

⁴⁷ Quotation from Pennington, *The Prince and the Law*, 42.

⁴⁸ For torture as a means of obtaining a confession rather than a means of proof, see Peters, *Torture*, 50.

⁴⁹ The register gives the magnate’s name as *Caurecinus de Lambertinis*, but this is almost certainly the same person as *Capriçinus de Lambertinis*, mentioned in a resolution from August 1285, under the rubric “De nobilibus et potentibus comitatus Bononie afidandis et cancelandis de banno qui securitatem prestabunt infra terminum infra ordinatum.” See *Statuti 1288*, 1:466. Other sources mention a Caprezio Lambertini.

⁵⁰ For the possibility that the details of confessions (such as the lists of stolen goods and their values) were compiled in advance as indictments and only later presented as the “confession” of the suspected thief, see Dean, *Crime and Justice*, 190–92; Stern, *The Criminal Law System*, 216.

⁵¹ ASB, Inquisitiones 10, reg. 8, 2v–4r.

been aimed squarely at eliciting lengthier confessions, not sorting out the contradictions of the initial stories.

In most cases, torture functioned to move the trial toward a guilty verdict. Importantly, a confession made under torture did not in itself constitute legal proof; the suspect would have to “persevere” in his confession afterwards, repeating it a second time. But this opportunity to recant always occurred under the threat of more torture, since any confession made under torture, though not probatory, provided the judge with new evidence that justified a second round of it.⁵² Indeed, some judges apparently did not need new evidence to continue torturing suspects if they did not hear the confessions they expected the first time. An extraordinary example of this is the case of Ghisellina, daughter of Bonaventura the shoemaker, who was tortured five times in 1292. Her confession does not make clear what her alleged crime was, but she may have been suspected of using counterfeit money. At her first torturing on 7 April, she claimed she had found six gold florins in a cubbyhole in her house one day the previous month when the commune’s knights were away on an expedition. Tortured again two days later, she changed her story, claiming she had received the six gold florins from one Fuzio, “who committed adultery with her in the middle of the night.” She gave the same terse, cryptic confession when tortured on 14 and 15 April. She stuck to this line when tortured for the last time on 14 May, having apparently remained in custody for the previous month. On this last occasion, she was tortured in front of four *anziani* and three bankers in addition to the usual audience of judges and notaries.⁵³ It was plainly illegal to subject her to torture so many times, but as the presence of the *anziani* and bankers suggests, expediency prevailed over due process when the political interest was great enough. Also in 1292, the podestà had another individual tortured three times—on 3, 4, and 6 June—on suspicion of some unspecified crime(s). This hardy soul made no confession whatsoever and was apparently left alone thereafter.⁵⁴ If torture encouraged the accused to condemn himself out of his own mouth, as Mario Sbriccoli has argued, then some judges took this encouragement to extremes.⁵⁵

Equally revealing is judges’ use of torture against persons suspected of petty crimes, even though Bologna’s statutes expressly forbade it. Domenico di Giacobino, resident of San Giorgio, was tortured in March 1286 after being arrested by the *familia* for playing dice in front of a church.⁵⁶ Evidently the judge had deemed him to be of ill repute, but he confessed to no other crime. In the same month, a woman from Forlì named Brunetta confessed under torture that a certain Riccobono had caught her emptying and stealing a sack of grain from his home.⁵⁷ Apparently she had done nothing worse, and hardly fit the type of the “common thief” seen elsewhere in this chapter. Overall, the registers of the torture notary suggest that, if torture were as well documented for the entire communal period as it is for these few years in Bologna, we would have a rather darker portrait of judicial practice in

⁵² Peters, *Torture*, 57–58; Sbriccoli, “Tormentum.”

⁵³ ASB, *Accusationes* 10, reg. 6, 4r, 5r–v. Blanshei mentions this case in *Politics and Justice*, 325.

⁵⁴ ASB, *Accusationes* 10, reg. 6, 7r–v.

⁵⁵ Sbriccoli, “Tormentum.”

⁵⁶ ASB, *Inquisitiones* 7, reg. 1, 7v.

⁵⁷ ASB, *Inquisitiones* 7, reg. 1, 6v.

late medieval Italy.⁵⁸ Communal governments needed exemplary punishments for public consumption, and torture was a key means of procuring them.

The Public Interest

What motivated this judicial violence and, by extension, the policing that fed into it? The corporal sentences themselves provide a superficial answer, since each typically offered a rationale for the prescribed punishment. Almost invariably, they expressed a philosophy of deterrence, often a formulation of the *ne crimina* maxim discussed in the last chapter. For example, in 1310 the podestà sentenced a convicted murderer to be decapitated “so that crimes do not remain unpunished but [rather] his punishment become an example to be feared by others.”⁵⁹ Examples could well be multiplied, and this sort of language was not peculiar to Bologna. For instance, in 1273 Perugia’s capitano condemned six men to be hanged for attempting the armed robbery and murder of an entire family in the village of San Martino. The court declared it “a most wicked example [...] to perpetrate such enormous crimes against the honor and peaceful state of so noble a city as Perugia,” and called for the convicts’ execution “so that it might be an example to others,” lest anyone presume to commit such a crime in the future.⁶⁰

Besides a theory of deterrence, corporal sentences typically expressed moral outrage at the crime(s) perpetrated by the condemned. A good example is the sentence of Giacomino of Roncastaldo, convicted in January 1290 of robbing a priest from Trieste on a highway in Bologna’s *contado*. As the story went, the priest had become lost and accepted Giacomino’s offer to show him the way, but Giacomino then turned on him, robbing the priest of a lambswool coat, two purses, a pair of gloves, and a pair of knives. Giacomino was sentenced to be hanged “since robbing men who entrust themselves to travel by public streets and roads under great faith is a bad example, and so that his punishment might be an example to others.”⁶¹ Implicit in this choice of words was the podestà’s understanding that it reflected poorly on his *regimen* when wayfarers could not travel the roads safely in Bolognese territory. The same concept of public trust is evident in the conviction of Guglielmo Accarisi, who was decapitated in August 1291 as an outlaw for murder. After the *familia* arrested him for illicit arms-bearing, the court found that he was under ban for the 1288 murder of his roommate (*socius de hospitio*) Puzio of Tuscany, who had come to Bologna to study canon law. The wording of his sentence places this breach of trust front and center, characterizing Guglielmo’s crime as especially “shameful and detestable” because Puzio had come to Bologna “believing himself to be free from care and to stay

⁵⁸ For further evidence of judges’ repeated use of torture in the investigative process, and how the sources hide it, see Dean, “Investigating Homicide.” Dean has also argued that thieves were tortured as a matter of course; see *Crime and Justice*, 25.

⁵⁹ ASB, Accusationes 30b, reg. 29, 11r: “Ad hoc ut malleficia non remaneant inpunita set pena ipsius aliis in metu transeat in exemplum.”

⁶⁰ ASP, Capitano 1, reg. 4, 19v: “Unde cum res sit nefandissimi exempli tallia et tanta enormia crimina perpetuare contra honorem et pacificum statum tam nobilis quam civitatis Perusii, et ut ceteris sit exemplum ne de cetero fieri presumatur.”

⁶¹ ASB, Accusationes 9a, reg. 3, 3r: “Ideo cum derobbare homines, qui ire per per stratas et vias publicas se sub fiducia magna credunt, sit res mali exempli, et ut ipsius pena ceteris sit exemplum.”

safely in the city.”⁶² Thus, punishing crimes served the public interest not only by deterring future criminal acts, but also by fostering moral solidarity in the community.⁶³

Indeed, it is important to remember that these sentences were written for public consumption, to be read aloud from the steps of the palace at the presentation of the condemned. By casting himself as the guarantor of justice and public morals, a podestà could burnish his reputation—which in turn would help him secure his next commission—and bolster the legitimacy of the regime he served. Foreign *rectores* ultimately served at the pleasure of local elites, and these elites expected their leading officials to provide exemplary justice for the public. Indeed, it reflected poorly on them if their employees did not. Thus, in October 1300, Bologna’s council granted the podestà special authority to investigate and prosecute the attacks on pilgrims—likely on their way to Rome for the Jubilee—that had taken place near San Ruffillo the night before. The council, feeling its responsibility to protect religious wayfarers in its territory, determined that such crimes “could redound to the serious damage and opprobrium of the commune and people of Bologna if they remain unpunished.”⁶⁴ An anonymous denunciation from January 1290 followed the same line of argumentation. It notified Bologna’s podestà, capitano, anziani, and consuls—as well as the presiding *ministrales* of the guilds—that the outlaws Ugolino di Bonifazio da Tignano and Ugolino da Montario were assaulting and robbing peasants (literally, *pauperes persone*) in the countryside from their stronghold at Tignano, which was “a great disgrace to the podestà and commune and people of Bologna.”⁶⁵ In a city-republic, the leading citizens ultimately provided justice, and the stability of their regime could depend on how well they were perceived as doing so.

It should be no surprise, then, that citizens played a pivotal role in shaping and promoting the judicial violence that their foreign magistrates carried out. When local residents made criminal accusations or otherwise asked the podestà for justice, they often invoked the same legal concepts and principles that the podestà did when he delivered sentences of corporal punishment.⁶⁶ For example, in January 1303, an anonymous citizen denounced the son of a dyer for allegedly abducting the wife of a fisherman and forcefully keeping her in his own home for his sexual pleasure. The denunciation labeled the crime a *res mali exempli* and “against the rule and honor” of the podestà, and therefore asked him to investigate and punish “so grave and enormous a crime,” as both the statutes and his honor required, “so that such crimes not remain unpunished and so that from now on such things not be attempted.”⁶⁷

⁶² ASB, Accusationes 9b, reg. 27, 1v: “Unde cum res sit turpis et mali exempli tam turpe et de[te]stabile malleficium comittere in personam sui socii de hospicio.” Cited in Blanshei, *Politics and Justice*, 367.

⁶³ Erikson, *Wayward Puritans*; Durkheim, *The Division of Labor*, 58.

⁶⁴ ASB, Riformagioni 153, 259r: “Que malleficia si remanerent impunita possent redundare et grave danpnum et obprobrium comunis et populi.” For another complaint about outlaws committing “enormous” crimes in the *contado*, see ASB, Provvigioni 4, reg. 213, 73r.

⁶⁵ ASB, Inquisitiones 18, reg. 1, 30r: “Notificatur magnum dedecus potestatis et comunis bononie et populi.”

⁶⁶ In the language of a 1256 register, locals who made accusations to the court demanded that criminals “be punished according to the form of the statutes and of the podestà’s good rule”; see ASB, Accusationes 2, reg. 10, 3v.

⁶⁷ ASB, Inquisitiones 58, reg. 6, 1r–v: “Quare cum talia facere et committere sit res mali exempli et contra regimen et honorem vestri domini potestatis et vestre curie, suplicatur quatenus vobis placeat de tam enormi et gravi maleficio inquirere et inquisitione facta ipsum punire et contra ipsum procedere, prout requirit et

Other accusations and denunciations bluntly requested acts of judicial violence. In March 1256, a *ministralis* denounced several prostitutes in his neighborhood and asked the podestà to cut off their noses if he found them, so that they would not stay in the city during his term in office.⁶⁸ In June 1254, a shepherd named Guarino, formerly of Piacenza, asked for three men to be tortured. He alleged that they had testified falsely against him—saying “impossible and very false things” under oath—in a civil dispute over the ownership of a certain house. He therefore asked that each of the alleged perjurers “be punished for the aforesaid according to law, the statutes and ordinances of the people, and the good rule of the podestà, and that every single one of the aforesaid men be subjected to torture since there are violent presumptions of falsehood against them.”⁶⁹ The record does not indicate whether the podestà obliged him, but the mere fact that a lowly individual of foreign birth would make such a request highlights both the central role of torture in criminal justice and the legal literacy of ordinary people in communal Italy. Guarino even offered the court the legal grounds for torture by invoking the concept of “violent presumptions.” To be sure, a formal accusation like this would have been drawn up with the help of a notary, but even if an official suggested this language to the accuser, the accuser still had to approve it. In the end, the document reflected the accuser’s wishes.

Thus, the shift toward hegemonic justice ultimately rested on the politics of the communes’ citizens. As noted in the previous chapter, professional jurists like Alberto Gandino played a leading role in developing communal statutes and criminal procedure in the thirteenth century. Yet their work necessarily supported the agendas of citizen-legislators who viewed punishment as essential to the public interest and good governance. When foreign magistrates carried out acts of judicial violence, they were generally carrying out the wishes of their employers. The underlying question, then, is why political elites thought judicial violence served their interests.

Outlaws, Infames, and Men of Ill Repute

Ultimately, the “public interest” was synonymous with the continued political and economic domination of the ruling elite. Though citizens invoked lofty ideals like the peaceful state of the commune in drafting criminal legislation, how they perceived and labeled threats to those ideals depended on the political and economic privileges they enjoyed as members of the governing coalition, as well as the moral order they claimed to uphold. The frequent and severe political disruptions of the thirteenth and fourteenth centuries may even have impelled these communities to seek out criminals and deviants to punish as a way to maintain and define moral boundaries.⁷⁰ Criminal justice in the communes, of which policing was a part, sought to correct and remove threats to the established order.

Communal statutes labeled and categorized certain kinds of people as threats to the social order and prescribed their correction or removal according to the severity of the

exigat honor vestre et forma juris statutorum ordinamentorum et reformationum comunis et populi Bononie et vestri arbitrii, et ne talia maleficia remaneant inpunita, et ut de cetero talia non aptentur.”

⁶⁸ ASB, Accusationes 2, reg. 8, 16v.

⁶⁹ ASB, Inquisitiones 1, reg. 4, 1r: “Quare petit predictos omnes et singulos puniri de predictis secundum ius et statuta et ordinamenta populli et bonum regimen potestatis, et predictos et singulos omnes subici tormentis cum sint contra ipsos violente presentationes falsitatis.”

⁷⁰ Building on Durkheim’s theory of punishment, this is a central contention in Erikson, *Wayward Puritans*.

threat they posed. At the furthest end of the spectrum were outlaws, infamous criminals, and social deviants whose very existence threatened the social order and who, therefore, required elimination.⁷¹ At the start of every podestà's term, Bologna's heralds went out into the city to proclaim that all infamous persons should leave the jurisdiction at once. The list of *infames* they recited typically included thieves, highway robbers, criminal outlaws, counterfeiters, assassins, prostitutes, pimps and madams, Cathars and heretics "of any sect," sodomites, soothsayers, magicians, and, in case this left anyone out, "all other infamous persons."⁷² Pimps and prostitutes stand out as an anomaly in this laundry list of out-groups, because they were not banned outright but rather confined to specific neighborhoods of the city. Yet all the other categories of person mentioned were by definition capital criminals, outlaws in the literal sense of persons whose very identity placed them outside the social order and beyond the protection of the law.⁷³ The heralds' proclamations sent a clear message: if the new podestà found anyone who fit the description of these types, he would proceed against them with the full weight of the law. Moreover, these proclamations threatened punishment for anyone who harbored any of these infamous types. Every month the podestà's *familia* followed up with a general inquisition regarding *infames*, asking the *ministrales* if they knew of any such individuals living in their parishes or anyone harboring them.⁷⁴

The logic of exclusion in criminal law overlapped significantly with the logic of exclusion in communal politics, which led the dominant coalition to banish their opponents from the city, sometimes en masse. Indeed, the judicial sources often lumped "enemies and exiles of the commune" (i.e., political enemies) together with criminal outlaws and men of ill repute.⁷⁵ Some general inquisitions inquired about political crimes, such as nobles retaining *populares* as bodyguards or anyone contracting relationships with Lambertazzi, in the same breath they asked about thieves, pimps, and assassins.⁷⁶ An inquisition from 1300 referred to members of the exiled Lambertazzi party interchangeably as outlaws, rebels, and "the disobedient" (*inobedientes*).⁷⁷ In a limited access order, there was ultimately little difference among these different types of disobedience. Political and moral crimes tend to overlap in single-party systems, and the communes were no exception.⁷⁸ The ruling party sometimes took military action against political rebels (see Chapter 5), but

⁷¹ Vallerani, "Criminal Court Procedure," 44–45.

⁷² ASB, Sindacato 5, 1288I (22 fols.), 1r: "Item [...] quod omnes et singuli latrones, robatores stratarum, banniti pro malleficio, falsarii monete, assassini, meretrices, rufiani, rufiane, gazari, sodomite, indivinatores, mathematizi, et omnes alii gazarii cuiuscumque sete, et omnes alie infamate persone que sunt in civitate Bononie vel districtu incontinenti exiant de ipsa civitatis Bononie et districtus sub penis et bannis comprensis in statutis comunis Bononie." For similar examples, see ASB, Sindacato 2, 1285II (28 fols.), 2r; Corone 7, 1295I (44 fols.), 1r; Corone 17, 1309II, 4r; Corone 22, 1316I (50 fols.), 1v.

⁷³ Dubber, *The Police Power*, 14–15, 20–21. For a comparative discussion, see Lupoi, *The Origins*, 368–87.

⁷⁴ In July 1315 alone, the podestà's *vicarius* questioned 292 *ministrales* about *infames*; see ASB, Corone 22, 1315II (38 fols.), 1bisv–8r. For monthly inquests regarding *infames*, see ASB, Corone 23, 1316II (72 fols.), 12r–23v, 36r–51v; Corone 17, 1309I, 2r–19v.

⁷⁵ See for example the oath of the *massarii* in ASB, Sindacato 1, 1285I (44 fols.), 17r. On the criminalization of political offenses in Bologna, see Blanshei and Cucini, "Criminal Justice and Conflict Resolution," 343–44.

⁷⁶ ASB, Corone 3, 1290II (64 fols.), 3r; Corone 11, 1300 (10 fols.), 10v; Corone 23, 1316II (72 fols.), 12r–23v, 36r–51v.

⁷⁷ ASB, Corone 11, 1300 (10 fols.), 10v.

⁷⁸ Bergesen, "Social Control."

the podestà and capitano, acting on their behalf, also sought to prosecute such “criminals” in court. On the rare occasions when the commune executed men in the central piazza, such as Aghinolfo da Ozzano above, it was to make an example of political rebels or heretics.⁷⁹

Municipal statutes targeted threats to the economic welfare of the commune arguably more than any other types. Bologna’s criminal court showed a special preoccupation with common thieves, or in the language of the sources, men who lived by thievery (*de rapto*) rather than by their own means (*de proprio*). The podestà’s *familia* held general inquisitions every two months regarding “men of ill condition and repute, committers of thefts, and those who are infamous for thefts and other crimes, or who were found or could be found to live more by thefts or thievery than by their own means.”⁸⁰ By definition, men who lived *de rapto* had no place in society and enjoyed no protection under law; their social and legal status made them subject to summary justice. The April 1290 sentence of Benvenuto of Casola clearly expressed the idea that men who lived *de rapto* were anathema to city life and social pollutants to be cleansed from the city. The podestà found that Benvenuto “was accustomed to live by thievery rather than by his own means,” and was a “public and infamous” assassin and robber as well. The podestà therefore had him decapitated “since it is in the interest of every ruler (*rector*) to purge the city which he rules of wicked men, and so that those living by their own labor might be able to remain safely and securely, and so that the punishment of this man might be an example to others.”⁸¹ Similar is the 1287 sentence of Francesco, son of the grain seller Ottolino, who was already under ban as an assassin in Lendinara and as a thief in Padua. Bologna’s podestà condemned Francesco to be decapitated as an infamous assassin, vagabond, and man of ill repute, who had allegedly come to Bologna to commit more murders, “so that his penalty might be an example for other malefactors,” and “since it is most vile for such men to be fostered in cities and to abide in them.”⁸² As men who lived by ill-gotten gains, such notorious criminals were the opposite of the ideal communal citizen, who earned his living through hard work in a legitimate trade.

As the labeling of Francesco as a “vagabond” suggests, judicial violence was also motivated by the social fears of a deeply conservative society.⁸³ These fears went beyond a simple, rational calculus of political or economic self-interest. Perugia’s statutes, for example, enjoined the podestà and capitano to hold inquisitions for sodomites every month.⁸⁴ In the case of vagabonds, beggars, and the disabled, society tended to assume the

⁷⁹ The 1307 decapitation of Mostarda da Panico in the central piazza is another example.

⁸⁰ ASB, Corone 17, 1309II, 56r: “Adversus et contra homines male conditionis et fame factores furtorum, et qui infamati essent de furtis et aliis malleficiis, et qui magis reperirentur vel reperiri possent vivere de furtis et raptu quam de proprio.” See also Corone 12, 1301II, 7v; Corone 17, 1309I, 2r. Bologna’s statutes required the podestà to hold inquisitions for such men every two months; see *Statuti 1288*, 1:176.

⁸¹ ASB, Accusationes 9a, reg. 3, 6v: “Quod potius vivere consuevit de ra[p]to quam de proprio et quod multa alia maleficia iam comisit et fecit. [...] Ideo cum intersit cuiuslibet rectoris purgare civitatem quam regit malis hominibus, et ut viventes de suo labore secure possint et tute morari, et ut istius pena ceteris sit exemplum.”

⁸² ASB, Accusationes 6b, reg. 13, 1r: “Idcirco cum nequissimum sit tales homines confoveri etiam in civitatibus conversari et cum [...] predicta et singula sint res mali exempli, et ut pena ipsius sit aliis malefactoribus ad exemplum.” It is unclear how the court discovered that Francesco was under ban in other jurisdictions. For issues of territorial jurisdiction in prosecuting thieves, see Dean, *Crime and Justice*, 192–94.

⁸³ For the use of a similar label in a 1295 sentence from Orvieto, see ASO, Podestà 2, reg. 9, 7v. Lansing also mentions the case in *Passion and Order*, 40.

⁸⁴ *Statuto 1279*, 1:12, 15.

worst about them, namely that they were capable of productive labor but chose instead to live on handouts, and often won them through deceit.⁸⁵ Bologna's statutes prohibited those "who beg falsely" from residing within 50 rods (*perticas*) of the city wall and prescribed penalties for anyone who hosted them. The list of false beggars included individuals who "stained" themselves with herbs (i.e., who used poisonous plants to create sores on their skin); those who pretended to be penitents by wearing iron rings around their arms; women who led young girls around begging alms for their dowries, alleging that they were to be married; and soothsayers and magicians. The same statute banned the blind and those who pretended to be blind alike, as if they were morally equivalent.⁸⁶ The heralds frequently blazoned reminders of these statutes, and the dirt notary included false beggars among the illicit persons and things he looked for on patrol and investigated through general inquests of parish officials.⁸⁷

If the commune generally treated these types as "matter out of place," it was also capable of extraordinary repression against them. Eye-opening in this respect are the separate confessions of three alleged soothsayers, whom Bologna had burned at the stake in 1290, 1300, and 1310, respectively. There is no space to detail their fascinating confessions here, but they strongly suggest that the commune's concern was not that they actually knew magic, but that they were wandering charlatans who deceived vulnerable people.⁸⁸ Together their cases suggest that communal authorities were preoccupied with the threat posed by vagabonds, charlatans, and soothsayers well before the famines and plagues of the fourteenth century supposedly ballooned the ranks of such marginal groups.⁸⁹ It may seem counterintuitive that men who did nothing worse than con people would suffer such cruel punishment in a society where murderers could avoid public prosecution by making peace with the victim's family. But it was precisely their lack of social connections, their not belonging to any household or community, that made vagabonds, soothsayers, and the like incorrigible in the eyes of the law.⁹⁰

As with judicial violence itself, prejudicial treatment under the law originated in the popular prejudices of citizens who viewed out-groups of all sorts—whether political, economic, or religious—with deep suspicion. Indeed, it was not foreign magistrates who made laws to exclude beggars and disabled persons from the city, but residents who

⁸⁵ In general, see Dean, *Crime in Medieval Europe*, 50–52; Guglielmi, *Il Medioevo*, 77–78, 84–85; Farmer, *Surviving Poverty*, 64–69; Rexroth, *Deviance and Power*, 68–125; Geremek, *The Margins of Society*, 29–43, 192–210. On attitudes toward the disabled and able-bodied poor, see Rawcliffe, *Urban Bodies*, 97–104; Metzler, *A Social History of Disability*, 162–97. On the link between moral and physical health, see Henderson, *The Renaissance Hospital*; Carmichael, *Plague and the Poor*.

⁸⁶ *Statuti 1245*, 2:285. The list seems to draw on Azo of Bologna's *Summa* (1208–10) on the *Corpus juris civilis*; see Farmer, *Surviving Poverty*, 66. For a catalog of different types of vagabonds from early modern Italy, see Camporesi, ed., *Il libro dei vagabondi*. For a more recent discussion of these stereotypes, see Jütte, *Poverty and Deviance*, 145–46, 164–67, 185–87. More broadly, see Gambaccini, *Mountebanks and Medicasters*.

⁸⁷ For proclamations see ASB, Corone 7, 1295I (44 fols.), 2r; Sindacato 5, 1288II, 17v–18r; Sindacato 6, 1289I (19 fols.), 2r–v; Sindacato 7, 1290II (38 fols.), 5v–6r. For the dirt notary's concern with false beggars, see ASB, Fango 5, 1293I, 79r–v; 1293II (80 fols.), 1r.

⁸⁸ ASB, Accusationes 9a, reg. 3, 3v–4r; 22b, reg. 21, 2r–v; 30b, reg. 29, 9v–11r. The inquisition that led to the latter sentence, from 1310, survives in Inquisitiones 77, reg. 1, 28r–31v.

⁸⁹ Cf. Pinto, "Un vagabondo, ladro e truffatore nella Toscana della seconda metà del '300: Sandro di Vanni detto Pescione," 335–36.

⁹⁰ Dubber, *The Police Power*, 51.

potentially had to live with them as neighbors. Poverty and physical disability were taken as signs of ill repute, especially when found in combination. Hence in a 1294 arms-bearing case, a defense witness had to qualify his statement that the defendant was indeed a peaceful man of good repute “even though” (*quamvis*) he had two blind sons and very little in goods.⁹¹ In court, local residents drew on moral and medical conceptions of beggars and disabled persons as public nuisances to testify against unwanted neighbors (or perhaps just personal enemies). In January 1295, for example, the dirt notary opened an inquest against a taverner named Giovanni based on the public *fama* that he was a “host and harbinger” of the blind, the lame, amputees, and “those who beg falsely,” and that he gave “men and women of this condition” food and drink in his house daily against the form of the statutes.⁹² Three of the witnesses therefore implored the court to expel the beggars from their neighborhood. As one blacksmith put it: “You, notary and lord podestà, would do well if you expelled such company from the *contrada*.”⁹³ Although Giovanni produced four defense witnesses who claimed that these witnesses all testified out of hatred for him, the dirt notary convicted Giovanni as a harbinger of beggars and other prohibited types.⁹⁴ Similarly, in 1293 the dirt notary investigated two men who supposedly harbored lepers, and three blind men who reportedly lived with their families in the parish of San Giuliano on the edge of town.⁹⁵ Perugia’s lawmakers were so concerned with lepers that they appointed five *custodes super leprosis expellendis*—one for each district of the city—and charged them with preventing lepers from breaching what might be characterized as a sanitary cordon, marked by five of the city’s churches. A separate statute dictated that any woman who lay with a leper who was not her husband was to be flogged and have her nose amputated.⁹⁶ The popular impetus to purge the city of moral impurities is also evident in Bologna’s treatment of prostitution, which lawmakers progressively excluded from all but a few parishes on the periphery of the city—red-light districts, in effect—because of the disturbances brothels allegedly caused in neighborhoods.⁹⁷ Once again, the drive to purify the city through repressive legal measures came not from zealous magistrates or jurists, but from ordinary residents with conservative social mores.

⁹¹ ASB, Corone 6, 1294I (84 fols.), 20r.

⁹² ASB, Fango 6, 1295I (46 fols.), 18r–20r: “Quod dicitur et publica vos et fama est quod ille Johanes est hospitator et receptator orborum et cechorum et avocholorum et aviritatorum et manchorum et membris debilitatorum aliorum similium et qui falso mendicant, et quod cotidie in domo predicta in qua habitat ille Johanes posita ut supra hospitatur et receptat homines et mulieres dicte conditionis, et eis dat et dedit cibum et potum in dicta domo contra formam statutorum comunis Bononie.”

⁹³ ASB, Fango 6, 1295I (46 fols.), 19v: “Sed vos notarius et dominus potestas bene faceretis si expleretis de illa contrata tallem bregatam.”

⁹⁴ For Giovanni’s defense see ASB, Fango 6, 1295I (64 fols.), 5r–8v.

⁹⁵ ASB, Fango 5, 1293II (80 fols.), 71v–72v; 1293I, 72r–73v.

⁹⁶ *Statuto* 1279, 1:266–67, 319–20. The sanitary cordon was marked by the churches of Santa Giuliana, San Galgano, Santa Caterina, Sant’Angelo di Libiano, and Santa Trinità.

⁹⁷ For the growing list of parishes from which prostitutes were banned, see *Statuti* 1245, 1:309–15; *Statuti* 1288, 1:197–201. For petitions from residents to add their parishes to the list, see ASB, Provvigioni 2, reg. 211, 194v; Riformagioni 153, 292r. On prostitutes as social pollutants, see Goldberg, “Pigs and Prostitutes”; Rexroth, *Deviance and Power*, 2, 5–6.

Police Patrols as Dragnet

What, then, did communal society's deep concern with political and moral purity have to do with policing? After all, the evidence in previous chapters suggests that the *familia* spent most of its time pursuing curfew breakers, gamblers, and illegally armed men. It is worth recalling that the *familia*'s primary mission was to capture outlaws and denounce criminals of all stripes, including "prohibited persons." Furthermore, in the minds of judges and lawmakers, outlaws and men of ill repute were often the same men who broke curfew, gambled, and bore arms illegally.

Dino's confession at the start of this chapter illustrates the perceived links between breaking curfew, gambling, and arms-bearing on the one hand, and theft, robbery, and even political disloyalty on the other. The link to police patrols is more explicit in the January 1286 confession of Bologna resident Giacomo di Guido, nicknamed Fideguida. Under torture, Giacomo revealed the circumstances of his arrest: the night watch had discovered him in the street without a light and carrying a piece of wood. He had stolen the wood from a carpenter and was bringing it to a tavern frequented by pimps, prostitutes, and wicked men, where he was planning to use it as firewood while he lay with a prostitute named Ravignana—or so he asserted under duress. Giacomo went on to confess to a litany of crimes including multiple counts of burglary, theft, armed assault, and conspiracy to commit murder—in one case with Marino Carbonesi, the same Lambertazzi who would appear in Dino's confession six months later. Lastly, Giacomo confessed to practicing "the art of the sodomites." He named two alleged partners in "buggery" (*buziria*) and claimed to have "raped many boys, especially while he was a prison guard for the commune of Bologna."⁹⁸ Whatever the veracity of these details, Giacomo was precisely the kind of man of ill repute whom the night watch and *familia* hoped to catch on curfew patrols. His confession confirmed the prevailing belief among judges and lawmakers that minor forms of disobedience could be indicators of more serious criminal activity. Furthermore, when Giacomo was presented to the public and his sentence read aloud in the piazza, he would have provided an exemplary reminder of why police patrols were necessary to protect the public interest.

Such examples suggest that the *familia*'s patrols functioned according to the same logic as today's "broken windows" policing. According to this theory—or rather, the popular simplification of it—strict enforcement against minor offenders prevents more serious types of crime. In effect, the police can use misdemeanor charges to create a dragnet that picks up real felons and prevents would-be offenders from committing worse crimes.⁹⁹ Men who went out at night without a light or who gambled and bore arms outside the boundaries set by the government were not merely disobedient; their behavior threatened specific kinds of harm in the future, such as burglary or assault. Furthermore, those behaviors could indicate the kind of criminal history and ill repute that the authorities sought to uncover and punish. By forcing men into court on relatively minor

⁹⁸ ASB, Inquisitiones 7, reg. 1, 1r-2r: "Item confessus fuit quod ipse Fideguida est sodomita et pluries et pluries artem sodomictorum faciebat et fecit et exercuit, et plures gargiones strupavit, maxime dum esset custos carceris comunis Bononie." See also reg. 2, 10v-12v.

⁹⁹ Wilson and Kelling, "Broken Windows"; Kelling and Coles, *Fixing Broken Windows*. For critiques, see Sampson and Raudenbush, "Seeing Disorder"; Thacher, "Order Maintenance Reconsidered"; Harcourt, *Illusion of Order*. For a rebuttal of popular misconceptions about the original theory, see Kelling, "Don't Blame My 'Broken Windows' Theory."

charges, police patrols provided judges with hundreds of additional opportunities to investigate citizens per year. And those men were far more likely to pose real threats to the social order than if the courts were to simply investigate citizens at random, as they did, in effect, through general inquests. Thus, when the podestà's *familia* went on curfew patrol, inspected arms permits, and raided gambling houses and taverns, they were legitimating their claim to search for outlaws and felons.

Curfew restrictions were meant to thwart burglars and other miscreants who operated under cover of darkness, not keep city residents pent up at night. Indeed, Bologna's statutes displayed a special concern for burglars, or "those breaking [into] or maliciously opening shops, bodegas, chests, boxes, or houses at night."¹⁰⁰ As seen in Judge Ugo's interrogation at the outset of the chapter, judges tended to view anyone discovered out at night, especially without a light, as suspicious. A proclamation from May 1315 made this explicit, declaring that any individuals discovered outside at night—with or without a light—would be regarded as "suspicious persons" (*suspecte persone*).¹⁰¹ Conversely, in March 1306, when Bologna was in the midst of a political crisis and, it seems, under a strict curfew, the capitano del popolo acquitted three alleged curfew breakers, all found with lights in front of their homes, on the grounds that they "were not suspicious persons."¹⁰² Moreover, judges seem to have encountered suspicious persons with some regularity in the course of their work. Much like Giacomo di Guido's case above, Fuzzolino da Pedona confessed to multiple crimes including cattle rustling and murder after the night watch arrested him for burglary in November 1292.¹⁰³

The next chapter will discuss the preventive logic of the arms-bearing laws in greater detail, but it is worth noting here that judges and jurists treated illicit arms-bearing as a sign of malicious intent.¹⁰⁴ In a May 1293 case, for example, the *familia* reported that a certain Bonaventura was carrying a "malicious" knife "maliciously" at his side and threw it away as soon as he saw them searching people for weapons.¹⁰⁵ Magistrates seem to have viewed concealed weapons with an extra degree of suspicion. As if to suggest the suspect's intent, the *berrovarii* sometimes reported whether he had been carrying his knife publicly or openly (*publice* or *palam*)—that is, in the customary manner of travelers—or privately, concealed, or underneath clothing (*privatim*, *absconsus*, *occultatus*, or *subtus*).¹⁰⁶ In Orvieto, carrying a concealed weapon earned a double fine, the same as carrying a weapon at night.¹⁰⁷ Similarly, the court looked with greater suspicion upon weapons that were easily concealed. In a 1308 case, for example, the *familia* described a blade as "very small, very sharp, slender and malicious," as if to imply that the weapon had no honorable uses, like a

¹⁰⁰ ASB, Provvigioni 4, reg. 213, 2r: "Item contra frangentes de nocte stationes vel apotechas, archas vel scrineos, vel domos vel malitiose aperientes."

¹⁰¹ ASB, Corone 21, 1315I (21 fols.), 11v.

¹⁰² ASB, Corone 15, 1306I, 8r: "Absoluti quia non fuerunt suspecte persone." For other acquittals on this ground, see 4r, 7v, 8v. The capitano had temporarily taken over police responsibility in the absence of the podestà.

¹⁰³ ASB, Accusationes 10, reg. 14, 1r.

¹⁰⁴ Cavallar, "Regulating Arms," 102–4.

¹⁰⁵ ASB, Corone 5, 1293I (66 fols.), 34v.

¹⁰⁶ ASB, Corone 20, 1313II (46 fols.), 31r: "Publice et palam." ASO, Podestà 2, reg. 3, 3r and 8v: "Privatim." ASB, Corone 20, 1313II (48 fols.), 18v: "Absconsus." ASB, Corone 16, 1308I (64 fols.), 4r: "Occultatus." ASB, Corone 4, 1292I (92 fols.), 25r: "Subtus."

¹⁰⁷ For examples, see ASO, Podestà 1, reg. 6, 1v, 36v.

combat knife (*cultellus de ferire*) or broad sword.¹⁰⁸ Of course, some individuals did use prohibited weapons maliciously to commit violent crimes, but there are also cases, like Guglielmo Accarisi's above, where routine stops for illegal arms uncovered wanted men. By targeting all men who bore arms without a license, lawmakers and judges could discipline those who bore them with malicious intent.

Lawmakers' attitudes toward gambling were more complex. Games of chance were both a tolerable vice, to be regulated rather than banned outright, and a serious threat to the economic and moral life of the city. The perceived links between gambling and blasphemy are well known, and made games of chance a favorite subject of popular preachers like Giovanni da Vicenza, who instituted Bologna's first gaming laws.¹⁰⁹ But blasphemy was only one of the concerns that led Lucca's lawmakers to label gambling the "source and origin" (*fons et origo*) of all evil in their civic statutes.¹¹⁰ To start, dice games could lead men to violence. Judges frequently saw cases where dice games inspired not only fisticuffs and general rowdiness, but also premeditated acts of violence. For instance, in his 1292 confession to multiple counts of theft and murder, Giovanni Buttrigari recounted how he had once lost his money gambling to a stranger in Padua. When he asked for some of the money back so that he could go to the public baths, the stranger answered, "My lady, I do not wish to lend to you." Giovanni responded to this insult by stabbing him to death.¹¹¹ In a 1300 homicide case, two *contadini* plotted overnight to recoup their money after losing it all gambling to a resident of Bologna. The next day they led him to the Ponte Maggiore outside of town under the pretense that they were going to pick grapes, then brutally struck him down with a pole arm and sword. They collected 4 lire and 2 soldi off his body.¹¹² And in 1286, Pietro di Pizzolo confessed that he had stabbed his associate with a lance after the latter refused to hand over his share of the loot they had just won using false dice.¹¹³

A gambling habit could also lead a family to financial ruin, and some citizens petitioned the city council for help controlling prodigal gamblers in their households.¹¹⁴ In more extreme cases, a gambling habit seems to have led some individuals to adopt a life of crime. Dino's confession at the start of this chapter offered a few examples of thefts inspired by gambling losses, which was a common motif in criminal confessions.¹¹⁵ The case of Marco di ser Pietro, formerly of Padua but a resident of Iesi at the time of his conviction, is exemplary. One night in May 1300, Marco was caught burglarizing a guesthouse in Bologna. His subsequent confession reads like a morality tale about the dangers of gambling, depicting a criminal career fueled entirely by his gambling habit. Marco professed that he had lived as a "public and famous thief" since leaving his home city

¹⁰⁸ ASB, Corone 16, 1308I (64 fols.), 33v: "Unum stocchettum parvunculum, acutissimum, et exilem et malitiosum."

¹⁰⁹ Connell and Constable, *Sacrilege and Redemption*.

¹¹⁰ Quoted in Dean, *Crime and Justice*, 88. For learned attitudes toward games of chance, see Ceccarelli, *Il gioco e il peccato*.

¹¹¹ ASB, Accusationes 10, reg. 14, 1v: "Madonna, ego nolo vobis mutuare."

¹¹² ASB, Accusationes 22b, reg. 21, 11v.

¹¹³ ASB, Accusationes 5b, reg. 16, 6r.

¹¹⁴ For examples, see ASB, Riformagioni 153, 240r; Ungarelli and Giorgi, "Documenti," 389–91; Blanshei, *Politics and Justice*, 419.

¹¹⁵ For another example, see ASB, Inquisitiones 7, reg. 1, 2r–v.

of Padua some eighteen years ago. He had gambled away all his possessions and so “he was ashamed to stay there [in Padua] and went through the world through many lands gambling and stealing as the opportunity presented itself to him.” During that time, he seems to have apprenticed himself to a tailor in Lucca and another in Naples, but in both cases stole from his master after losing all his clothes and money since “he was in the habit of gambling.” The judge sentenced Marco to be hanged as a common thief.¹¹⁶ With Marco’s condemnation, the criminal court effectively presented to the Bolognese public an exemplar of how gambling could lead to the downfall of productive members of society. Marco had been born into a respectable family, if his father’s honorific title of “ser” is any indication, and trained to practice an honorable trade. Yet his gambling habit had reduced him to thievery and, ultimately, led to his death on the gallows. The warning for Bologna’s citizens about the dangers of gambling could not have been clearer.

If habitual gamblers were a short step removed from common thieves, they were also the close cousins of swindlers and cheats. False dice feature prominently in a number of confessions, including Marco’s above. The podestà’s *familia* discovered ten dice on Marco when he was in custody, four of which were trick dice, either mismarked or weighted. Marco even described in his confession how he had been inspired to acquire trick dice after falling victim to them, which dice helped him win 11 lire back from the men who had initially duped him. In August 1300, a cobbler and resident of Bologna named Polo di Martino confessed to being “a common and infamous falsifier, swindler, deceiver, and changer of dice.” Polo admitted to practicing “the art of using false and mismarked dice” in Bologna and other cities, and recounted a litany of times when he had used them to win money and goods fraudulently. Polo estimated that he earned at least a quarter of his living for himself and his wife by practicing this art. The podestà condemned him to lose his right hand.¹¹⁷ And in August 1286, Zollo da Montegacio confessed to using false dice and a fake gold florin to cheat a “most simple rustic” from Saliceto out of 6 lire. Zollo and his associate had seen this “rustic” make those 6 lire selling woolen textiles near the Porta Ravennana, and subsequently led him out of the city to gamble away his earnings. Like Polo, Zollo paid for his crime with the loss of his right hand.¹¹⁸

Besides outright theft and deceit, gambling was closely associated with usury. The sources typically call men who lent money to gamblers *mutuatores*, but in a 1286 inquest the notary labeled them *generatores*, a word that more typically meant “usurer,” suggesting these lenders charged high interest rates.¹¹⁹ Indeed, it is not hard to imagine opportunistic and unscrupulous lenders frequenting taverns and other popular gambling spots in

¹¹⁶ ASB, Accusationes 22b, reg. 21, 1r-v: “Et dixit quod a dicto tempore citra consuevit ludere et ludebat et ideo faciebat predicta furta. [...] Item dixit et confessus fuit quod iam sunt decem et otto anni vel circa quod ipse se separavit de Padua occasione ludi, quia luxerat pannos denarios et arma que habebat, quoniam verecundabatur stare ibi, et ivit per mundum per plures terras ludendo et furando prout sibi occurrebat. Et dixit quod ipse est publicus et famosus latro et fuit a dicto tempore citra, et quod plura alia fecit de quibus ad presens non recordatur.”

¹¹⁷ ASB, Accusationes 22b, reg. 21, 6v-7r: “Inprimis dixit et confessus fuit quod ipse est publicus et famosus coniator, ingiuncator, deceptor, et cambiator taxillorum et fuit a carniprivo proxime preterito fuit annus citra, et quod quasi continue dicto tempore operatus fuit dictam artem mittendi taxillos falsos et mispuntos falso, scienter, et dolose hominibus ludentibus secum.”

¹¹⁸ ASB, Accusationes 5b, reg. 16, 7v: “rusticho simplizisimo.” For another robber charged with making and using false dice, see ASB, Inquisitiones 7, reg. 1, 5v.

¹¹⁹ ASB, Corone 1, 1286II, 14v-15r.

medieval cities, and the statutes prohibited lending to gamblers accordingly. Judges seemed to have been more interested in prosecuting gaming hosts and moneylenders than ordinary gamblers, much the way modern prosecutors prefer to target drug dealers and traffickers rather than users. For example, in September 1286, when the *familia* brought in five men who were allegedly gambling in the piazza, the judge asked them for the names of moneylenders and other gamblers. When they offered no useful information, he had all five suspects released from prison since they were “paupers and most wretched persons.”¹²⁰

Especially revealing is the case of Enrighetto Aldovrandini, arrested in October 1286 for gambling in the piazza. The *berrovarii* had seen Enrighetto gambling in the piazza four days before they managed to arrest him, and heard then from other gamblers that he had been using loaded dice. Thus, once he was in custody, the judge ordered Enrighetto under pain of 10 lire to hand over all the dice he had in his possession. He promptly handed over three proper dice, but the judge, apparently unconvinced, had Enrighetto brought into the palace chapel and searched. There the *familia* found seven “false and despicable” dice on him—whose markings the notary described in detail—along with several other proper dice.¹²¹ Enrighetto still refused to cooperate with the judge’s investigation, however. Under further questioning, he denied that he was gambling in the piazza, claiming instead that he was merely standing by the game because he wanted to change a *bolognino grosso* to buy a bundle of straw. He could not deny that the *familia* had just found several false dice on him, but claimed to have found them in a handkerchief in the piazza. He even claimed that he only knew how play the licit games *ad gnassum* and *ad tabulas*, not the forbidden game *ad zardum*. With all evidence to the contrary, the judge consigned him to prison. While in prison, Enrighetto decided to turn state’s witness, so to speak. When he appeared in court again six days later, the judge asked him who lent money to gamblers in the piazza. Enrighetto offered the names of 11 individuals, including four with ties to the Lambertini family, who two months earlier had been implicated in the gambling house raid described at the start of this book. The court proceeded against all 11, but only two answered the summons; it is unclear if any were found guilty. Remarkably, Enrighetto received a full acquittal, even though the possession of false dice constituted a serious offense, as illustrated in the cases above.¹²² It is likely Enrighetto struck a bargain while in jail, offering the court information in exchange for clemency. This podestà was apparently more interested in prosecuting private gaming operations—especially those with potential links to a magnate family—than one lowly swindler. Thus, as with arms-bearing and curfew, the regulation of gambling helped the *familia* to discover and prosecute more threatening criminals and infamous types.

Finally, it did not help the general opinion of gamblers that the majority of players in the public gaming spots (*baratarie*) were foreigners and vagrants.¹²³ Consider the defense

¹²⁰ ASB, Corone 1, 1286II, 22r: “Relaxati sunt precepto potestatis quia pauperes et vilissime persone.”

¹²¹ ASB, Corone 1, 1286II, 37v: “Qui incontinenti sibi dedit tres taxillos bonos et rectos et signatos ut debebant. Qui dominus Ugo iudex suprascriptum Aricgetum fecit duci in capella et circari, et inventi fuerunt sibi per familiam domini potestatis infrascripti taxilli falsi et desponti.”

¹²² ASB, Corone 1, 1286II, 37v–39v.

¹²³ Of the 141 *baraterii* arrested in 1293II, the provenance of 89 of them is given. Of these, only 10 were Bolognese; the vast majority were from other towns in northern Italy (especially from the Po valley), with a few from as far as Sardinia, Germany, and England. Vallerani gives this tally in “Giochi di posizione,” 27, 34. The original list is in ASB, Corone 5, 1293II (53 fols.), 48r–52v.

of four gamblers—two Germans, one Modenese, and one Tuscan—arrested under the Asinelli tower in Bologna. The sole article of their *intentio* was that they were all *marochi* and gamblers accustomed to playing for clothing, and “for this reason they go wandering through the world and begging.”¹²⁴ One of their witnesses testified that he had seen them lying in the commune’s piazza at night because they had no home to return to at the end of the day. He also had seen them doing menial labor—namely delivering wood, hay, and straw to city residents—“in order to earn the bread from which they might draw life.”¹²⁵ Indeed, “wandering” was a common theme in *marochi*’s defenses.¹²⁶ On the one hand, these defenses were meant to inspire pity from the court and earn a lower financial penalty. Yet, as this chapter has shown, vagabondage was not merely a pitiable state but a threatening one associated with heinous crimes. As a further case in point, Marco’s confession above described how he “went through the world through many lands stealing and gambling.”¹²⁷ Indeed, confessions like his—to say nothing of confessions from “vagabond” assassins and soothsayers—go a long way toward explaining why the authorities thought public gamblers required constant surveillance and discipline.

Given gambling’s links to usury, blasphemy, prodigality, thievery, deceit, vagrancy, and violence, it is no wonder that lawmakers and judges considered men who hosted private gaming to be of ill repute, or even infamous. But it is worth emphasizing briefly, once again, that judicial acts against gamblers reflected popular prejudices. Local residents tended to lump dice players and their hosts together with other infamous types when testifying against reputed gambling houses. For example, following a raid on an infamous (*infamata*) gambling house in May 1300, several neighbors testified that the house was frequented by prostitutes, pimps, and men of ill repute.¹²⁸ In October 1320, a *ministralis* of Santa Cristina denounced a tavern as a gambling house by alleging that foreigners and rustics (*terrone*s) lent money there.¹²⁹ And in 1324, *ministrales* denounced the taverner Bonaccursio di Bonaventura on two different occasions, in January and August, for hosting dice players, scoundrels (*gaiuffi*), idlers (*putroni* or *poltrone*s), magicians (*afaturatores*), cripples (*sinancati*), and the catchall “people of bad condition” as his guests.¹³⁰ Denunciations like these make clear, once again, that jurists and laymen shared a common vocabulary of infamous and marginal types. They divided communal society roughly into two categories, producers (e.g., guildsmen) and free riders (e.g., thieves and beggars), and habitual gamblers and their facilitators clearly fell into the latter category.

The Role of *Fama*

In inquisitorial procedure, the course of the trial hinged on the *fama*, or reputation, of the accused. Reputable individuals—and in Bologna, especially those belonging to the

¹²⁴ ASB, Corone 6, 1294II (42 fols.), 23v: “Inprimis quod predicti et quilibet predictorum sunt marochi et baratari et lusores azardi et consueti sunt ludere panos et ea occaxione vadunt vagando per mundum et mendigando.” For the *relatio*, see 1294II (58 fols.), 26r.

¹²⁵ ASB, Corone 6, 1294II (42 fols.), 23v: “Vidi eos et quemlibet eorum portare ligna et fenum et palleas omnibus hominibus pro recuperando panem unde possint trahere vitam.”

¹²⁶ For other examples, see ASB, Corone 3, 1291II (37 fols.), 6v, 14r.

¹²⁷ ASB, Accusationes 22b, reg. 21, 1r–v: “Ivit per mundum per plures terras ludendo et furando.”

¹²⁸ ASB, Inquisitiones 49, reg. 2, 18r–21r.

¹²⁹ ASB, Corone 28, 1320II (22 fols.), 5r.

¹³⁰ ASB, Corone 29, 1324I, 120r–v; 1324II, 23v, 26r. For *gaiuffi*, see Silanos, “Homo debilis,” 89; Cassese, *Espulsione, assimilazione, tolleranza*, 184; Guglielmi, *Il Medioevo degli ultimi*, 85.

guilds and popular militias—could expect certain protections under law. In contrast, men of ill repute could be subjected to torture.¹³¹ Whether the court deemed a person reputable or not depended largely on what other people said about him. A reputable person could call on any number of friends and neighbors to vouch for his or her good name, including to counter defamatory testimony from mortal enemies. In contrast, a person of ill repute had no one to call on to defend his name, because his neighbors shunned him or he had no links to the community at all. Either way, he was considered a dangerous individual who, by definition, required discipline or removal, and the statutes gave judges wide latitude to do just that. Thus, criminal investigations proceeded along two very different paths, depending on the *fama* of the suspect. There were effectively two justice systems in place: one for in-groups and one for out-groups.

Even before the authorities heard any testimony about a suspect or questioned him personally, they might assess his *fama* simply by looking at him.¹³² Physical appearance said much about one's *fama* and was accepted as evidence in court. In a 1296 curfew case, for example, a witness who did not seem to know the defendants well attested their good *fama* "from the sight of [their] body."¹³³ The podestà's *familia* made similar judgments on sight. In a 1286 arms-bearing case, the judge was skeptical of the defendant's claim to clerical status because he appeared in court "without a tonsure and with a helmet and cuirass on his back and without any clerical habit."¹³⁴ Likewise, the notary carefully recorded the attire of another alleged gambler in a 1291 case—a robe, gray cloak, gray hood, and two pairs of socks and shoes—as if to preclude any argument that he was a *marochus*.¹³⁵ And in a 1312 arms case, the judge acquitted the defendant in part because "he did not seem ill-intentioned."¹³⁶ Conversely, when a suspect appeared before the judge with a physical disability, this did not speak well of his *fama*. For example, Pino of Ferrara, tortured as a common thief in 1286, would have appeared immediately suspicious for having only one eye—the result of a punishment for theft, he confessed, under a previous podestà.¹³⁷ The assumption that criminals often looked like criminals also explains why, in an otherwise routine gambling case from 1291, the *familia* reported that one of the two suspects had only one eye.¹³⁸

As a matter of standard procedure, the court cross-checked the names of curfew, arms-bearing, and gambling offenders with the list of criminals outlawed by the commune. This practice is evident from a few cases where wanted men gave false names to the court. In one such case from 1321, a foreigner named Antonio, arrested for carrying a knife, confessed that he had intentionally given the podestà's notary another name, "since he was outlawed for a crime and knew it, and so that it would not become known, through his

¹³¹ Vallerani, *Medieval Public Justice*, 255, 275; Blanshei, *Politics and Justice*, 321–23, 362–63; Pennington, *The Prince and the Law*, 159–60.

¹³² Todeschini, *Visibilmente crudeli*.

¹³³ ASB, Corone 8, 1296I (80 fols.), 44r: "Hoc scit ex respectu corporis." For similar attestations of good *fama* based on appearance, see ASB, Corone 6, 1294I (84 fols.), 31v–32v; 1294II (28 fols.), 3v–4r.

¹³⁴ ASB, Corone 1, 1286II, 23r: "Qui vissus a dicto iudice erat sine corona et cum bacineto et loritha in dorso et sine aliquo habitu clericatus."

¹³⁵ ASB, Corone 3, 1291II (56 fols.), 44r–v.

¹³⁶ ASB, Corone 19, 1312I (48 fols.), 32v: "Et quia non videbatur cum fraude."

¹³⁷ ASB, Inquisitiones 7, reg. 1, 4v.

¹³⁸ ASB, Corone 3, 1291II (56 fols.), 8v.

being discovered with arms, that his own true name had been written in the book of outlaws.”¹³⁹ Similar is the case of Tura of Casola Canina, hanged as a common thief in 1286. As the notary recorded his confession, Tura had told the judge he was the son of Albertino, although truthfully he was the son of Paolo Raneri, and he had changed his name thus “so that he could escape from our hands.”¹⁴⁰ How the court saw through such lies is an interesting question, but one the sources do not allow us to answer. Other outlaws were more forthcoming, it seems. In February 1318, two *berrovarii* reported that Mengo da Bagnarola had fled from them into a nearby house after they discovered him carrying a knife. The officers never found the knife, but they did find Mengo and brought him before the podestà’s knight. Asked why he had hidden from them, Mengo answered that he was under ban for robbery, a fact he also confessed before the judge in court.¹⁴¹ And in a 1283 case from Perugia, the judge asked Simonello Talone, apparently arrested for violating curfew, if he was an outlaw. Simonello admitted that he was, having been placed under ban for the murder of a certain Prodo one year earlier. The next day in court Simonello confessed to the homicide, committed with a knife in the neighborhood of San Fortunato. The judge ordered him to pay a hefty fine within three days or face the loss of his right hand and head in accordance with statute.¹⁴² Thus, just as “the technology of documentation” was a powerful tool for Dominican inquisitors in Languedoc, it allowed the secular courts in the communes to track and prosecute wanted men.¹⁴³

The Crowns and Arms records indicate that this cross-checking with the book of outlaws produced results on other occasions as well. A prime example is the case of Santo of Faenza, one of two men arrested by the *familia* in February 1287 for playing dice next to the church of Madonna del Monte. When Santo failed to make a valid legal excuse or produce guarantors, the court placed him in jail and condemned him to a 25-lire fine. Six days later, however, the court brought him back for questioning. Under closer examination, Santo admitted he was an outlaw of the commune. The previous podestà, Tebaldo Brusati of Brescia, had banned him for striking a certain Gallo, who then lived with him in the house of Dottino Dotti, with a dagger and drawing blood. The notary changed his sentence to read: “absolved of the penalty for gambling since his foot must be amputated.”¹⁴⁴ In 1302, a certain Dinolo of Romagna, arrested for carrying a knife, was released from prison after having his foot cut off. Savorino of Pistoia, found with a lance and shield in August 1314, was hanged as a thief two days later. And in 1326, one Leonardo, arrested for playing

¹³⁹ ASB, Inquisitiones 106, reg. 3, 31r–32r: “Quia bapnitus erat de malleficio et sciebat, et ne per inventionem factam de ipso cum armis sciretur verum proprium nomen eius per quod scriptum erat in libro bapnitorum.” Also cited in Blanshei, *Politics and Justice*, 356.

¹⁴⁰ ASB, Inquisitiones 7, reg. 3, 2v: “Et predictum prenomen sibi mutabat ut posset evadere de manibus nostris.” It is unclear how Tura came into official custody.

¹⁴¹ ASB, Corone 25, 1318I (82 fols.), 42r–v. The record does not give Mengo’s fate.

¹⁴² ASP, Capitano 7b, reg. 7, 13r–14v. The case appears in a register labeled “book of persons found at night.”

¹⁴³ Given, *Inquisition*, 25–51.

¹⁴⁴ ASB, Corone 1, 1287I (34 fols.), 25r–v: “Absolutus a pena ludi quia anputari debet sibi pex.” Santo may have escaped this sentence, however. Three days after his second questioning, several witnesses testified in court that Santo had concluded a peace with Gallo, mediated by Dottino Dotti and Opizzo Galluzzi and recorded by the notary Feliciano Feliciani, all three of whom testified. Santo and his witnesses attested that he and Gallo made peace in lieu of the 100-soldi compensation that Gallo had first demanded. See ASB, Corone 1, 1287I (34 fols.), 25v, 27v–28v.

dice, was “absolved” of gambling since he was (by then) hanged at the podestà’s order.¹⁴⁵ The number of petty offenders who turned out to be wanted men was surely greater than the Crowns and Arms records indicate. To take the case of Guglielmo Accarisi once again, there is no record of his arrest for carrying a dagger at night in the Crowns and Arms register for the second semester of 1291, even though that register has the appearance of completeness. We know of the *familia*’s role in his apprehension only through the death sentence against him as an outlaw for homicide.

Besides cross-checking names with the books of outlaws, judges investigated the *fama* of everyone who came into police custody. A judge had several ways to accomplish this. He might interrogate the defendants themselves, as seen at the start of this chapter when Judge Ugo asked the curfew breakers whether they were thieves or assassins. Alternatively, a judge might question neighbors about the suspect’s *fama*. In a 1295 case, two men found with knives at night were placed in jail while the judge questioned two representatives from their parish about their character. The suspicion may have been well-grounded: one of these witnesses stated they were bad men and that he had heard one of them had stolen an anvil.¹⁴⁶ In a 1287 case, the judge questioned some six individuals, including the judge Rebaconte Panzoni and two members of the da Sala family, about an individual suspected of spectating at a dice game.¹⁴⁷ Furthermore, podestà sometimes sent their officials to the scene of a discovery in order to interrogate the local residents.¹⁴⁸ After gambling raids in particular, the podestà often dispatched a knight and notary to question the neighbors of the alleged gambling house or tavern. A September 1310 inquisition against an alleged gambling host and criminal associate spells out that the knight and notary held the inquisition “across the street from the house of the committed delict” and made each witness (13 in total) swear to tell the truth with his or her hand on the gospel.¹⁴⁹ In a 1289 case where the *familia* found two gaming tables in a tavern, the podestà’s officials interrogated locals that very evening, right next to the tavern in question. With the taverners in custody, they questioned 23 neighborhood residents that evening and seven more over the next two days, asking them what they knew about the veracity of the allegations.¹⁵⁰ Multiple other instances of this practice survive in the records.¹⁵¹ Alternatively, the podestà might send out the commune’s heralds to invite testimony against a suspect. In September 1310, for example, the heralds blazoned around town that anyone who had anything to say against Giovanni di Giacomino, arrested for breaking curfew the previous night and “appearing to be a man of bad condition and reputation,” should come before the judge before terce the next day, or else Giovanni would be restored to his previous liberty the following morning.¹⁵² After an evening patrol in March 1315

¹⁴⁵ ASB, Corone 13, 1302II (102 fols.), 71r; Corone 20, 1314II (58 fols.), 13v; Corone 30, 1326II (88 fols.), 46v.

¹⁴⁶ ASB, Corone 7, 1295II (32 fols.), 20v.

¹⁴⁷ ASB, Corone 1, 1287I (16 fols.), 8r–v.

¹⁴⁸ For examples, see ASB, Corone 22, 1316I (88 fols.), 11r–v, 40v. On this practice in general, see Blanshei, “Bolognese Criminal Justice,” 71–72.

¹⁴⁹ ASB, Corone 18, 1310II (96 fols.), 42v–43v: “Recepti et examinati super predictam inquisitionem contra predictum Franciscum formatam et super unoquoque articulorum dicte inquisitionis ante domum domini Jacobi Bertolomei, que est oviam domui commissi delicti.”

¹⁵⁰ ASB, Corone 2, 1289II (58 fols.), 53v–55v. Only three individuals confirmed the bad fama about the taverners—and could not well attest the hearsay at that—and so the court acquitted them.

¹⁵¹ ASB, Corone 10, 1299–1300 (41 fols.), 6r, 8v–9r, 19r–v.

¹⁵² ASB, Corone 18, 1310II (46 fols.), 14r: “Apparens homo male condictionis et fame.”

netted nine suspects—five on curfew charges, one for arms-bearing, and three for music-making—the podestà sent out the heralds to invite everyone in the city who might have something to say against them to come testify, either publicly or in secret, that day or the next.¹⁵³ Again in February 1324, the heralds invited any citizen to bring charges against an individual found by the *miles* in violation of curfew the night before.¹⁵⁴

However the judge collected *fama* about the suspect, it could play a deciding role in the ensuing trial. The following pair of curfew cases from 1290, both involving suspects found under suspicious circumstances, demonstrates this clearly. In the first case, the *familia* found a certain Ugolino out in his home neighborhood of San Leonardo one night in early January, without a light and carrying a load of linens. Textiles were popular loot for thieves, so the podestà's court opened an inquisition against Ugolino the next day. The court questioned four of his neighbors—one himself a judge and the other three members of prominent families—about Ugolino's reputation. His neighbors all vouched for his good name, albeit in rather generic terms. In the words of one witness: "Ugolino is and has been for as long as can be remembered a man of good repute and of good condition, and [I] never heard anything about him except good, and he is regarded as a good man in the neighborhood of San Leonardo."¹⁵⁵ Ugolino himself also gave a statement. He admitted that he was found without a light by the *familia*, but explained that, when he was caught, he was coming from the house of a certain Giovanni, where he had gone to help chop wood and then stayed for dinner. The linens he was carrying were in fact his own; he was bringing them back home after Giovanni's servant girl had washed them for him. In other words, when Ugolino had his run-in with the *familia*, he was only bringing his laundry home from his friend's house, and his hands were too full to carry the requisite lantern. The court acquitted him entirely, despite his confessed infraction of the statutes.¹⁵⁶

In the second case, three watchmen found Bertramino of Como and another man in the crossroads of Porta Ravegnana one night in August. They managed to seize Bertramino and deliver him into custody, but his associate eluded capture. The watchmen also found a knife and a hand drill at the scene of their arrest. The next day the podestà's court launched an inquisition against Bertramino "as if [he were] a thief and a robber," on the grounds that the implements found (which of course were assumed to be his) were burglar tools, intended for breaking into shops and locked chests.¹⁵⁷ The three watchmen were all questioned in turn about the suspect. They reported that Bertramino had given them a false name at first, denied having any companion or tools with him, and then later contradicted himself. Though they did not know Bertramino, they all believed him to be of ill repute and "to practice wicked arts," considering how they found him.¹⁵⁸ That same day, the judge had Bertramino tortured, which produced the desired confession. As Bertramino told it, on the day of his arrest he had agreed to go thieving at the suggestion of Pagano, the suspect who had escaped. That evening they had eaten dinner together at an inn and then

¹⁵³ ASB, Corone 21, 1315I (102 fols.), 66v.

¹⁵⁴ ASB, Corone 29, 1324I, 105v.

¹⁵⁵ ASB, Corone 2, 1290I (12 fols.), 5r: "Interrogatus, dixit ipsum Ugholinum esse et fuisse semper pos[t]quam recordatur hominem bone fame et conditionis et numquam audivit de eo nisi bonum, et pro homine bono teneri in cappela predicta sancti Leonardi."

¹⁵⁶ ASB, Corone 2, 1290I (12 fols.), 5r-v.

¹⁵⁷ ASB, Corone 3, 1290II (110 fols.), 14r: "Tamquam contra furem et latronem."

¹⁵⁸ ASB, Corone 3, 1290II (110 fols.), 14v: "Et credit ipsum uti mallis artibus eo quod taliter fuit inventus."

went to work near the Porta Ravegnana, Pagano equipped with the knife and hand drill. Thus, Bertramino confessed only to conspiracy to commit burglary, and put most of the blame on his escaped accomplice. This apparently satisfied the judge, who, in a relative act of mercy, sentenced Bertramino to be flogged through the city.¹⁵⁹

Together these cases illustrate how policing in the communes worked as a dragnet. It made citizens answer for minor offenses, but it also made them vulnerable to serious legal scrutiny from judges. Once in custody, a reputable man like Ugolino had little to fear, even if he had to endure the hassle of being arrested, giving surety, and getting his friends and neighbors to vouch for his good name. Indeed, it was self-governing citizens like Ugolino who chose to put up with this legal harassment in the first place. Even if he were imprisoned for a spell, a citizen of any means could pay for favors from prison guards or, in some cities, to upgrade his living quarters (*agevolatura*).¹⁶⁰ But for men of ill repute like Bertramino, a simple curfew violation could result in an expansive inquisition, torture, and the loss of life or limb. The perceived need to discipline or remove men like Bertramino was one of the key motivating factors in the growth of police power in the thirteenth century. Police patrols embodied the practical application of the philosophy of deterrence that pervades the judicial sources from this period.

Conclusion: A Persecuting Society?

The examples of judicial violence presented in this chapter should give pause to scholars who downplay the prevalence of judicial violence in medieval Europe. While these represented just a small percentage of the overall case load, discipline and punishment were every bit as central to the system as restitution and negotiation. At the same time, Bologna's use of inquisition and judicial violence to deter and remove threats to the public interest would seem to support R.I. Moore's thesis about the emergence of a "persecuting society" in medieval Europe. According to this narrative, medieval bureaucracies grew during the thirteenth century as a new clerical elite sought to consolidate its power and suppress marginal groups, such as lepers, heretics, and Jews, whom they perceived as threats. Theoretical categories of dangerous persons, the use of inquisition to sort individuals into those categories, and the use of judicial violence to discipline or destroy identified threats were all important elements of the persecuting society.¹⁶¹

Certainly, the persecuting mentality described by Moore was part and parcel of the growth of police power in the thirteenth-century communes. The threats posed by all sorts of out-groups justified preventive intervention by authorities, and facilitated a paradigm shift in criminal law from personal guilt to social danger. However, the explanation for this new mentality is not as simple as top-down repression by a new, insecure class of clerical elites, as in Moore's narrative. While notaries and jurists played an integral role in expanding the communes' statutes and public courts, they did so in concert with a broad coalition of political elites, and these citizens were interested in disciplining and excluding more groups than lepers, heretics, and Jews. Indeed, political, economic, and moral exclusion of all sorts was fundamental to the logic of this limited access order, whose

¹⁵⁹ ASB, Corone 3, 1290II (110 fols.), 14r–16r.

¹⁶⁰ Geltner, *The Medieval Prison*, 20, 65.

¹⁶¹ The foundational work is Moore, *The Formation of a Persecuting Society*. Other important studies include: Given, *Inquisition*; Pegg, *The Corruption of Angels*; Pegg, *A Most Holy War*; Moore, *The War on Heresy*.

politics amounted to a single-party system. In this context, “marginal” types might include noblemen who fought on the losing side of a civil war and even guildsmen who maintained relations with them. These types of exclusion were driven not purely by social taboos or imagined threats, but by the hard logic of a social order that could not tolerate political opposition. Thus, to explain the growth of police power in the thirteenth-century communes, historians must also account for intra-elite competition and the collective interests of their coalition governments.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Camera del comune, Tesoreria e contraltatore di tesoreria

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio del giudice al sindacato

Ufficio delle acque, strade, ponti, calanchi, selciate e fango

Governo

Provvisgioni dei consigli minori

Riformagioni del Consiglio del Popolo

Archivio di Stato di Orvieto

Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

PUBLISHED PRIMARY SOURCES

Camporesi, Piero, ed. *Il libro dei vagabondi: lo "Speculum cerretanorum" di Teseo Pini, "Il vagabondo" di Rafaele Friano e altri testi di "furfanteria."* Milan: Garzanti, 2003.

Caprioli, Severino, ed. *Statuto del comune di Perugia del 1279.* 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288.* 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267.* 3 vols. Bologna: Regia Tipografia, 1869–1877.

Ungarelli, Gaspare, and Francesco Giorgi. "Documenti riguardanti il giuoco in Bologna nei secoli XIII e XIV." *Atti e Memorie della R. Deputazione di storia patria per le provincie di Romagna*, series 3, vol. 11 (1892–1893): 360–410.

SECONDARY SOURCES

Ascheri, Mario. "La pena di morte a Siena (sec. XIII–XV) tra normativa e prassi." *Bullettino senese di storia patria* 110 (2003): 489–505.

Behrmann, Carolin, ed. *Images of Shame: Infamy, Defamation and the Ethics of Oeconomia.* Berlin: De Gruyter, 2016.

- Bergesen, Albert. "Social Control and Corporate Organization: A Durkheimian Perspective." In *Toward a General Theory of Social Control*, edited by Donald J. Black, 1:141–70. New York: Academic Press, 1984.
- Blanshei, Sarah Rubin. "Bolognese Criminal Justice: From Medieval Commune to Renaissance *Signoria*." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 55–82. Lanham, MD: Lexington Books, 2018.
- . "Crime and Law Enforcement in Medieval Bologna." *Journal of Social History* 16 (1982): 121–138.
- . "Gruesome Penalties and Merciful Pardons: Bologna 1250–1454." Annual Meeting of the American Historical Association Meeting. Atlanta, Ga., 2016.
- . *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Blanshei, Sarah Rubin, and Sara Cucini. "Criminal Justice and Conflict Resolution." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 335–60. Leiden: Brill, 2018.
- Carmichael, Ann G. *Plague and the Poor in Renaissance Florence*. Cambridge: Cambridge University Press, 1986.
- Cassese, Michele. *Espulsione, assimilazione, tolleranza: chiesa, stati del Nord Italia e minoranze religiose ed etniche in età moderna*. Trieste: Edizioni Università di Trieste, 2009.
- Cavallar, Osvaldo. "Regulating Arms in Late Medieval and Renaissance Italian City-States." In *Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society*, edited by Julius Kirshner and Laurent Mayali, 57–126. Berkeley: Robbins Collection, 2002.
- Caviness, Madeline H. "Giving 'the Middle Ages' a Bad Name: Blood Punishments in the 'Sachsenspiegel' and Town Lawbooks." *Studies in Iconography* 34 (2013): 175–235.
- Ceccarelli, Giovanni. *Il gioco e il peccato: economia e rischio nel tardo Medioevo*. Bologna: Il Mulino, 2003.
- Cohen, Esther. *The Modulated Scream: Pain in Late Medieval Culture*. Chicago: University of Chicago Press, 2010.
- . "'To Die a Criminal for the Public Good': The Execution Ritual in Late Medieval Paris." In *Law, Custom, and the Social Fabric in Medieval Europe: Essays in Honor of Bryce Lyon*, edited by Bernard S. Bachrach and David Nicholas, 285–304. Kalamazoo: Medieval Institute Publications, Western Michigan University, 1990.
- Cohn, Samuel. "Criminality and the State in Renaissance Florence, 1344–1466." *Journal of Social History* 14 (1980): 211–33.
- Connell, William J., and Giles Constable. *Sacrilege and Redemption in Renaissance Florence: The Case of Antonio Rinaldeschi*. Toronto: Centre for Reformation and Renaissance Studies, 2005.
- Dean, Trevor. *Crime and Justice in Late Medieval Italy*. New York: Cambridge University Press, 2007.
- . *Crime in Medieval Europe, 1200–1550*. Harlow: Longman, 2001.
- . "Investigating Homicide: Bologna in the 1450s." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 83–100. Lanham, MD: Lexington Books, 2018.
- Dubber, Markus. *The Police Power: Patriarchy and the Foundations of American Government*. New York: Columbia University Press, 2005.

- Durkheim, Emile. *The Division of Labor in Society*. Translated by W.D. Halls. New York: Free Press, 1984.
- Ekirch, A. Roger. *At Day's Close: Night in Times Past*. W. W. Norton & Company, 2005.
- Erikson, Kai. *Wayward Puritans: A Study in the Sociology of Deviance*. New York: Wiley, 1966.
- Farmer, Sharon A. *Surviving Poverty in Medieval Paris: Gender, Ideology, and the Daily Lives of the Poor*. Conjunctions of Religion & Power in the Medieval Past. Ithaca: Cornell University Press, 2002.
- Ferrari, Matteo. "'Avaro, traditore': Pittura d'infamia e tradizione figurativa del tradimento politico tra Lombardia e Toscana (1250-1350)." In *Images and Words in Exile: Avignon and Italy during the First Half of the 14th Century*, edited by Elisa Brilli, Laura Fenelli, and Gerhard Wolf, 23-38. Florence: Sismel, 2015.
- Fenster, Thelma, and Daniel Smail, eds. *Fama: The Politics of Talk and Reputation in Medieval Europe*. Ithaca: Cornell University Press, 2003.
- Fiorelli, Piero. *La tortura giudiziaria nel diritto comune*. 2 vols. Milan: A. Giuffrè, 1953.
- Gambaccini, Piero. *Mountebanks and Medicasters: A History of Italian Charlatans from the Middle Ages to the Present*. Translated by Bettie Gage Lippitt. Jefferson, N.C.: McFarland & Co., 2004.
- Gauvard, Claude. *"De grace especial": crime, état et société en France à la fin du Moyen Age*. 2 vols. Paris: Publications de la Sorbonne, 1991.
- Geltner, Guy. *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present*. Amsterdam: Amsterdam University Press, 2015.
- . *The Medieval Prison: A Social History*. Princeton: Princeton University Press, 2008.
- Geremek, Bronisław. *The Margins of Society in Late Medieval Paris*. Cambridge; Paris: Cambridge University Press; Editions de la maison des sciences de l'homme, 1987.
- Given, James B. *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc*. Ithaca: Cornell University Press, 1997.
- Goldberg, P.J.P. "Pigs and Prostitutes: Streetwalking in Comparative Perspective." In *Young Medieval Women*, edited by Katherine J. Lewis, Noël James Menuge, and Kim M. Phillips, 172-93. New York: St. Martin's Press, 1999.
- Guerra, Enrica. *Una eterna condanna: la figura del carnefice nella società italiana tardomedievale*. Milan: FrancoAngeli, 2003.
- Guglielmi, Nilda. *Il Medioevo degli ultimi: emarginazione e marginalità nei secoli XI-XIV*. Rome: Città nuova, 2001.
- Harcourt, Bernard E. *Illusion of Order: The False Promise of Broken Windows Policing*. Cambridge, Mass.: Harvard University Press, 2001.
- Henderson, John. *The Renaissance Hospital: Healing the Body and Healing the Soul*. New Haven: Yale University Press, 2006.
- Kelling, George L. "Don't Blame My 'Broken Windows' Theory for Poor Policing." *Politico*, August 11, 2015. www.politico.com/magazine/story/2015/08/broken-windows-theory-poor-policing-ferguson-kelling-121268. Accessed December 2018.
- Kelling, George L., and Catherine M. Coles. *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*. New York: Martin Kessler Books, 1996.
- Jordan, William Chester. "Expenses Related to Corporal Punishment in France." In *Prowess, Piety, and Public Order in Medieval Society: Studies in Honor of Richard W. Kaeuper*, edited by Craig M. Nakashian and Daniel P. Franke, 286-300. Leiden: Brill, 2017.

- Jütte, Robert. *Poverty and Deviance in Early Modern Europe*. Cambridge: Cambridge University Press, 1994.
- Lacchè, Luigi. "Loca occulta. Dimensioni notturne e legittima difesa: per un paradigma del diritto di punire." In *La notte. Ordine, sicurezza e disciplinamento in età moderna*, edited by Mario Sbriccoli, 127–40. Laboratorio di storia 3. Florence: Ponte alle grazie, 1991.
- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Lupoi, Maurizio. *The Origins of the European Legal Order*. Translated by Adrian Belton. Cambridge: Cambridge University Press, 2000.
- Mazzi, Maria Serena. *Gente a cui si fa notte innanzi sera: esecuzioni capitali e potere nella Ferrara estense*. Rome: Viella, 2003.
- Merback, Mitchell B. *The Thief, the Cross, and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe*. Chicago: University of Chicago Press, 1999.
- Metzler, Irina. *A Social History of Disability in the Middle Ages: Cultural Considerations of Physical Impairment*. New York: Routledge, 2013.
- Migliorino, Francesco. *Fama e infamia: problemi della società medievale nel pensiero giuridico nei secoli XII e XIII*. Catania: Giannotta, 1985.
- Milani, Giuliano. "Avidité et trahison du bien commun: Une peinture infamante du XIII^e siècle." *Annales HSS* 3 (September 2011): 705–39.
- . *L'esclusione dal comune: conflitti e bandi politici a Bologna e in altre città italiane tra XII e XIV secolo*. Rome: ISIME, 2003.
- Mills, Robert. *Suspended Animation: Pain, Pleasure and Punishment in Medieval Culture*. London: Reaktion Books, 2005.
- Moore, R.I. *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950–1250*. 2nd ed. Malden, Mass.: Blackwell Publishing, 2007.
- . *The War on Heresy*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2012.
- Ortalli, Gherardo. *La pittura infamante nei secoli XIII–XVI*. Rome: Jouvence, 1979.
- Pegg, Mark Gregory. *A Most Holy War: The Albigensian Crusade and the Battle for Christendom*. Oxford: Oxford University Press, 2008.
- . *The Corruption of Angels: The Great Inquisition of 1245–1246*. Princeton: Princeton University Press, 2001.
- Pennington, Kenneth. *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition*. Berkeley: University of California Press, 1993.
- Peters, Edward. *Torture*. Expanded ed. Philadelphia: University of Pennsylvania Press, 1996.
- . "Wounded Names: The Medieval Doctrine of Infamy." In *Law in Mediaeval Life and Thought*, edited by Susan J. Ridyard and Edward B. King, 43–89. Sewanee: The University of the South Press, 1990.
- Pinto, Giuliano. "Un vagabondo, ladro e truffatore nella Toscana della seconda metà del '300: Sandro di Vanni detto Pescione." *Ricerche storiche* 4 (1974): 327–45.
- Rawcliffe, Carole. *Urban Bodies: Communal Health in Late Medieval English Towns and Cities*. Woodbridge: The Boydell Press, 2013.

- Remensnyder, Amy. "Torture and Truth: Torquemada's Ghost." In *Why the Middle Ages Matter: Medieval Light on Modern Injustice*, edited by Celia Chazelle, Simon Doubleday, Felice Lifshitz, and Amy Remensnyder, 154–68. London: Routledge, 2011.
- Rexroth, Frank. *Deviance and Power in Late Medieval London*. Translated by Pamela Selwyn. Cambridge: Cambridge University Press, 2007.
- Sampson, Robert J., and Stephen W. Raudenbush. "Seeing Disorder: Neighborhood Stigma and the Social Construction of 'Broken Windows.'" *Social Psychology Quarterly* 67 (2004): 319–42.
- Sbriccoli, Mario. "'Nox quia nocet.' I giuristi, l'ordine e la normalizzazione dell'immaginario." In *La notte. Ordine, sicurezza e disciplinamento in età moderna*, edited by Mario Sbriccoli, 9–22. Laboratorio di storia 3. Florence: Ponte alle grazie, 1991.
- . "'Tormentum idest torquere mentem.' Processo inquisitorio e interrogatorio per tortura nell'Italia comunale." In *La parola all'accusato*, edited by Jean-Louis Biget, Jean-Claude Maire Vigueur, and Agostino Paravicini Bagliani, 17–32. Prisma 139. Palermo: Sellerio, 1991.
- Silanos, Pietro. "Homo debilis in civitate. Infermità fisiche e mentali nello spettro della legislazione statutaria dei comuni cittadini italiani." In *Deformità fisica e identità della persona tra Medioevo ed età moderna: atti del XIV Convegno di studi organizzato dal Centro di studi sulla civiltà del tardo medioevo: San Miniato, 21–23 settembre 2012*, edited by Gian Maria Varanini, 31–92. Florence: Firenze University Press, 2015.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- Stern, Laura Ikins. *The Criminal Law System of Medieval and Renaissance Florence*. Baltimore: Johns Hopkins University Press, 1994.
- Terpstra, Nicholas. "Theory into Practice: Executions, Comforting, and Comforters in Renaissance Italy." In *The Art of Executing Well: Rituals of Execution in Renaissance Italy*, edited by Nicholas Terpstra, 118–79. Kirksville, MO: Truman State University Press, 2008.
- Thacher, David. "Order Maintenance Reconsidered: Moving beyond Strong Causal Reasoning." *The Journal of Criminal Law and Criminology* 94 (2004): 381–414.
- Todeschini, Giacomo. *Visibilmente crudeli: malviventi, persone sospette e gente qualunque dal Medioevo all'età moderna*. Saggi 681. Bologna: Il Mulino, 2007.
- Tracy, Larissa. *Torture and Brutality in Medieval Literature: Negotiations of National Identity*. Cambridge: D.S. Brewer, 2012.
- Vallerani, Massimo. "Conflitti e modelli procedurali nel sistema giudiziario comunale. I registri dei processi di Perugia nella seconda metà del XIII secolo." *Società e storia* 48 (1990): 267–99.
- . "Criminal Court Procedure in Late Medieval Bologna: Cultural and Social Contexts." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 27–54. Lanham, MD: Lexington Books, 2018.
- . *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.

Verdon, Jean. *Night in the Middle Ages*. Translated by George Holoch. Notre Dame: University of Notre Dame Press, 2002.

Wilson, James Q., and George L. Kelling. "Broken Windows." *The Atlantic* (March 1982): 29–38.

Chapter 5: Internal Threats: Policing Violence and Enmity¹

In April 1290, Bettino di Megliodegialtri Ricci confessed in court that he had tried to frame his enemies from the Boattieri clan for assault. As described in his sentence, Bettino first bloodied his hand with a knife and then went into the Boattieri's neighborhood to pick a fight. He surprised Baldo and Giacomo Boattieri from behind, provoking one of them to shove him and say, "What are *you* doing in this neighborhood?"² This was precisely the reaction Bettino was hoping for. Now that they had "come to words" and made physical contact, Bettino held up his bleeding hand and cried out that he had been wounded. From there it is unclear how Bettino landed in court, but evidently his ruse was not very convincing. He confessed that he had contrived this plot with one of Tommaso Ricci's sons after the notary Giacomo Biasmaltorti—later identified as a partisan (*ex parte*) of the Boattieri clan—had Bettino accused by Giacomo Boattieri and Corso Guglielmi of some unspecified crime. These details suggest that Bettino was pursuing a vendetta through criminal accusations instead of direct violence—a vendetta that involved family friends, not just blood relatives. In light of this confession, the podestà found Bettino guilty of attempting to frame his enemies "falsely, maliciously, and against the truth" and "against the good and peaceful state" of the commune. He condemned Bettino according to statute to lose his right hand—the same hand he had bloodied to entrap his enemies.³

The Boattieri and Ricci families both featured prominently among Bologna's political elite.⁴ While the origins of their enmity remain unclear, the commune's mutilation of Bettino failed to lay the feud to rest. When Rosso della Tosa took office as podestà in January 1292, one of his first orders of business was to place the two families on house arrest. The statutes allowed the podestà to confine warring parties to specific locations in the city or *contado* whenever this seemed politically expedient.⁵ He therefore sent eight partisans of the Ricci—including Bettino's father, Megliodegialtri—to the house of Francesco Preti, a leading *popolano*. He also sent nine of the Boattieri—including Giacomo Biasmaltorti, the instigator of the legal charge that Bettino claimed to have been avenging—to the house of Delfino del Priore, a belted knight.⁶ The podestà ordered the

¹ Parts of this chapter appear in Roberts, "Vendetta."

² ASB, Accusationes 9a, reg. 3, 1r: "Quid vadis tu faciendo per contratam?" The trial record does not explicitly identify Bettino as a Ricci, but his father's unusual name and the context (including the case below) leave little doubt about his family name.

³ ASB, Accusationes 9a, reg. 3, 1r: "Et etiam probatum est legitime per testes receptos contra eum ipsum de dicto mense aprilis falso et contra veritatem et malitiose fecisse predicta. [...] Ideo, cum tales falsitates et malitias et tam turpia crimina committere sint res pessime et mali exempli et contra bonum et tranquillum statum comunis et populi Bononie." The sentence accorded with the statutory punishment for false testimony in a case of armed assault; see *Statuti 1288*, 1:213. For Giacomo Biasmaltorti's occupation as a notary, see *Statuti 1288*, 1:392.

⁴ The Boattieri and Ricci families included several important political figures among their ranks. Graziolo Boattieri held the office of *anzianus* nine times between 1283 and 1303, and Tommaso Ricci did so eight times between 1287 and 1309. The Boattieri were a family of mixed political status, however, with several magnates and belted knights among them, including Cervo in the note below. See Blanshei, *Politics and Justice*, 173, 285, 560–61.

⁵ *Statuti 1288*, 1:186. See discussion below.

⁶ ASB, Corone 4, 1292I (92 fols.), 33r–v, 35r–v. The Boattieri party comprised: Cervo and his sons Ubaldo and Niccoluccio; Graziolo and his brother Guido; Bonincontro; Giacomo; and two allies of the family, Giacomo

confinées not to stray more than 25 *brachia* from their respective houses under penalty of 1,000 lire; each party had to provide ten guarantors for this sizable sum. Furthermore, although the podestà allowed them to come to the palace on official business, he gave orders to ensure their paths would never cross. He ordained specific routes for each party to follow through the city streets, and only allowed them to come on alternating days: the Ricci on Monday, Wednesday, and Friday; the Boattieri on Tuesday, Thursday, and Saturday. He also allowed them to attend Mass at their parish churches every day, if they so desired. That same month, the podestà ordered the jailers of the upper prison not to release Benvenuto Ricci from their custody without his express permission and to guard him carefully, under penalty of 2,000 lire. The record does not state what Benvenuto had done to deserve prison rather than house arrest.⁷

Over the next few months, the podestà modified their terms of confinement multiple times, suggesting a sustained attempt to hold the feud in check. He had the Boattieri relocated to the house of Balduino Balduini, a prominent judge, less than three weeks after the initial order. He placed two more Ricci under house arrest, and released two individuals from each party in May. The record does not indicate how long these house arrest orders lasted, but the Ricci and Boattieri were confined to their respective locations for at least five months.⁸

While they were in confinement, the podestà also had his *familia* keep a close eye on these houses, as a pair of arms-bearing trials show. That January, the *familia* charged Bonincontro Boattieri, who was among those confined, with refusing to be searched for illegal weapons, and a certain Bencivenni di Giliolo, who was with him, for carrying one. The *berrovarius* Ghino told the following story in court: when he arrived at the house of Delfino del Priore “where the Boattieri are residing in confinement,” he saw Bonincontro moving toward the house. He ordered him to stop “in such a way that he could hear him well,” but Bonincontro paid him no heed and entered the house. Before long he came back outside wearing armor and carrying a new license for it. Ghino’s comrade Faldo added the following: when “he was searching carefully for weapons among the men who were at the house of Delfino del Priore where the Boattieri are residing in confinement,” he found a small sword on the ground behind Bencivenni.⁹ He testified that Bencivenni was nearest the sword, which would have made him guilty for it, but Bencivenni denied in court that it

Biasmaltorti and Filippo Lisignuoli. The Ricci party comprised: Bartolomeo; Megliodegialtri; Tommasino and his son Paolo; and their allies Giacomino and Giovanni Spavaldi, Gilio Azzi, and Gerardo da Cocca. For Delfino del Priore, see Blanshei, *Politics and Justice*, 139. The Preti were also a powerful *popolano* family; Blanshei, *Politics and Justice*, 451, 557.

⁷ ASB, Corone 4, 1292I (92 fols.), 1v, 3r, 33v–34r.

⁸ ASB, Corone 4, 1292I (92 fols.), 7v, 11r, 13v, 33v–34r. On Balduino Balduini, see Blanshei, *Politics and Justice*, 245.

⁹ ASB, Corone 4, 1292I (92 fols.), 20v: “Qui Ghinus retulit et dixit quod, cum iret ante aliam familiam apud domum domini Dalfini del Priore ubi Bovatterii morantur ad confinia, vidit dictum Bonincontrum [de Bovatteriiis] ire versus quandam domum. Et cum ipse berrovarius dixisset eidem [illegible word], ‘Vade plane,’ ita quod potuit eum bene audire, ipse Bonincontrus tamen passim passim [sic] intravit dictam domum. Et postea cum exivit de dicta domo habebat arma defensibilia, tamen sed habebat bulletam novam. [...] Qui Faldus retulit acque dixit quod [cum] ipse scrutaretur pro armis inter homines qui erant apud domum domini Dalfini del Priore, ubi morantur Bovatterii ad confinia, invenit quendam gradiolum parvum de ferire in terra post dictum Bencivenni. Et ipse Bencivenni erat propior dicto gradio aliquo qui esset ibi et habebat arma defensibilia cum bulla nova.”

was his. Fortunately for him, Bonincontro came forward and confessed that he was the weapon's owner. After spotting the *familia*, he had laid down the sword and gone inside in order to avoid an arms-bearing charge. In the end Bonincontro was convicted and the charge against Bencivenni dropped. Yet the *familia* evidently continued their surveillance after this case. Just three weeks later in February, *berrovarii* reported finding Bonincontro again, this time standing "under the portico of the house in which he is staying in confinement" with a knife.¹⁰ Again he was convicted and fined 10 lire.

Thus, over a two-year period, Bologna's podestà attempted to suppress a feud between two elite families through corporal punishment, house arrest, and police surveillance.¹¹ Any one of these incidents alone might be dismissed as an anomaly, but together they show a sustained effort by government authorities to prevent the escalation of the Boattieri-Ricci conflict, which could well have had implications for political stability. Even if their enmity was ultimately resolved by a peace agreement or extrajudicial mediation, the evidence belies Andrea Zorzi's assertion that government authorities "recognized the existence of conflicts and tried to resolve them without repression or punishment."¹²

This evidence of sustained government repression raises questions about the recent historiography of vendetta in the communes and medieval Europe more broadly. Over the past two decades, Zorzi especially has championed the view that Italy's communes legitimated vendetta.¹³ As the argument goes, vendetta enjoyed both cultural legitimacy, thanks to its widespread practice and society's moral ambivalence toward the institution, and legal legitimacy thanks to communal statutes that allowed the practice. Although certain communes' statutes (including Bologna's) placed restrictions on vendetta, Zorzi states that "not a single text banned vendetta" and "civic laws neither prohibited nor prosecuted it." He accounts for vendetta's legitimacy primarily in terms of its social function, arguing that vendetta, unlike the mass exiles and factional violence that plagued the Italian communes, was a symmetrical response to violence that sought to restore social equilibrium rather than leave one side victorious over the other. It put in place "a temporary balance in the exchange of injury" that could allow parties in conflict to negotiate peace. Consequently, the communes recognized vendetta's "positive value" as a "practice of social self-regulation" and "balancing mechanism" that worked to limit violence rather than spread it.¹⁴ Although a few scholars have challenged this view, Zorzi's reading remains highly influential in the field.¹⁵

¹⁰ ASB, Corone 4, 1292I (46 fols.), 2v: "Berovarii et familiares domini potestatis predicti [...] invenerunt et viderunt Bonincontrum condam Cambii de Boacteriis capelle Sancti Nicholay Burgi Sancti Felicis sub porticu domus in qua moratur ad confinia habentem unum cultellum ad ferire contra formam statuti ad latus."

¹¹ For the distinction between vendetta and feud, see note 37 in the Introduction.

¹² Zorzi, "Legitimation," 34.

¹³ "Legitimation"; "Consigliare alla vendetta"; "Fracta est civitas magna"; "La cultura della vendetta"; "Conflitti et pratiques infrajudiciaires"; "Ius erat in armis." See also the volume edited by Zorzi, *Conflitti, paci e vendette nell'Italia comunale*.

¹⁴ Zorzi, "Legitimation." Quotations on 44, 47–48.

¹⁵ Vallerani echoes Zorzi that vendetta was "widely recognized in the communal statutes" in *Medieval Public Justice*, 116. For alternative readings, see Dean, *Crime and Justice*, 123–32; Dean, "Violence, Vendetta, and Peacemaking"; Dean, "Marriage and Mutilation"; Maire Vigueur, "Progetti di trasformazione"; Maire Vigueur, *Cavaliers et citoyens*.

The rehabilitation of vendetta is part of a broader, functionalist current in medieval studies, mentioned in the Introduction, that emphasizes the social uses (and social value) of institutions. Whether the subject is hatred, reputation, violence, or the public trial, these studies elucidate how institutions “worked” within the logic of the social order.¹⁶ The functionalist paradigm has especially transformed the study of medieval justice to include extra- and infrajudicial processes of conflict resolution, such as vendetta, peacemaking, and arbitration.¹⁷ The functionalist approach to vendetta has shed valuable light on the structures of medieval social orders, and helped to correct some long-standing biases in the historiography. In a society where relationships of friendship and enmity determined the order, the pursuit of vendetta was clearly a rational decision and, in certain situations, culturally sanctioned or even obligatory.¹⁸ Indeed, vendetta is common to many cultures because it addresses the universal need to establish rules for the use of violence.¹⁹ Having recognized vendetta’s social value, today’s historians no longer assume that it suffered a gradual but inevitable decline in the face of growing state power.²⁰ And they are far less likely than their predecessors to speak in terms of the triumph of public justice over private, or the state’s progressive claim to a monopoly on the legitimate use of violence.

However, the notion that communal statutes sanctioned vendetta is not entirely accurate. Trevor Dean has emphasized some of the ways that communes did in fact prohibit or prosecute vengeance. Some communes penalized vendetta outright, while others prescribed severe penalties for secondary vendetta that were double, triple, or even quadruple the norm for assault or homicide. Furthermore, judges and jurists do not seem to have sanctioned the practice. Jurisprudence distinguished between the legitimacy of defending oneself in a single fight and the illegitimacy of starting a new fight in order to take revenge. In legal practice, judges did not accept vendetta as an excuse for violence, nor did defendants and their lawyers—who were generally adept at finding loopholes in the statutes—appeal to vendetta laws to exonerate themselves.²¹ Thus, if most communes’

¹⁶ On the social functions of violence and hatred, see Skoda, *Medieval Violence*; Smail, “Violence and Predation”; Smail, “Hatred”; Throop and Hyams, eds., *Vengeance*; Rosenwein, ed., *Anger’s Past*. On the function of public courts, see Vallerani, *Medieval Public Justice*; Wickham, *Courts and Conflict in Twelfth-Century Tuscany*; Kuehn, *Law, Family & Women*. Smail ties together all three threads in *The Consumption of Justice*. For a historiographical review, see Netterstrøm, “The Study of Feud.”

¹⁷ The broader literature on conflict resolution is discussed in the introduction. On extra- or infrajudicial institutions, see Garnot and Fry, eds., *L’infrajudiciaire*; Geary, “Extra-Judicial Means”; Martone, *Arbiter-arbitrator*; Padoa Schioppa, “Delitto e pace privata.” On peacemaking in medieval Italy, see Jansen, *Peace and Penance*; Kumhera, *The Benefits of Peace*; Palmer, “Piety and Social Distinction”; Jansen, “‘Pro Bono Pacis’”; Zorzi, “Pace e conflitti”; Wray, “Instruments of Concord”; Sensi, “Per una inchiesta sulle ‘paci private’”; Bellabarba, “Pace pubblica e pace privata”; Vallerani, “Pace e processo.” The seminal work of anthropology is Gluckman, “The Peace in the Feud.”

¹⁸ Zorzi, “Legitimation,” 32, 42, 48. More broadly, see Freund, *Sociologie du conflit*. Cf. Muir, *Mad Blood Stirring*, 229 for sixteenth-century Friulians’ ambivalence toward their own desires for revenge.

¹⁹ For a comparative overview of vendetta across cultures, see Boehm, “The Natural History.” For vengeance in a variety of medieval contexts, see Barthélemy, Bougard, and Le Jan, eds., *La vengeance*.

²⁰ Cf. Rubinstein, *Studies in Italian History*; Heers, *Family Clans*; Celli, *Studi sui sistemi normativi*; Martines, ed., *Violence and Civil Disorder*; Cecchini, “L’assassinio”; Niccolai, *I consorzi nobiliari*; Maugain, *Mœurs italiennes*; Enriques, “La vendetta”; Dorini, “La vendetta privata”; Kohler, *Das Strafrecht der italienischen Statuten*; Pertile, *Storia del diritto italiano*; Burckhardt, *The Civilization of the Renaissance in Italy*.

²¹ Dean, *Crime and Justice*, 126–31; Dean, “Violence, Vendetta, and Peacemaking”; Dean, “Marriage and Mutilation,” 7–9.

laws did not expressly ban vendetta, neither did they grant exceptions for vendetta in prescribing punishments for interpersonal violence. To Dean's critiques can be added a question of emphasis. If vendetta was a deeply entrenched custom in communal society, is it really remarkable that civic statutes did not ban it outright? Is it not more significant that the same citizen-legislators who practiced vendetta increasingly sought to regulate it over the course of the thirteenth century? Indeed, highlighting the "legitimation of vendetta" would seem to make an event out of historical continuity, while obscuring the more interesting question of historical change.

This chapter shows that one of the main impetuses behind third-party policing in the communes was a perceived need to regulate and even suppress interpersonal violence, including the violence of vendetta. First, it explains why citizen-legislators saw a need to contain the institution of feud. It was not just that disorderly behavior was bad for business, so to speak, but that it could spawn more serious conflict with political implications. When important families were involved, the line between feud and civil war was thin; factional struggles were essentially feuds waged on a larger scale. Lawmakers therefore understood their own potential for violence, as well as that of political outsiders, to be problematic. Second, this chapter explains how the arms-bearing laws were designed to prevent men who had mortal enemies from expressing their hatred through "war" or violence. They allowed the authorities to target feuding men, as in the case of the Boattieri above, and to intervene in volatile situations before enemies came to blows. The arms permit system also allowed the *familia*, through random stops, to discipline a broad swath of the male population that was likely to engage in feud. The chapter goes on to argue that the regulation of arms-bearing was part of a broader legislative program that aimed to restrict the right to use violence—and to a certain extent, the right to take vengeance—to legitimate public collectives, namely the popular militias. The program did not aim at a state monopoly on the legitimate use of violence per se, but, in keeping with the logic of factional politics, sought to maintain the dominance of the ruling coalition. The ruling coalition needed not only to suppress violence from external enemies, but to prevent the defection of its own members, and they seized on written law and public organizations as powerful tools for policing unsanctioned acts of violence. Finally, this chapter shows how the commune's preventive policing, beyond suppressing feud-related violence, sought to prevent enmity itself. Citizen-legislators passed laws to regulate mourning, music-making at night, festivities, and even snowball fights in large part because these behaviors were likely to precipitate new enmities. In a society where an argument over a dice game could engender mortal hatred, and where political elites gambled much as commoners did, it was a matter of self-preservation for the ruling coalition to regulate gambling.

Enmity and Instability

Before exploring how the communes policed feud-related violence and even enmity itself, it is important to understand why lawmakers would seek to regulate these institutions. While processual historians do not deny the potential disruptiveness of feud, they emphasize its positive role in maintaining the social order. Zorzi in particular has cast vendetta as a self-regulating institution. Certainly, vendetta and hatred are important institutions for maintaining balance in many social orders. But they are an inherently

unstable solution to the problem of violence because of the potential for personal enmities to shade into political ones.²²

A pair of cases from Bologna, which took place just months apart, illustrates the thin line between personal and political enmity, as well as the relative ease with which men across social strata developed relationships of mortal hatred. They also provide exceptional insight into how ordinary citizens thought of mortal enmity, because in both cases the judge asked the defense witnesses to define the concept. The first case, from October 1289, never spells out the accusation against the defendant, a certain Francesco nicknamed “Magnano,” but he was likely facing a spurious gambling charge. Whatever the allegation, he tried to render the testimony of the witnesses against him legally inadmissible—a procedure known as witness exception—by proving through his own witnesses that they were his enemies.²³ In the words of his defense, the witnesses against him “hate him to the death since they had injurious words and blows between them.”²⁴ According to his defense witnesses, Francesco had exchanged “words and blows” with his enemies two months prior in August under the Asinelli tower. Although there was no bloodshed, some of the witnesses claimed that staves and defensive arms were involved, and one witness let slip that their fight (*rixa*) had broken out over a dice game.²⁵ After they confirmed that Francesco and the hostile witnesses hated each other, the judge asked each defense witness what mortal hatred meant and what caused it. The Latin record of these exchanges is tortured but worth quoting. According to one Bartolomeo, “Mortal hatred is one man taking another’s person from him and one man killing the other, and this usually arises between men because of words and deeds.”²⁶ According to one Gemignano, mortal hatred was simply hatred of one’s enemy. It was called “mortal” because it meant “one enemy wants to kill his enemy.”²⁷ A certain Antonio likewise said mortal hatred was simply “when one man hates another,” and explained that it arose “for injurious words which one man says to the other and for blows which one man gives to the other.”²⁸ Lastly, a certain Zambono likened mortal hatred to “saying one man hates another.” In his understanding, “One man hates another any time when they strike each other and when they say injurious words to each other and when one has the other condemned.”²⁹

²² Dean, “Marriage and Mutilation.”

²³ On witness exception procedure, see Schnapper, “Testes inhabiles”; Donahue, “Proof by Witnesses”; Smail, *The Consumption of Justice*, 95–100.

²⁴ ASB, Corone 2, 1289II (74 fols.), 52r: “Et eum hodiunt ad mortem cum habuerint inter se verba iniuriosa et verbera.”

²⁵ ASB, Corone 2, 1289II (74 fols.), 52r–53v.

²⁶ ASB, Corone 2, 1289II (74 fols.), 52r: “Interrogatus quod est hodium ad mortem et qua de causa hodie unus homo alium ad mortem, respondit quod est hodium ad mortem accipere personam unus alteri et interficere unus alium. Et hoc dixit quod solet intervenire inter homines pro verbis et factis.”

²⁷ ASB, Corone 2, 1289II (74 fols.), 52v: “Interrogatus quid est hodium mortale, respondit quod est sui inimici. Interrogatus qua de causa dicitur hodium mortale, respondit quod est quando unus inimicus vellet interficere suum inimicum.”

²⁸ ASB, Corone 2, 1289II (74 fols.), 53v: “Interrogatus quod est hodium ad mortem, respondit quod est hodium ad mortem quando unus hodie alium. Interrogatus qua de causa hodie unus homo alium et habet eum hodium ad mortem, respondit quod pro verbis que dicit unus alteri iniuriosis et pro percussionibus quas unus homo facit alteri.”

²⁹ ASB, Corone 2, 1289II (74 fols.), 53r: “Interrogatus quod est hodium mortale, respondit quod est dicere sicut unus homo hodie alium. Interrogatus qualiter hodie unus homo alium, respondit quod unus homo hodie

Two months later, another case unfolded along similar lines after six men testified against Paolo di Balduccio on charges that he hosted and financed illicit gambling. In his defense, Paolo counterargued that these witnesses were his mortal enemies who “hate him mortally and regard him with hatred, and he them.”³⁰ Paolo’s own four witnesses each confirmed that his accusers were his mortal enemies and had been for over two years. The most recent incident between Paolo and his accusers had occurred a few months before, when Paolo’s accusers attacked him with knives and stones in front of the Prendiparte family’s compound and chased him to the Tencarari’s, where he apparently ran for safety. Most of the witnesses would not say what inspired Paolo’s enemies to commit this “villainy” (*villania*), but Pietro Tencarari revealed—after first claiming not to know the cause—that the attack was to avenge a brawl (*rixa*) between Paolo and Petrizolo Carbonesi.³¹ As in the first case, the judge asked each of the defense witnesses to define mortal enmity, this time phrasing the question: “What kind of enmity makes a capital enemy?” Their answers, again, were wonderfully matter-of-fact. Simone Calamatoni said it was “when one man wants to take another’s person from him.”³² Polo Calamatoni answered simply that it was “when one man wants to kill another,” and later stated that these men “would gladly take Paolo’s person from him.”³³ Pietro Tencarari said it was “when one man would kill another if he could.”³⁴ Rodolfo di Zaccaria, who identified himself as Paolo’s *cognatus*, defined it as “when one man would injure another, with or without weapons.” He even went so far as to admonish the judge, “Do not abide them lest they kill Paolo.”³⁵

The agreement between these separate witness groups on the definition of mortal enmity is striking. All eight witnesses understood mortal hatred to mean that the enemies actually wanted to kill each other and, as Pietro stated, would do so if given the opportunity. Multiple witnesses simply equated mortal hatred with hatred, suggesting they had no concept of non-mortal hatred. Any sentiment worthy of being called hatred meant to the death. And as Zambono stated explicitly, it arose *whenever* one man struck or insulted another, or won a case against him in court. It was a matter of course. Indeed, the witnesses may have been confounded at being asked so obvious a question. Everyone understood what hatred meant; one did not have to define it. In both cases, months had gone by without any peace being made.

alium aliquando quando percutiunt se adinvicem et quando dicunt se adinvicem verba iniuriosa et quando facit condemnare unus alium.”

³⁰ ASB, Corone 2, 1289II (74 fols.), 56r: “Et eum mortaliter hodiunt et hodio habent et ipse eos.”

³¹ ASB, Corone 2, 1289II (74 fols.), 57r–58r.

³² ASB, Corone 2, 1289II (74 fols.), 57r: “Interrogatus que est inimicitia capitalis que facit inimicum capitalem, respondit quod est quando vult unus alteri accipere personam.”

³³ ASB, Corone 2, 1289II (74 fols.), 57v: “Interrogatus que est inimicitia que facit inimicum capitalem, respondit quod est quando vult unus homo interficere alium. [...] Interrogatus que inimicitia est inter dictum Paulum et predictos testes, respondit quod predicti testes libenter acciperent personam dicto Paulo, et hoc dicitur a gentibus.”

³⁴ ASB, Corone 2, 1289II (74 fols.), 57v: “Interrogatus que est inimicitia que facit inimicum mortalem, respondit quando unus homo interficeret alium si posset.”

³⁵ ASB, Corone 2, 1289II (74 fols.), 58r: “Interrogatus que inimicitia est inter predictos Paulum et dictos testes, respondit quod voluerunt predicti testes predictum Paulum vulnerare cum cultellis et spontonibus, et per eos non stetit quin dictum Paulum interficerent. [...] Interrogatus que est inimicitia que facit inimicum mortalem et capitalem, respondit quod quando unus homo iniuraret alium cum armis et sine armis.”

The similar witness testimony is all the more remarkable given the apparent social divide between the men in these two cases. In Paolo's case, every identifiable individual was a *popolano*, some of them from elite families. Two of his accusers were notaries, one a saddler, and the other of the da Guercino family.³⁶ For his defense witnesses, Paolo called two Calamatoni and a Tencarari, and one of his own kinsmen of ambiguous relation.³⁷ (Paolo's own family name is never given.) The political importance of the individuals, the years-long history of enmity between the two sides, and the skirmish from one family compound to another would seem to point to factional conflict. Conversely, Francesco's enmity appears to have had lowly origins in fisticuffs over a dice game in a public gambling spot. Most of the men involved appear to have been of no great import. One of his accusers was a Malpigli, but otherwise no family names are given. And his own witnesses do not seem particularly well-educated or used to testifying in court. The judge had to rephrase one question for Antonio in plainer language, for example.³⁸ This contrast suggests that the same culture of honor existed across the social spectrum. Whether people came to words and blows over a dice game or control of the government, the result was the same: mortal enmity that would endure until peace was made.

These depositions are as close as the historian can get to the subjective reality of mortal enmity. The men who mortally hated their enemies did not think of their hatreds and vendettas as a social script or public performance. They felt that hatred viscerally and acted on it in the pursuit of honor and interest. Granted, in many cases they calculated that a compromise, such as a peace agreement, offered them the best chance of saving face. But compromise was not their object. Men in feuds actually wanted to kill each other, and actually tried to do so when the opportunity presented itself. Historians minimize the significance of this reality when they interpret feud and emotions narrowly in terms of their social function.

Furthermore, however "normal" hatred was as an institution, it had the potential to disrupt city life. When those hatreds involved members of the political elite, they could threaten the cohesion of the governing coalition and destabilize the formal institutions of government. As Timothy Reuter has observed with regards to Salian Germany, "[t]he boundaries were fluid between the 'private' sphere of peace-breaking and feud, on the one hand, and the 'public' sphere of resistance and rebellion on the other."³⁹ Rebels and rulers experienced wars against each other as feuds, and the same can be said for the Italian communes with regards to the governing coalition and its opponents. Thus, for the lawmakers who comprised the governing coalition, it was a matter of self-interest to suppress feud-related violence and even to prevent enmity from arising in the first place.

³⁶ ASB, Corone 1, 1286II, 13r, 14r. Their names are: Domenico the saddler, Venedico di Michele, Zarletto di Giacobino, Albergetto di Tommasino, Francesco da Guercino, and Giovanni da Palea. Venedico and Giovanni are identified as notaries in another gambling case where they were defendants themselves. That case also identifies the former as Venedico Aimeri. For the da Guercino family, see Blanshei, *Politics and Justice*, 36, 119, 122, 541, 553.

³⁷ For the Calamatoni, see Blanshei, *Politics and Justice*, 39, 330, 558. For the Tencarari, see 125, 128, 242, 558.

³⁸ ASB, Corone 2, 1289II (74 fols.), 53v: "Interrogatus tempore cuius potestarie fuerunt predicta, respondit quod nescit bene. Interrogatus quis dominus erat Bononie pro potestate, respondit quod erat potestas Bononie dominus Jaconus de Perusio."

³⁹ Reuter, "Peace-Breaking," 361; Althoff, "Königsherrschaft," 288–89.

They could not afford to wait for their fellow elites to resolve their feuds without posing a risk to their coalition.

The blurred lines between personal and political enmities explain why the authorities sometimes prosecuted verbal insults with heavy penalties. For example, in 1256 the podestà levied hefty fines against Bonifacio di Castellano and Rodolfo di Graidano after their exchange of words in a city council meeting led to a brawl. He assessed them 200 lire each “for the good rule of the city and so that it might be an example to others,” since “many evils might ensue for the commune and men of Bologna if such things remained unpunished.”⁴⁰ The podestà went on to fine Bonifacio and ten other men for loitering at the palace that evening after vespers—perhaps as they were daring Rodolfo and his own retinue to meet them in a street fight.⁴¹ Likewise in 1290, the podestà prosecuted Mattiolo Galluzzi and Delfino di Michele Priore, both magnates, after they traded words in the old palace. Delfino had apparently stepped on Mattiolo’s feet, which provoked Mattiolo to stand up and tell Delfino that “he ought to go around with his head bowed just like his ancestors did.” (The Galluzzi apparently looked down on latecomers to the aristocracy.) The insult and ensuing confrontation earned Mattiolo a 100-lire fine, of which he actually paid 80. In the words of the sentence, saying such “injurious and indecent words” in the palace was not only against the honor of the podestà and the commune, but “might have redounded in no small way to the detriment and prejudice of the commune and people of Bologna.” Delfino received the lesser sentence of 25 lire (of which he paid 20), but the public interest rationale was the same.⁴² In light of these cases, it is no wonder the podestà’s *berrovarii* patted down council members on the palace steps before they entered for meetings.⁴³ The pat-downs would have not only made it harder for political conspirators to carry out plots, but also discouraged citizens from retaliating violently when they felt dishonored in the city council.

Policing Feud

The most obvious way communal governments sought to limit the potential violence of feud was by policing arms-bearing. Historians have generally either paid little attention to the communes’ arms-bearing laws or interpreted them as a type of anti-magnate legislation, which targeted the bearing of arms as a defining feature of magnate

⁴⁰ ASB, Accusationes 2, reg. 8, 27r: “Unde cum res sit mali exempli et inde multa mala posset sequi comuni et hominibus Bononie si talia remanerent impunita, ideo potestas condenpnat quemlibet ipsorum secundum formam statutorum, et ex arbitrio sibi ex statutis concesso et per bonum regimen civitatis, et ut sit aliis exemplum, in libris ducentis.”

⁴¹ ASB, Accusationes 2, reg. 8, 28v.

⁴² ASB, Accusationes 9a, reg. 11, 6v: “Dicendo eidem irato animo [...] quod debebat ire capite inclinato sicut fecerant sui maiores. [...] Idcirco cum talia et similia dicere et facere in palatio comunis in nostra presentia possent et potuissent in non modicum comunis et populi Bononie preiudicium redundasse et redondare.” For Delfino, see Blanshei, *Politics and Justice*, 139n10. For the Galluzzi see below. For another case of words exchanged in the palace, this time between Mattiolo Buonacatti and Pietro Albrici, see ASB, Corone 2, 1289II (24 fols.), 8r–9v.

⁴³ It is unclear at what point this became standard practice, but there are multiple records of it in a register from 1324. ASB, Corone 29, 1324I, 88r, 111r–v, 123v–124v, 132r–134v.

identity.⁴⁴ However, communes began restricting the right to bear arms at least a half century before the *popolo*-magnate conflict emerged. The 1143 *breve* of the Genoese *compagna* prohibited the bearing of arms in the city except for those traveling abroad.⁴⁵ By the mid-thirteenth century, similar laws also existed in southern Italy and France, where the *popolo*-magnate conflict did not define politics.⁴⁶ In fact, prohibitions against arms-bearing had been a common feature of the Peace and Truce of God movements of the late tenth and eleventh centuries. According to the Truce of God decreed by Emperor Henry IV in 1085, no man was to “presume to bear as weapons a shield, sword, or lance—or, in fact, the burden of any armour” on certain days of the week or feast days.⁴⁷ Furthermore, the vast majority of people prosecuted on weapons charges were not magnates. For example, of the more than 60 individuals charged with illicit arms-bearing in the second semester of 1291, not a single one was identified as a noble.⁴⁸ The same trend is evident in Perugia in the second half of the thirteenth century.⁴⁹

[Image 2: Drawings of prohibited weapons on the cover of a Crowns and Arms register.]

Rather than targeting a specific social group, the regulation of arms-bearing simply aimed to prevent acts of violence. Bologna’s lawmakers occasionally made this rationale explicit, as in a 1293 provision that placed new restrictions on *contadini* and *rustici* bearing arms “to restrain” their “many crimes and homicides.”⁵⁰ Other legislators also left little doubt about their intent. For example, Emperor Frederick II unambiguously invoked a preventive rationale in his *Constitutions of Melfi* (1231): “Our aim is not only directed beneficially at the punishment of crimes already committed, but also at preventing the opportunity and grounds for committing them. Therefore, since the bearing of forbidden weapons sometimes is the cause of violence and murder, we elect to resist now rather than to avenge later.”⁵¹ Similarly, Henry IV issued his 1085 decree “chiefly for the security of all those who are at feud,” and so that “those who travel and those who remain at home may enjoy the greatest possible security.” His restrictions on arms-bearing expressly did not exempt men in feuds (*faicosi*) and went hand-in-hand with prohibitions against violent

⁴⁴ An important exception is Cavallar, “Regulating Arms.” For arms-bearing laws as anti-magnate legislation, see Grundman, *The Popolo at Perugia*, 114; Salvemini, *Magnati e popolani*, 85. Cf. Vallerani, *Il sistema giudiziario*, 170–71.

⁴⁵ Imperiale di Sant’Angelo, ed., *Codice diplomatico*, 1:150. By the the 1160s and 1170s, the Genoese *compagna* seem to have relaxed some of these prohibitions, allowing swords and knives but not bows, crossbows, or lances. For a discussion, see Epstein, *Genoa*, 36, 66–68.

⁴⁶ Firnhaber-Baker, *Violence*, 49–51, 77–79; Firnhaber-Baker, “Seigneurial War,” 62–63; Gonthier, *Le châtement du crime*, 55–59; Kaeuper, *War, Justice, and Public Order*, 239–40, 243–46; Toulet, “L’incrimination”; Perrot, *Les cas royaux*, 152–54.

⁴⁷ As in Bologna’s later statutes, the decree granted exceptions to travelers, provided that they lay down their arms again upon returning home. Doeberl, ed., *Monumenta Germaniae*, 49–51. The translation is from Henderson, ed., *Select Historical Documents*, 208–11.

⁴⁸ Indeed, of the more than 200 total *inventiones* contained in the register, the only noble was Francesco Ramberti, convicted for breaking curfew; ASB, Corone 3, 1291II (56 fols.), 34v.

⁴⁹ Vallerani, *Il sistema giudiziario*, 171.

⁵⁰ *Statuti 1288*, 1:569.

⁵¹ Piccolo, ed., *Liber Augustalis*, 23–27. The translation is from Powell, trans., *The Liber Augustalis*, 15.

crime, namely murder, arson, robbery, assault, and injuring anyone with “any kind of weapon.”⁵²

Communal governments were especially keen to prevent armed violence of an overtly political nature. The fundamental job of the podestà and capitano del popolo was to preserve the regime that employed them, and judicial records show that these foreign magistrates prosecuted rioters and partisans in factional conflicts for violations of statute, including breaching the arms-bearing laws. For example, in April 1267, Perugia’s capitano convicted 14 men for instigating a riot by assaulting two brothers and calling bystanders to arms. The capitano sentenced each of them to 150-lire fines, labeling it a bad example “to start brawls and tumults in such a way and to cry ‘To arms! To arms!’ in cities,” since such actions had historically led to uprisings in the city of Perugia.⁵³ The fine comprised 100 lire for rioting and making the call to arms, 25 lire for armed assault, and 25 more for dragging the assault victims by the hair. The capitano also prosecuted each of the rioters for the weapons they carried in the tumult. One of them—who had evidently been dressed in full battle array—received a 10-lire fine for wearing a cuirass, gorget, greaves, and iron helmet, and carrying a shield and knife.⁵⁴ Furthermore, the capitano sentenced five of the rioters to 50-lire fines for throwing stones from their houses during the riot, a crime typically associated with urban warfare. In that sentence, the capitano reasoned that “so harsh and terrible a crime ought not to remain unpunished” and categorized the offense as being “against the honor and good state of the city of Perugia.” Finally, the capitano declared that if any of them could not pay their fines within the allotted time, his home would be razed to the ground.⁵⁵ The sentence does not reveal the motivation for the attack and riot, but at a minimum the case shows how interpersonal violence (the assault on the brothers) could have political repercussions (the call to arms leading to mob violence). The case also illustrates the importance—from the perspective of the commune’s political elite—of having a neutral public official prosecute and punish the rioters. Violent reprisals from the victims of the assault (or their allies) would still be likely, but this third-party intervention lessened the likelihood that the violence would spiral out of control.

A 1275 case from Bologna is also revealing for the perceived links between arms-bearing and factional violence. Here, Bologna’s capitano del popolo investigated a riot (*rumor*) between the Lambertazzi and Geremei factions from February of that year to determine who had participated. In defense of a certain Bonvicino, Pietro Matafeloni testified that Bonvicino had remained inside his home during the riot. He claimed not to know which party Bonvicino favored, because he had never seen him participate in any riot or carry weapons for either side. Rather, Pietro believed Bonvicino to be “a peaceful man

⁵² Doeberl, ed., *Monumenta Germaniae*, 49–51. The translation is from Henderson, ed., *Select Historical Documents*, 208–11.

⁵³ ASP, Capitano 2, reg. 1, 23r: “Cum sit res mali exempli rixam et rumorem tali modo facere et cridare ‘Ad arma, ad arma’ in civitatibus, et nobis videatur qui crident ‘Ad arma’ in risis facere malum cridum et malo modo [...] Et etiam ea de causa tumultus consuevit esse et potuit fieri in ista civitate Perusii.”

⁵⁴ ASP, Capitano 2, reg. 1, 23v–25v.

⁵⁵ ASP, Capitano 2, reg. 1, 26r: “Cum sit res mali exempli quod de domibus proiciantur lapides in talibus et multa mala possent ex inde oriri, et tale maleficium tam durum et pessimum non debeat remanere in punitum, ideo dominus capitaneus ipsos et quemlibet ipsorum comuni Perusii in quinquaginta libris Perusii sententialiter condepnat, adsimillando dictum maleficium in personam quorumlibet de predictis ei qui aliquid traverit contra honorem et bonum statum civitatis Perusii.”

who loves the commune,” since he never carried weapons or ran to arms during tumults.⁵⁶ Giovanni Gozzadini testified somewhat more plausibly that he had seen Bonvicino run to arms a few times during riots. But he emphasized that Bonvicino “loved the commune” (*diligens comune*), never took up arms for the Lambertazzi, was sympathetic toward the Geremei, and for the most part stayed in the houses of the Gozzadini and Baciacomatri without any weapons.⁵⁷ Whatever the truth of the matter, these prominent defense witnesses were expressing their understanding of what it meant to be a good citizen of the commune. In the *popolo*’s ideology, the commune was a tranquil and harmonious community; men who bore arms and participated in partisan conflicts disturbed its good state.

In this political context, where interpersonal violence often shaded into the political, it should be no surprise that the podestà’s *familia* used the arms-bearing laws to prevent violence between warring parties, as seen in the case of the Boattieri at the beginning of this chapter. Indeed, this sort of targeted policing against men known to be in the midst of a feud likely occurred more often than the trial records reveal. For example, in August 1298, the *familia* charged Bernabò Gozzadini and a certain Cuscino, who lived in the house of Brandelasio Gozzadini, with carrying knives. One *berrovarius* reportedly took the knife from Bernabò’s hand as he was trying to toss the weapon on the ground; a second claimed to have seen Cuscino throw his knife away before confiscating it. For his part, Bernabò claimed that the *familia* had found the knife not on him but in a shop belonging to the Pegolotti family, and that there were at least 15 men standing closer to the knife. Cuscino gave a similar story, alleging that the *familia* had found the knife under a table that some 30 men were standing near. The notary recorded nothing else about their trials except that they were convicted.⁵⁸ From this record alone, it looks like little more than a case of the *familia*’s word against the defendants’.

However, other sources reveal that 1298 was a year of violence between Brandelasio Gozzadini and his sons, on the one hand, and the Pegolotti and Lamandini families on the other. Just three months after this weapons case, their enmity would culminate in the fatal beating of Guidotto Lamandini. Fearing the outbreak of riots over this murder—an especially grave threat in the midst of Bologna’s ongoing war with Ferrara—the city council removed these Gozzadini from the popular societies, declared them magnates, and placed them under house arrest in the countryside.⁵⁹ Viewed in this light, an otherwise unremarkable arms-bearing case takes on a whole new meaning. It seems that the Gozzadini had been on the premises of a shop owned by their mortal enemies, the Pegolotti, amid a sizable gathering of men, some of whom had weapons. In all likelihood the *familia* deliberately intervened in this volatile situation, using the arms-bearing laws to preempt violence.

Although the *familia*’s intervention did not resolve the conflict, the episode shows them using the arms-bearing laws to coerce mortal enemies effectively. How many more of the thousands of surviving arms-bearing cases had similar backgrounds that have been

⁵⁶ ASB, Giudici, Giudici 1, 3v: “Credit ipsum pacificum et diligentem comune, quia non trahit ad rumores nec deffert arma.”

⁵⁷ ASB, Giudici 1, 3v.

⁵⁸ ASB, Corone 9, 1298 (28 fols.), 19v–20r.

⁵⁹ Blanshei, *Politics and Justice*, 170–71.

glossed over by the formulae of notarial recordkeeping is impossible to say. But there is also evidence that the *familia* brought arms-bearing and curfew charges against the da Panico and Galluzzi households during periods of conflict between those noble families and the commune. To take the da Panico first, the counts had a checkered but mostly antagonistic history with the commune.⁶⁰ Although they briefly allied with the commune in the war against Ferrara in 1296, relations deteriorated again in 1297 after the counts and Alberto Galluzzi murdered the esteemed knight Delfino del Priore in the city and then fled.⁶¹ In January 1300, the podestà ordered one of his knights to destroy the counts' property at Panico, overlooking the Reno in the mountains south of town, after they murdered a notary from Castel del Vescovo.⁶² In May 1304, the commune decapitated the bastard Count Baldino of Panico and four others for treason. In May 1306, the governing coalition declared three of the da Panico—Paganino, Tordino, and Dosso—rebels and traitors of the commune when they failed to appear in court to answer the charge that they and their allies were mustering forces to attack Bologna. The podestà's knight again led an expedition to destroy their houses in the countryside. Finally, in January 1307, after the counts assaulted several of Bologna's castles, the commune retaliated by decapitating Mostarda, son of Count Maghinardo, in the central piazza.⁶³ Against this backdrop, it hardly seems coincidental that the *familia* brought curfew and arms-bearing charges against members of the da Panico's retinues in February 1299, May 1299, May 1300, and April 1306. In at least three of these cases, the *familia* found the men under the portico of a house in the parish of San Gervasio that the da Panico and Romanzi families shared through marriage.⁶⁴

The case from April 1306 especially suggests the *familia* was keeping a close eye on the da Panico in the weeks before Paganino, Tordino, and Dosso were designated rebels of the commune. One evening that month, the *familia* brought curfew charges against two retainers of Count Federico da Panico, whom they found without a light "under the portico" and "in front of the door" of the count's house.⁶⁵ According to the *berrovarius* Ugolo, he and his comrade Fantinello were in front of the Count's door when they heard it open and saw Bitto, one of the defendants, come outside and stand on the doorstep. Bitto never descended from the doorstep because Ugolo said to him, "Don't move. The podestà's knight is coming." Bitto did as he was told and waited for the knight to arrive, but in the meantime the other defendant, Bertuccio (nicknamed "Ragazzino"), heard the commotion and came to the door. He never exited the house, but the knight had both him and Bitto detained and led to jail.⁶⁶ The second *berrovarius*, Fantinello, told virtually the same story, and both defendants pleaded their innocence on the grounds that they had been discovered "inside"

⁶⁰ Foschi, "I conti di Panico"; Vicinelli, "La familia dei Conti"; Gualandi, "Le origini dei Conti di Panico"; Gozzadini, "Di alcuni monumenti."

⁶¹ Griffoni, *Memoriale*, 27.

⁶² ASB, Corone 11, 1301I, 8r.

⁶³ Griffoni, *Memoriale*, 29–31.

⁶⁴ ASB, Corone 9, 1298–1299 (48 fols.), 11v, 38v–42r; Corone 10, 1299 (34 fols.), 22r; Corone 11, 1300 (82 fols.), 9r–10v, 19r–20r; Corone 15, 1306 (47 fols.), 17v–18r. The pattern of intervention may be much older. In a case dated 1237, the watchmen found a certain Domenico at night with a knife (but with a light) under the portico of Count Ugolino da Panico; ASB, *Accusationes* 1a, reg. 6, loose folio.

⁶⁵ ASB, Corone 15, 1306 (47 fols.), 17v: "Sub porticu domus dicti comitis Federici ante hostium dicte domus."

⁶⁶ ASB, Corone 15, 1306 (47 fols.), 17v: "Ipse Ugolus [dixit], 'Non moveas te quia venit dominus miles domini potestatis.'"

the house.⁶⁷ Ultimately, the judge acquitted both men. Regardless of the legality of the *familia*'s actions, however, they still served the purpose of reminding the Counts of Panico—who always posed a threat of violence—that the commune was watching them closely.

There is also circumstantial evidence that in 1324, the *familia* used an arms-bearing charge to target the Galluzzi, a magnate family whose urban compound survives partially intact today. On 19 February, the commune suspended all business because Albizzo di Bonifacio and his sons Comacio, Ferino, and Maghinardo—all of the Galluzzi house—had kidnapped the *popolano* Tommaso di Aldovrandino da Argelata. (As discussed below, Bologna's statutes called for the cessation of all public and private business whenever a magnate attacked, killed, or kidnapped a *popolano* until revenge was taken.) Six days later, on 25 February, the commune again ordered a halt to business because the sons of the late Guglielmo Galluzzi—Tedisio, Pietro, and Mattiolo—had committed an unspecified *offensio* against the *popolano* Michele di Pietro da Pollicino. One month later, on 24 March, city life again came to a halt after the same three brothers and a fourth named Luca targeted Michele again, this time assaulting and kidnapping him. Against this background, it can hardly be coincidental that on 20 February—one day after the first interruption to city life—two *berrovarii* found Guglielmo di Azzo Galluzzi carrying a knife near his home. The podestà convicted him for the offense.⁶⁸

In all of the cases above, the *familia* seems to have targeted individuals they knew to be engaged in feuds or conflict with the commune. Yet the trial records also suggest that the *familia* used the arms-bearing laws to intervene more spontaneously in armed confrontations, either to break up street fights or prevent them from turning violent. For example, in June 1294, the *familia* arrested Don Filippo, the rector of San Geminiano, after they saw him toss a knife on the ground. The priest spent four days in jail before he could give surety.⁶⁹ Again, it seems the commune was reluctant to deliver this cleric to the episcopal court. In his defense, Don Filippo argued there had been a street fight in front of his church that day and men had drawn knives. In an attempt to play the role of peacemaker, he had taken a knife from one of the combatants and tossed it away. Two witnesses confirmed this. As one testified, Don Filippo had intervened in the "great *rumor* and *rixa*" in front of his church "lest an evil befall," and the knife's owner had only let Don Filippo have the knife when he noticed the *familia* arriving on the scene.⁷⁰ The court acquitted Don Filippo accordingly. This was hardly the only arrest the *familia* made for an illegal weapon during an assault or attempted assault.⁷¹ In such interventions, the podestà's men do not appear to have shown any regard for whether that violence was taking place within the "legally sanctioned" context of vendetta.

⁶⁷ ASB, Corone 15, 1306 (47 fols.), 18r.

⁶⁸ ASB, Corone 29, 1324I, 48r, 105r-v, 108r.

⁶⁹ ASB, Corone 6, 1294I (118 fols.), 82r.

⁷⁰ ASB, Corone 6, 1294I (84 fols.), 53r-v: "Dixit quod [...] facta fuit quedam rixa et magnus rumor iuxta ecclesiam Sancti Geminiani per plures homines, in quo rumore et rixa traeri fuerunt et evaginari plures cutellos de ferire, et quod dominus Dun Phylipus prespiter et rector dicte ecclesie traxit se ad dictum rumorem et rixam causa sedandi et amorcandi dictum rumorem et rixam ne mallum eveniret."

⁷¹ ASB, Corone 6, 1294I (118 fols.), 46r; Corone 13, 1302II (102 fols.), 24r-v; Corone 28, 1320II (100 fols.), 15r.

Indeed, judges did not accept mortal enmity as an excuse for ignoring the commune's ban on assault weapons. Trevor Dean has already made this point more generally about judicial practice in Bologna, and the Crowns and Arms registers show this to have been true in arms-bearing cases as well.⁷² Some defendants tried to excuse themselves on the grounds that they had mortal enemies, but I have found no cases where this defense proved effective. For example, in August 1291, Graydano di ser Fantolino explained to the judge that he had been carrying a knife in his stocking for his personal protection since his brother "had died" (i.e., been murdered). The judge convicted him nonetheless.⁷³ In March 1296, the *familia* discovered Giacomino, a resident of Modena's *contado*, in Bolognese territory with an iron helmet (*cervelliere*) and shield, but "had great difficulty capturing him" when he attempted to flee. Later in court, Giacomino explained he had fled because he mistook the *familia* for "bad men" and was being especially vigilant at that time because he was in the midst of "a great war" (*magnam gueram*). As soon as he recognized the armed men as the podestà's *familia*, he came to them straightaway—or so he claimed. Whatever the truth of the matter, the judge convicted him according to statute.⁷⁴ Similarly, in 1295 two brothers from Bologna's *contado* argued in their defense that they had been carrying assault weapons because they had "many mortal enemies."⁷⁵ Their witnesses confirmed that they carried weapons "out of fear and for their defense because of the wars that they have," particularly with two members of the Galluzzi family, Lippo and Galluzzo, who had been banned for murdering their uncle a few years earlier.⁷⁶ Once again, the judge convicted them according to statute. Simply put, the statutes did not allow men in feuds to bear arms, and the podestà's judges appear to have upheld those laws faithfully.

Furthermore, the communes' weapons regulations aimed to prevent men—especially men in feuds—from taking up arms in the first place. To this end, communes like Bologna developed a licensing system for the privilege of wearing armor.⁷⁷ I have detailed the evolution of Bologna's system, which seems to have emerged in the 1260s, elsewhere.⁷⁸ Most salient here is the stated rationale for licenses to wear armor. A 1262 law lamented that men at war (*habentes guerram*) often fell victim to "assassins and bad men who did not fear the bans of the podestà and commune of Bologna," because they themselves were afraid of the statutory penalties for bearing arms. Lawmakers reasoned they would not be such easy victims if they were protected, and therefore ordained that all men at war and "all others wishing to bear [arms]" could—at the discretion (*arbitrium*) of the podestà—

⁷² Dean, "Violence, Vendetta, and Peacemaking," 4–10.

⁷³ ASB, Corone 3, 1291II (56 fols.), 29v–30r: "Interrogatus ubi habebat dictum cultelum, respondit in calcca et dixit quod portabat occasione custodie persone sue quia quidam suus frater fuerat mortuus."

⁷⁴ ASB, Corone 8, 1296I (42 fols.), 15r: "Qui Jacominus ad eius defensionem dixit quod est forensis et de comitatu Mutine et de terra Bazani et ibi habitat cum familia. Quando vidit familiam potestatis credit quod essent malli homines, quia ipse habet atentum magnum et magnam gueram et ipsa de causa afugit. Et quando scivit quod erat familia potestatis incontinenti venit ad ipsos, et bene habebat dicta arma ut confesus fuit."

⁷⁵ ASB, Corone 7, 1295I (135 fols.), 72r: "Item quod predicti Ugolinus et Berthollus habent multos inimicos mortales in civitate Bononie et districtu, et ideo portabant dicta arma." The *familia*'s denunciation is in ASB, Corone 7, 1295I (30 fols.), 14v.

⁷⁶ ASB, Corone 7, 1295I (135 fols.), 73v: "Audivit eis dici quod portabant dicta arma eis inventa propter metum et ad eorum defensionem propter guerras quas habent." For their enmity with the Galluzzi, see 72r–v.

⁷⁷ For a comparison of licensing regimes across northern Italy, see Cavallar, "Regulating Arms," 110–17.

⁷⁸ Roberts, "Vendetta."

wear armor and carry a long sword without suffering any penalty.⁷⁹ Similarly, a 1265 law issued by Loderingo degli Andalò and Catalano di Guido—two members of the military order known as the *frati gaudenti* who had been appointed governors of the city in a time of crisis—allowed anyone embroiled in “war or hatred” to receive a license to wear armor “for the protection of his person,” so long as he gave surety that he would not harm anyone.⁸⁰ Bologna’s 1288 statute prohibited foreigners from receiving a license but made an exception for students who were at war; later, the exception was amended to apply to all foreigners in feuds.⁸¹

In their oaths, permit recipients swore not to assault anyone during the podestà’s term in office—in other words, that they would wear armor for purposes of self-defense only.⁸² For instance, in 1303 five Florentines—likely recently exiled White Guelfs—swore before the podestà that “they wished to bear defensive arms since they have hatred and war, because of which it is appropriate to bear these arms, and they fear lest they be struck, and for this they are prepared to give their word.”⁸³ During a five-week period in 1303, Bologna accepted sureties for some 313 arms licenses, 83 of which were for foreigners claiming feuds.⁸⁴ Perugia had a similar licensing regime that allowed men in feuds to give surety for the privilege of wearing armor. In a 1277 list of such sureties, four men from each parish stood before a judge to name all of their neighbors who had “just cause”—such as “mortal hatred”—to bear defensive arms.⁸⁵ By 1294, each petitioner had to swear before a notary of the court that he would not strike, wound, or kill anyone with arms anywhere in Perugia’s jurisdiction, and that if he did so he would personally answer to the magistrates.⁸⁶ Clearly, such licensing regimes were established to allow men in feuds to defend themselves, not to sanction violence between mortal enemies.

Furthermore, the Crowns and Arms records show that the podestà and his *familia* implemented this licensing regime systematically. Lists of license recipients indicate that, by the late thirteenth century, the issuing of armor permits was a major duty of the podestà’s office. Between November 1298 and April 1299, for example, the podestà’s notaries issued nearly 1200 permits.⁸⁷ In one month in 1294, Perugia accepted sureties

⁷⁹ *Statuti 1245*, 1:272–73: “Cum homines habentes guerram timeant arma portare propter banna potestatis sepe per assassinos et malos homines, qui non timent banna potestatis nec comunis Bononie, qui feriant ad postam oculte feriantur, offendatur et occidantur, quas offensiones de facili non recipient si muniti essent, statuimus et ordinamus quod omnes habentes guerram cum aliquibus et omnes alij portare volentes per civitatem et extra abque banno et pena eis auferenda a potestate possint suo arbitrio portare per civitatem et burgos civitatis arma ad defensionem sui, scilicet panceriam, gamberias, collarium, cerveleriam rotellam sive braçarolam et spatas longas pallam et non subtus.”

⁸⁰ *Statuti 1245*, 3:607. On the *frati gaudenti*, see Gazzini, “Disciplinati.”

⁸¹ *Statuti 1288*, 1:227–28. See also 570.

⁸² *Statuti 1288*, 1:570.

⁸³ ASB, Corone 13, 1303I (70 fols.), 56v: “Et dixerunt se vele portare arma defensibilia, eo quia habent hodium et gueram propter quod oportet portare ipsa arma, et timent ne sibi offendantur et de hoc parati sunt fidem facere.” Another seven Florentines took the same oath that February and are explicitly identified as being “of the party of the Whites of Florence”; see 70v.

⁸⁴ ASB, Corone 13, 1303I (70 fols.). The sureties were made between 3 January and 12 February.

⁸⁵ ASP, Capitano 4, reg. 1, 15r–33r. For one who had “odium mortalem,” see 20r.

⁸⁶ ASP, Capitano 19, reg. 8, 1r–10v.

⁸⁷ ASB, Corone 9, 1298–1299 (72 fols.). The notaries granted licenses to 1117 citizens, 33 foreigners, and 48 clerics.

from some 62 individuals seeking to wear armor legally.⁸⁸ Permits also had to be renewed at the start of every podestà's term (typically every six months), as the heralds reminded city residents on a regular basis.⁸⁹ Furthermore, the *familia* made sure that men who wore armor through the city were carrying a valid license and were not carrying assault weapons, which the permit did not cover. Trial records show that the *familia* frequently reported individuals for wearing armor without a permit or while carrying an expired one. For example, in July 1299 the *familia* reported three men for wearing armor with expired permits (*bolea vetera*). At least two of them, Giacomo Boattieri and Andalò Trentinelli, were from elite political families, but all were convicted anyway.⁹⁰ In brief, the *familia* paid close attention to men wearing armor and, in the absence of a valid permit, made them prove in court their right to wear it.

The permit system was a remarkable innovation for a society in which no single entity enjoyed a monopoly on the right to use violence. As late as the 1250s, men were allowed to wear armor in the city as they saw fit. By the 1260s, this customary right had become a privilege to be awarded by the authorities and verified by the *familia*. In practice, the licensing system enhanced the commune's ability to monitor and police violence in two significant ways. First, it required individuals who felt threatened by mortal enemies to seek the government's permission for the right to protect themselves. Only men who would come before the podestà's notaries and swear an oath—thereby making it public knowledge that they had mortal enemies or considered themselves likely to have them—were allowed to wear armor in the city. Second, and by extension, the permit system allowed the *familia* to focus their patrols on men who were likely to practice vendetta. By wearing armor in public, an individual both signaled that he had mortal enemies and invited the *familia* to check his permit. When they did check his permit—and searched him for other illegal weapons—the *familia* was in effect reminding him that it was illegal to assault those enemies. Thus, far from legitimating vendetta, the permit system actually sought to limit individuals' ability to pursue it.

Toward a Monopoly on Violence

To sum up thus far, Bologna's government took on an increasingly coercive role in the enforcement of arms-bearing laws over the course of the thirteenth century. For many generations, presumably, there had been no restriction on individuals' right to carry a knife or sword in the city and certainly no need for a government-issued license to wear armor. By the 1230s, lawmakers had banned combat knives and other assault weapons; by the 1260s, they required most residents to acquire a government permit before they could wear armor.⁹¹ In the same period, the podestà's *familia* began patrolling the city daily and focused those patrols on men carrying weapons.

The increased regulation of arms-bearing in the communes was part of a broader trend that saw communal governments increasingly try to regulate and suppress interpersonal violence. It would be anachronistic to characterize these efforts as the suppression of "private warfare," a phrase that does not appear in the sources and that

⁸⁸ ASP, Capitano 19, reg. 8, 1r–10v. The sureties were made between 4 November and 6 December.

⁸⁹ New podestà typically sent out heralds to announce that it was time to renew permits. For examples, see ASB, Sindacato 5, 1288I (22 fols.), 1v; Sindacato 10, 1293II (50 fols.), 3v; Corone 7, 1295I (44 fols.), 1v.

⁹⁰ ASB, Corone 10, 1299 (40 fols.), 2r–v. See also Corone 13, 1302II (102 fols.), 10v–12r, 17v–18v.

⁹¹ *Statuti 1288*, 1:225–28.

assumes the legitimate right to use violence fell along a private-public divide.⁹² As seen above, “wars” between feuding individuals could shade into factional conflict and have public implications.⁹³ Yet the sources suggest that Bologna’s *popolo* regime increasingly sought to prevent the “illegitimate” violence of individuals and private collectives, such as *guarnimenta* and *consorteria*, while condoning the “legitimate” violence of public collectives, such as communal and popular military organizations.

The arms-bearing laws were not the only statutes designed to prevent violence outside of communal organizations. As seen at the start of this chapter, the statutes granted the podestà authority to place feuding groups under house arrest or confine them to locations in the *contado*. According to statute, this authority applied in cases where men were at war and a truce (*treugua*) was to be imposed, or where disturbances caused by magnates or the great houses of the *popolo* threatened the “good state” of the commune. Besides the cases of the Boattieri and Gozzadini above, the podestà exercised this authority on multiple occasions.⁹⁴ Perugia’s solution was to empower the podestà and capitano to distrain 500 lire, in cash or in kind, from parties between whom “any discord or battle arose.” Perugia’s *rectores* could also expel from the city and *contado* anyone who engaged in a brawl (*rixa*).⁹⁵ Other statutes criminalized the tools and tactics of urban warfare. For example, one statute prescribed harsh penalties—up to and including decapitation—for arson, shooting arrows in the city, or throwing stones from one’s house at night.⁹⁶ Another prescribed a range of penalties for using catapults or similar machines of war to hurl objects at the communal palace.⁹⁷ Another subset of statutes placed restrictions on armed groups, denying citizens the right to organize for violence. One such statute prohibited anyone from exiting the city armed in the service of someone else without the podestà’s express permission.⁹⁸ A 1290 *reformatio* gave the podestà and capitano the authority to prosecute anyone who participated in a military expedition (*andata*, *guarnimentum*, or *munitio*) without their permission.⁹⁹ In August 1293, Bologna’s heralds also proclaimed a ban against any *guarnimentum* outside of town, and an ordinance from 1311 gave the podestà jurisdiction over battles involving more than ten persons on each side.¹⁰⁰ In the same vein, lawmakers restricted the right of individuals to maintain a personal retinue.

⁹² Firnhaber-Baker, “Seigneurial War,” 37–38; Kaminsky, “The Noble Feud,” 55–56. Cf. Shaw, “Honour, Faction and Private Wars”; Carbonnières, “Le pouvoir royal”; Algazi, “Pruning Peasants”; Algazi, “The Social Use of Private War.”

⁹³ For the phrase “individual war” (*guerra specialis*), see ASB, Corone 4, 1292I (92 fols.), 12r.

⁹⁴ The main statute mentions men in the midst of war; *Statuti 1288*, 1:186. However, the statute on inquisitions also grants the podestà this authority with regards to the city’s great houses; *Statuti 1288*, 1:175–76. For other examples, see Blanshei, *Politics and Justice*, 166, 288, 310, 330.

⁹⁵ *Statuto 1279*, 1:299: “Si aliqua discordia appareret vel batalia inter aliquos.”

⁹⁶ *Statuti 1245*, 1:278; *Statuti 1288*, 1:207–8.

⁹⁷ *Statuti 1245*, 1:281–82; *Statuti 1288*, 1:208–9. For an analogous law in Perugia, see *Statuto 1279*, 1:293.

⁹⁸ *Statuti 1245*, 1:273–74. In some versions of this law, the podestà could not grant such permission without the approval of the council, *anziani*, and consuls.

⁹⁹ *Statuti 1288*, 1:179. An earlier statute had prescribed the death penalty for anyone who led a *guarnimentum* into the city in times of unrest; *Statuti 1288*, 1:216.

¹⁰⁰ ASB, Sindacato 10, 1293II (50 fols.), 22r; ASB, Provvigioni 4, reg. 213, 2r. The word *guarnimenta* literally meant “garnishments,” or in a military context “fortifications,” but metaphorically signified the ensemble of men and materiel used in military actions. Antonio Pertile defined the *guarnimentum* as any cavalcade of 20 or more armed men, but Bologna’s laws do not seem to have specified a minimum number of participants; Pertile, *Storia del diritto italiano*, vol. 5, *Storia del diritto penale*, 487.

According to a 1293 provision, any citizen or foreigner at war could travel with a retinue of armored (but unarmed) servants for his protection, but only if he submitted all of their names in writing to the podestà and provided surety for each of them to have a permit. The bishop of Bologna was allowed to keep up to 12 fully armed *familiaries* and the abbot of Nonantola up to six, provided that the podestà's notaries had recorded their names and they wore an identifying marker (*intagla*).¹⁰¹

As with the arms-bearing laws, there is good evidence that Bologna and other communes enforced these laws. In October 1291, the podestà acquitted one of the bishop's *familiaries* of wearing armor illegally after he showed his license as a member of the episcopal household.¹⁰² In July 1318, Bologna's podestà launched an inquest against Tommasino Ariosti and his three brothers for leading a *guarnimentum* to the castle of Gorgognano (in Bologna's *distretto*), where they brutally slayed Francesco Beccadelli. Although the commune failed to capture any of the Ariosti, they did apprehend four alleged participants in the *guarnimentum*. These alleged accomplices all denied knowledge of the brothers' intent to commit homicide, but after being subjected to torture, they all confessed to aiding and abetting murder, and were decapitated accordingly.¹⁰³ In Perugia in 1279, a boy who claimed to be eight years old was made to answer in court after the commune's "secret guard elected [...] over arrow-shooters" denounced him and another individual for shooting crossbow bolts.¹⁰⁴ That same year, Perugia's capitano tried Puzio di Bonagrazia after the *familia* found him around curfew time carrying a large stone under his cloak.¹⁰⁵

At the same time Bologna's lawmakers worked to suppress practices associated with warfare, they increasingly reserved the right to take vengeance to the *popolo's* militias or arms societies.¹⁰⁶ From the 1280s onward, Bolognese law mandated that whenever a magnate attacked, killed, or kidnapped a *popolano*, the public courts and all shops were to close until vengeance was taken. The podestà was to blazon this order across the city as soon as he learned of the crime, and fine any public official, merchant, or tradesman who kept his business open 25 lire. This law expanded an earlier measure from 1259, which had ordered the suspension of business only when an *anzianus* or consul was attacked.¹⁰⁷ Records of the heralds' proclamations show that these laws went into effect on multiple occasions, as seen above with the Galluzzi's 1324 attacks on a *popolano*.¹⁰⁸ By making collective vendetta a legal obligation, the *popolo* ensured not only that vengeance would be taken, but also that an attack on one member would be felt as an attack on all—if only because of the profits they lost when they had to close their shops.

¹⁰¹ *Statuti 1288*, 1:570. Prior to this law, the commune seemed to have granted licenses to retain bodyguards on a case-by-case basis; an example is in ASB, Corone 4, 1292I (92 fols.), 12r.

¹⁰² ASB, Corone 3, 1291II (56 fols.), 42r.

¹⁰³ ASB, Inquisitiones 96, reg. 2, 21r–29r. Francesco Beccadelli's name is also given as Francesco Artenisi. Blanshei mentions the case in Blanshei, *Politics and Justice*, 360.

¹⁰⁴ ASP, Capitano 5b, reg. 8, 16v: "Custos secretus electus pro comuni Perusii super sagitantibus." Perugia's statutes ordered the podestà and capitano to secretly appoint one *bonus homo* for each of the city's five districts to denounce violations of the law against shooting arrows in the city; *Statuto 1279*, 1:305.

¹⁰⁵ ASP, Capitano 5b, reg. 8, 15v.

¹⁰⁶ Fasoli, "Le compagnie delle armi." On the popular militias more broadly, see Poloni, "Disciplinare la società"; Artifoni, "Corporazioni."

¹⁰⁷ *Statuti 1288*, 1:289, 318, 383. *Statuti 1245*, 3:304–5.

¹⁰⁸ For another example, see ASB, Sindacato 8, 1291I (44 fols.), 18v–19r.

In practice, the organized violence of collective vendetta was hardly distinguishable from warfare. For example, when members of the Baccilieri and de' Berni families killed a member of one of the popular militias in 1286, the *popolo's* response was devastating. An unspecified number of guildsmen and militia members “ran to burn down and destroy” the properties of Ramberto Baccilieri, the judge Lambertino de' Berni, and others—from their towers and homes in the city to their vineyards and woodlands in the countryside. The podestà later used public funds to compensate several master carpenters and masons who helped to raze the homes of the Baccilieri, suggesting this *vindicta* was a well-organized and publicly sanctioned event.¹⁰⁹ But for good measure, the Council of the *Popolo* passed a resolution in its aftermath granting legal immunity to everyone who had taken part in the arson, robbery, and general devastation, on the grounds that it was all “for the honor, good state, and preservation of Bologna’s *popolo*.”¹¹⁰

Furthermore, the sources suggest “justice” of this sort was neither rare nor unique to Bologna. In a July 1303 public corruption trial, a longtime crier of the commune named Alberto da Roffeno (see Chapter 6) mentioned that he once rode in a cavalcade of 400 men “taking certain vengeance” in the countryside on behalf of the commune. He later sold the loot he acquired on that expedition for 40 soldi.¹¹¹ In October 1286, the podestà ordered 15 *magistri* of unnamed trades—likely carpenters and masons, as above—to be paid 30 soldi for six days of work razing the homes of criminals in Castel San Pietro.¹¹² The practice of collective vendetta is also evident in Parma, where in 1294 the notaries’ guild avenged the murder of one of its members in the village of Olmo. According to a later chronicle, an *anzianus* led 100 guildsmen to the village, where they seized two of the alleged malefactors and recovered the corpse of the victim. After Parma’s court had one of the captives hanged and the other sentenced to perpetual imprisonment—and after the guild had given its deceased member a proper burial—they returned to Olmo in force to destroy the houses and properties of others banned for the murder. The chronicler even notes that the communal palace remained closed until the notaries had completed their *vindicta* and returned once again to Parma.¹¹³ These acts of “justice” against the governing coalition’s enemies were hardly distinguishable from acts of personal vengeance, except that they were carried out by legitimate public collectives.

It is significant that these governing coalitions permitted and indeed mandated *collective* vendetta against magnates and others who perpetrated violence against their members, as opposed to allowing individuals and families to carry out revenge themselves. The practice clearly affirmed the role of public organizations, including the organs of government, in punishing and deterring interpersonal violence, but offered no such affirmation to individuals seeking vengeance. The same logic is evident in the way the sources refer to corporal punishments carried out by the podestà as vendettas (*vindicte*).¹¹⁴ That is, the government increasingly claimed the right to take vengeance on behalf of aggrieved citizens. Indeed, the *popolo* regime punished its own members when they used

¹⁰⁹ ASB, Sindacato 3, 1286II, 106v–7v.

¹¹⁰ ASB, Riformagioni 126, 17r. Blanshei mentions this incident in *Politics and Justice*, 384n233.

¹¹¹ ASB, Accusationes 25b, reg. 15, 15v: “Faciendo certas vindictas.”

¹¹² ASB, Sindacato 3, 1286II, 92r.

¹¹³ Bonazzi, ed., *Chronicon Parmense*, 9:66. The episode is discussed in Guarisco, “Il ‘popolo.’”

¹¹⁴ For instance, one statute mandated that no *vindicta* or *pena personalis* except flogging was to be carried out within the city limits unless it was deemed necessary; see *Statuti 1288*, 1:237.

violence unilaterally, outside of public organizations like the militias. For example, in October 1300, the Council of the *Popolo* designated Zoenne Beccadelli as a magnate because he had mortally wounded another member of the *popolo*. The victim and his brother claimed that Zoenne had attacked him “without any cause, but only because of his power and arrogance,” and therefore petitioned the council to take this extraordinary measure “so that crimes and homicides against the men of Bologna’s *popolo* might cease, and so that they might stay (and dwell) in their homes and neighborhoods safely.”¹¹⁵ In the *popolo*’s ideology, such acts of violence were the calling card of their enemies and therefore could not be tolerated within the coalition. It is noteworthy, too, that collective vendetta brought overwhelming, asymmetrical force to bear on its targets, which suggests that its purpose was not restoring social balance so much as making future attacks impractical.

The trend toward collectivizing the right to violence also helps to explain Bologna’s practice of auctioning confiscated weapons back to citizens, as described in Chapter 1. It was perfectly legal for citizens to arm themselves to the teeth by way of these auctions. For example, in December 1305, the commune sold some 14 knives, seven daggers, three shields, and two lances—a total of 25 arms, explicitly noted to have been confiscated by the *famiglia*—to one individual, Francesco Papazzoni, for just 40 soldi.¹¹⁶ The Papazzoni and other members of the governing coalition were expected to bear arms in the service of popular militias or the commune’s army—that is, as part of legitimate public organizations. However, if the *famiglia* caught Francesco bearing these same arms for his own ends, and he did not have license to do so, they would be confiscated once again.

Thus, while thirteenth-century communes did not claim a monopoly on the right to use violence, they increasingly claimed that right for public collectives and penalized acts of violence that took place outside them. It is through this lens that Bologna’s and Florence’s laws prohibiting “secondary vendetta,” or revenge attacks by anyone other than the original offender and victim, should be read.¹¹⁷ Zorzi has pointed to these laws as evidence of the legitimization of vendetta, since they did not set penalties for the principals of the vendetta. He argues that the laws’ “salient element” was their “recognition of the vendetta system as a common mode of conflict resolution and as a juridically legitimate institution.”¹¹⁸ Yet the evolution of the Bolognese law shows rather the commune’s growing intolerance of vendetta. The original 1252 statute prohibited the victim of an attack from retaliating against anyone except his assailant, effectively placing kith and kin off limits. It threatened perpetual banishment and the loss of all private property as punishment, but provided for the ban to be lifted by consent of the victim or his heirs, meaning when a peace agreement had been made. This already placed a significant restriction on a practice that customarily required family members to avenge each other. But the penalties for violating this stricture also became progressively more severe. In 1265, the *frati gaudenti* (mentioned above) included a new version of this law in their ordinances to pacify the city.

¹¹⁵ ASB, Riformagioni 153, 254r: “Absque aliqua causa sed solum propter potentiam et superbiam suam. [...] Ad hoc ut cessent malleficia et homicidia in homines populi Bononie, et ut secure stare et morari possint in domibus et contracta ipsorum.”

¹¹⁶ ASB, Corone 14, 1305–1306, 4v. The Papazzoni family were longstanding members of the *popolo* and were accused of violence on several occasions; see Blanshei, *Politics and Justice*, 101n106, 470, 478.

¹¹⁷ The Bolognese statute dates to 1252; see *Statuti 1245*, 1:266. The Florentine law is from the fourteenth century; see Caggese et al., eds., *Statuti*, 2:278.

¹¹⁸ Zorzi, *La trasformazione*, 168.

The 1265 law declared that those who killed someone other than the perpetrator in an illicit act of revenge would suffer the same penalty as any murderer (i.e., death) and all their goods would be bequeathed to the victim's heirs except for their houses and towers, which would be razed to the ground, never to be rebuilt. From there the penalties decreased, but they were still severe: 4,000 lire for inflicting serious injury, 3,000 lire for inflicting minor injury with bloodshed, and 2,000 lire for inflicting injury without bloodshed. If the offenders could not be brought into custody, they were to be banished permanently "as for a most serious crime"—regardless of whether the victim was killed or only wounded and regardless of any peace agreement—and all their properties redistributed or destroyed. The *frati gaudenti* passed these extreme sanctions "so that the city and district of Bologna might endure in peace and tranquility, and [so that] such an enormous, most serious, and heinous crime be extirpated by the root."¹¹⁹ Although this law was likely conceived as an emergency measure, it retained full effect—including the threat of perpetual and irrevocable ban—when the *popolo* regime revised the statutes in the 1280s.¹²⁰ These laws trended toward the growing repression of vendetta, not its legitimization.

Indeed, to argue that the "salient element" of these laws was that they did not prohibit vendetta outright is to assume that the communes naturally sought a monopoly on the legitimate use of violence. In fact, communal governments not only lacked such a monopoly, they had no concept of it. If some communes did not ban vendetta outright, it was because that was a radical idea for an honor-based society in which vengeance was a moral obligation scarcely distinguishable from self-defense. Nevertheless, their laws (and enforcement of them) show increasing intolerance toward violence perpetrated outside the framework of public institutions, including the violence of vendetta. Considering that the right to violence was traditionally diffuse in communal society, the growing suppression of that right is the remarkable development, not the fact that the state did not claim a complete monopoly of it.

Preventing Enmity

As public justice took a preventive turn, virtually no detail of life in the communes was too trivial to merit the attention of lawmakers. Chapter 1, for example, showed how the crowns notary attempted to measure the trains of women's dresses to the breadth of a finger. The myriad rules and regulations enforced by the dirt notary could be just as niggling. If many of the communes' more far-reaching statutes sought simply to prevent disorder in burgeoning towns, a subset of them can be understood as aiming to prevent enmity itself. That is, beyond preventing feud-related violence, communal regimes sought to prevent mortal hatreds from developing in the first place. This section will treat the policing of mourning, music-making, public festivities, and snowball fights in turn as cases in point.

Mourning laws, which prohibited dramatic displays of grief, seem to have originated with feuds in mind. Bologna did not enshrine such laws in statute until the 1280s, but a ban

¹¹⁹ *Statuti 1245*, 3:609–10: "Et ut civitas bononie et eius districtus in pace et tranquillitate persistent. Et tam enorme tanque gravissimum malefitium et nefarium radicitus extirpetur, inviolabiliter observari."

¹²⁰ *Statuti 1288*, 1:209–10. The statute made one small modification: there is no 4,000-lire penalty for serious wounds, only the 3,000- and 2,000-lire penalties for wounds that (respectively) did and did not cause bloodshed. For the tendency to normalize emergency measures, see Isenmann, "From Rule of Law."

from 1275 reveals much about the motivations behind them. On 13 June of that year, the heralds proclaimed a ban against anyone making a *corrotto* (i.e., a song or chant of lamentation) for any deceased or wounded person, or allowing anyone but neighbors to gather around the body, under a steep penalty of 100 lire.¹²¹ 13 June 1275 also happened to be the day that Bologna's exiled Ghibellines launched an attack on the ruling Guelfs and defeated them in battle. According to one chronicle, 2,000 Bolognesi lost their lives.¹²² The mourning ban was just one in a series of extraordinary proclamations aimed at addressing this political emergency. One such proclamation granted all Geremei (Guelfs) permission to seize, detain, ransom, and injure in person and property any Lambertazzi (Ghibelline) they could find without fear of penalty. Another threatened exile and loss of property to anyone who started any brawl (*rissa*) that might result in a riot (*rumor*) or injury among the men of the city.¹²³ Again, Bologna's authorities were explicitly concerned that street fights could escalate into political tumults. By extension, the restrictions on mourning were meant to prevent public displays of grief that could incite kinsmen or fellow partisans to violence. Bologna's first funeral law was not concerned with regulating passions in their own right, but with preventing reprisals for violent, premature deaths.

The same preventive logic seems to undergird many of the mourning and funeral laws found in the 1280s statutes. By 1285, lawmakers had enshrined the 1275 prohibition against making a *corrotto* and added to it a list of other prohibited mourning behaviors. They also affirmed a prohibition against anyone but close kin (within three degrees of kinship) gathering at the house of the deceased.¹²⁴ Related laws aimed at crowd control. They limited the number of individuals allowed in funeral processions (excepting guilds, militias, and confraternities), prohibited mourners from lingering at the church or the deceased's house (excepting neighbors and close kin), and forbade city residents from inviting *contadini* to funerals. Yet other mourning laws aimed to keep news of a death from stirring passions beyond the neighborhood of the deceased. Such measures included bans on trumpeting news of someone's death around town or ringing the bell of any church other than the one at which the deceased was to be buried. Lastly, lawmakers seem to have believed that the sight of a deceased woman or of women mourning was especially likely to inflame the passions of male relatives. Consequently, they banned female kin from funeral processions and decreed that deceased women could not be carried in a procession with their faces uncovered.¹²⁵ Furthermore, by requiring *ministrales* to notify the podestà of deaths in their parishes, lawmakers ensured that the authorities would be aware of any premature or politically sensitive deaths that might spark reprisals or riots over the death of important individuals. Perugia's statutes featured similar provisions that limited funeral processions to clergymen and those who were carrying the deceased, and required corpses of either sex to be fully covered during funerals and processions.¹²⁶ In the context of Bologna's 1275 proclamations, these measures appear designed, at least in part, to prevent feud-related violence. They evidence a shared understanding among lawmakers that

¹²¹ ASB, Giudici 2, 5v. For the meaning of *corrotto*, see Lansing, *Passion and Order*, 12, 61–65.

¹²² Griffoni, *Memoriale*, 21.

¹²³ ASB, Giudici 2, 3v.

¹²⁴ ASB, Sindacato 2, 1285II (28 fols.), 3v, 11r, 14v.

¹²⁵ ASB, Corone 4, 1292I (92 fols.), 65r–66v.

¹²⁶ *Statuto* 1279, 1:353.

funerals—especially those resulting from premature and violent deaths—could inflame enmities and inspire acts of revenge.

The potential for enmity seems to have motivated many communes to prohibit making music at night (*mattinate*). As Christiane Klapisch-Zuber has noted, the word *mattinata* had diverse meanings in medieval Italy; it could refer equally to an amorous serenade or a form of charivari. Charivari, or “rough music,” was a mock serenade—consisting of bawdy songs and cacophonous music made with horns, bells, kitchen pots, and the like—typically performed at night at the house of a newlywed couple whose union was unorthodox in some way, such as when a widow or widower married for the second time. Charivari might be used to persuade a couple to throw a party for their “serenaders”—likely friends and neighbors—and be taken with good humor. But charivari could also bring shame on a house and lead to violence, especially if the lyrics became too insulting. Charivari was the close cousin of “door-scorning,” a form of community censure for sexual misconduct such as adultery or prostitution. Door-scorners would vandalize the deviant couple’s door at night, drawing lewd symbols; splattering it with mud, blood, and excrement; and even breaking it down—often while making “rough music.” Such customs are attested across Western Europe in the medieval and early modern periods.¹²⁷ Curiously, however, historians have tended to equate Italian *mattinate* with charivari and said little about the appearance of laws banning *mattinate* in the thirteenth century.¹²⁸

Court records suggest that the communes did enforce their prohibitions against night music, and that these bans covered all sorts of serenades, not just rough music. In Bologna, evidence of enforcement predates the earliest surviving statutes. In 1256, the podestà convicted three men caught with a drum at night and, separately, a notary caught with a lute.¹²⁹ A lute is an unlikely instrument for making rough music, and indeed the earliest such law from Bologna (1261) specifically banned lutes and viols, not percussive or brass instruments of the sort that would be used in charivari.¹³⁰ Granted, later versions of the ban mention horns, drums, and trumpets, but actual cases make clear that the law aimed to suppress all music, not just rough music.¹³¹ For example, a certain Jacopo, reportedly found playing a lute and “making *mattinate*” one night in 1287, confessed that he and a companion had been on their way to the house of a certain Zoanna to play *mattinate* before the morning bell.¹³² This seems a clear-cut case of courtship, where *mattinata* meant precisely what it means in Italian today: an aubade, or morning serenade. Yet other cases suggest that a *mattinata* could refer to any sort of musical gathering after dark. One evening in January 1324, the *famiglia* reported a group of eight men under the portico of the fisherman Masino, where two of them were allegedly “making *mattinate* and singing,” and one was holding bellows for an organ on the ground in the middle of the

¹²⁷ On the *mattinata*, see Klapisch-Zuber, “The ‘Mattinata.’” On door-scorning in Italy, see Dean, “Gender and Insult,” 227–29; Cohen, “Honor and Gender.” More broadly, see Muir, *Ritual*, 106–11, 143–44; Le Goff and Schmitt, eds., *Le charivari*; Gowing, *Domestic Dangers*, 101; Burke, *The Historical Anthropology*, 103–4.

¹²⁸ For examples, see: Dean, *Crime and Justice*, 122–23; Youngs and Harris, “Demonizing the Night,” 153n45; Kuehn, “Contracting Marriage,” 407–8; Gottlieb, *The Family in the Western World*, 80.

¹²⁹ ASB, Accusationes 2, reg. 8, 39v, 42v.

¹³⁰ *Statuti* 1245, 3:558.

¹³¹ For bans of other musical instruments, see Sindacato 5, 1288I (22 fols.), 6r; Sindacato 6, 1289II (38 fols.), 35r; Sindacato 10, 1293II (50 fols.), 4r.

¹³² ASB, Corone 1, 1287I (34 fols.), 8v–9v.

gathering. This was despite the fact that two of the accused had lanterns.¹³³ In Perugia (1283) and Siena (1306) as well, men were convicted for playing guitars at night.¹³⁴

What was the harm in making music at night? Bologna's 1261 law prohibited anyone from carrying musical instruments in the evening "since many and various crimes might be perpetrated because of these instruments."¹³⁵ If rough music could inspire criminality, including acts of violence, romantic serenades could as well. Consider the testimony in a gambling case from 1293, where the defendant claimed one of his accusers was his enemy and had made death threats against him many times since they were both in love with the same young woman (*domicella*).¹³⁶ In medieval Italy, a romantic rivalry could indeed be a matter of life and death. By extension, an evening serenade might precipitate a confrontation with such a rival, or perhaps with the men of the woman's house who felt dishonored by the serenaders. This may explain why the notary Vacondio and companion, convicted in 1256 for carrying a lute, were each found carrying a knife as well.

Furthermore, young men (*iuvenes*)—who were generally the most likely source of violence—were the primary participants in *mattinate*. The 1261 ordinance seems to reference this concern by explicitly noting that the ban applied to students as well as other men. In a March 1315 case, one of three men arrested for carrying instruments admitted he had intended to play the trumpet with some foreign students.¹³⁷ The link among young men, music-making, and violence is more explicit in the deposition of Alberghetto Calamatoni, who was captured in January 1315 while under ban for armed assault. As mentioned in Chapter 1, Alberghetto had served as *domicellus* to a podestà in Siena while under ban. At his arraignment, Alberghetto confessed to having assaulted a certain Guido (or Guiduccio) with a knife the previous year, striking him in the face "since Guido had first done injury" to him. The judge then asked Alberghetto "of what sort of condition and life" he was, whether he was literate, and what people he consorted with both before and after his ban. He replied that he was illiterate since "he could never learn" letters, though he had gone to school as a boy. "For this reason he has consorted with young men and led his life in the manner of young men in making *astrudii* and *mattinate* with instruments at night as young men do." When the judge asked him "why he did not take up a clerical order so that he might avoid the perils of the secular courts," Alberghetto answered first because of his illiteracy, but second "because he liked the life of *astrudii* and *mattinate* and enjoying himself with lay youths more than living clerically or being a cleric." This last question from the judge suggests a certain reluctance to punish a wayward youth from an elite family, but in the end he had Alberghetto's foot cut off as the law demanded.¹³⁸ The connection

¹³³ ASB, Corone 29, 1324I, 31r: "Matutinantes et canentes."

¹³⁴ ASS, Podestà, Malefizi 11, 84v. ASP, Capitano 7b, reg. 7, 25v.

¹³⁵ *Statuti 1245*, 3:558: "Quia multa malleficia et varia possent perpetrari occasione predictorum instrumentorum."

¹³⁶ ASB, Corone 5, 1293II (53 fols.), 7v: "Item quod si quis testis ex inquisitione recepti dixerunt eum luxisse dicta dicta [sic] die et loco predicto ad aliquem ludum bischacie, falsum dixere [sic] et contra veritatem."

¹³⁷ ASB, Corone 21, 1315I (102 fols.), 66r.

¹³⁸ ASB, Corone 21, 1315I (102 fols.), 26v: "Quia dictus Guido primo fecerat iniuriam ipsi Albergicto. [...] Interrogatus cuius conditionis et vite erat ipse Albergipus, et si erat licteratus, et cum quibus est usus ante dictum bannum et post, respondit quod licteratus non erat quia bene ivit ad scholas cum puer erat sed numquam potuit discere, et propterea usus est cum iuvenibus, et more iuvenum vitam suam duxit in astrudiis et maytinatis faciendis de nocte cum instrumentis ut iuvenes faciunt. [...] Interrogatus quare non suscepit ordinem clericatus ut evitaret pericula secularium iudiciorum, dixit quia non erat licteratus, et delectabat

between night music and youth violence could hardly be clearer in Alberghetto's deposition. As he portrayed it, making *mattinate* was typical male behavior; it was simply what young men did. But it was also the case that young men like Alberghetto were more likely to get into knife fights and therefore merited greater police attention.

Bologna's lawmakers treated traditional holiday festivities as potential threats as well. For instance, the statutes banned the crowning of a May queen (*maiuma*) at the customary celebration of *calendimaggio*.¹³⁹ The heralds routinely reminded city residents of this prohibition every April and May, and asked *ministrales* to denounce anyone who violated it.¹⁴⁰ On at least one occasion, in 1289, two *ministrales* from the parish of San Martino dell'Aposa denounced five young women for playing a game in which one of them was crowned "countess" (*comitissa*).¹⁴¹ An episode described by the chronicler Matteo Griffoni hints at why lawmakers saw a need to suppress this tradition. In May 1268, a group of neighborhood youths were blamed for stealing a beautiful purse from the "countess" who had been crowned that day. The father of the "countess" assaulted the young men, wounding one of them, and all involved were arrested, but the truth of the matter (i.e., who stole the purse) was never discovered.¹⁴² *Calendimaggio* celebrations, like any large gatherings of Bologna's young men, had a high potential to spawn enmity and therefore attracted preventive measures from the authorities.

In the same vein, lawmakers prepared for holiday celebrations with harsher laws and increased police monitoring, much as if they were political emergencies. Some communes doubled the penalties for bearing arms on feast days. In 1295, for example, Orvieto's podestà convicted three men for carrying weapons on the feast of the Assumption and fined them double the usual amount, because the city council had passed an ordinance to this effect.¹⁴³ A 1306 conviction from Siena seems to hint at a similar prohibition in noting that the offender was carrying weapons on the feast of San Bartolomeo.¹⁴⁴ It is obvious why the authorities would want to keep weapons away from the large crowds gathered for such festivities, but special holiday police measures did not stop there. Bologna's government instituted a strict curfew during Carnival several times in the 1290s, prohibiting anyone from being outside after the first curfew bell (rather than the usual third), even with a light.¹⁴⁵ They also prohibited residents from holding dances, as was customary, in their homes, courtyards, or under their porticoes after the first bell. The

eum plus dicta vita astrudiorum et maytinatorum et gaudere cum iuvenibus secularibus quam clericaliter vivere et clericus esse." For Alberghetto's sentence, see Blanshei, *Politics and Justice*, 368. For the Calamatoni family, see 39, 330. I cannot find the word *astrudius/-um* in any Latin dictionary or glossary. It may derive from the Greek "strouthos," meaning "lewd fellow or lecher," which in turn might hint at charivari or door-scoring. Thank you to Greg Recco and Sarah Stickney for suggesting this etymology. See also Mazzoni Toselli, *Racconti storici*, 2:91n1.

¹³⁹ For the tradition in Bologna, see Frati, *La vita privata*, 143–46. For medieval Italy more generally, see McGee, *The Ceremonial Musicians*, 18–19, 23.

¹⁴⁰ *Statuti 1288*, 1:249. For proclamations, see ASB, Sindacato 5, 1288I (22 fols.), 16v; Sindacato 6, 1289I (19 fols.), 7v; Sindacato 8, 1291I (44 fols.), 22r. For a general inquisition that expressly covered the statute, see ASB, Corone 29, 1324I, 115r.

¹⁴¹ ASB, Corone 2, 1289I, 16r.

¹⁴² Griffoni, *Memoriale*, 18.

¹⁴³ ASO, Podestà 2, reg. 9, 56v.

¹⁴⁴ ASS, Malefizi 11, 232v.

¹⁴⁵ For Carnival in Bologna, see Frati, *La vita privata*, 180–83.

penalty for violating either prohibition was a steep 50-lire fine. The heralds blazoned this through town, and in 1291 even went out to Castelfranco, at Bologna's border with Modena, to make this proclamation.¹⁴⁶ Nor were these idle threats. On the last night of Carnival in 1296, the *familia* arrested a certain Matteo di Bolognetto when they found him without a light in Via Castiglione, near Romeo Pepoli's house, before the third curfew bell. Matteo gave up the names of three companions who had fled the *familia*, and ultimately the judge sentenced each of them to a 20-lire fine.¹⁴⁷ Even in years when lawmakers did not issue special bans like those above, there is evidence that the *familia* paid close attention to Carnival celebrations. In a February 1294 curfew case, the defendant argued that he had been found in front of his home in the presence of lamps that he had set up to watch a dance—"as customarily takes place during Carnival time"—a few houses away.¹⁴⁸ The judge ultimately acquitted him, but it is telling that the *familia* was in the vicinity of such a dance, perhaps waiting for the revelers to violate a statute.

Finally and perhaps most surprisingly, Bologna's authorities prohibited snowball fights and even prosecuted men for partaking in them. On 22 December 1293, the heralds proclaimed by order of the podestà that no one was to play in the snow or throw snow under penalty of 10 lire.¹⁴⁹ The very next day, the *familia* arrested two *fumantes*, Giacomo and Domenico, for playing in the snow "against the precept or proclamation made by the heralds of the commune of Bologna by order of the podestà." They were even jailed for a time because they could not give surety, and the podestà proceeded against them by inquisition.¹⁵⁰ Under questioning the next day, Giacomo denied that he was playing with or throwing snow at anyone. When the judge asked him why he was arrested and what he was doing at the time, he claimed to have no idea since he was doing nothing more than standing in the street. Domenico likewise expressed bafflement at his arrest. By his account, he was in a house or tavern (*domus*) when the *familia* ordered him to come outside, alleging that he had played in the snow. When he obediently exited, they arrested him.¹⁵¹ The trial record ends there, but this was not an isolated occurrence. The heralds had proclaimed an identical ban five years earlier, on 13 February 1288.¹⁵² And at the start of 1317, the *familia* arrested a number of people for playing in the snow following a ban by the podestà. On 1 January, they detained eight men for having a snowball fight and led them to the palace. They all confessed and gave surety for their offense. At least seven more men were arrested the same day for playing in the snow, one in front of his house and six near the cathedral of San Pietro. Yet another was arrested the next day and two more on 4 January for a total of 18 arrests in four days.¹⁵³ It is hard to know how common such proclamations were after heavy snowfalls, which are relatively infrequent in Bologna. But

¹⁴⁶ ASB, Sindacato 8, 1291I (44 fols.), 18v; Corone 7, 1295I (44 fols.), 14v.

¹⁴⁷ ASB, Corone 8, 1296I (80 fols.), 54r-v.

¹⁴⁸ ASB, Corone 6, 1294I (84 fols.), 12r: "Item quod ibi homines et mulieres ballabant et cantabant secundum quod fieri solet tempore carneplavi."

¹⁴⁹ ASB, Sindacato 10, 1293II (50 fols.), 37r.

¹⁵⁰ ASB, Corone 5, 1293II (48 fols.), 23v: "Ivissent cum domino Georgio de Varona milite domini potestatis et eius mandato causa inquirendi [...] ludentes ad nivem contra preceptum seu cridam factam per banitores comunis Bononie de precepto dicti domini potestatis."

¹⁵¹ ASB, Corone 5, 1293II (48 fols.), 23v.

¹⁵² ASB, Sindacato 5, 1288I (22 fols.), 9r.

¹⁵³ ASB, Corone 24, 1317I (86 fols.), 17r-v.

the record of these arrests more than 23 years apart suggests this was a consistent policy of the commune.

The trouble with snowball fights, it seems, was that snow could be used as a projectile much like stones, and stone-throwing was a common tactic in urban warfare. Lawmakers in Bologna and other communes prohibited violent stone-throwing games and mock battles that were popular among residents.¹⁵⁴ The heralds regularly proclaimed the bans against such violent games, which went by many names and were especially popular among boys (*pueri*). A proclamation from 13 June 1306—a year of major political unrest—makes clear the rationale for these prohibitions: “no person great or small” should dare to play at the games of *rombolles* or *besogni* “or any other game whence a *rumor* or *scandalum* might arise” under pain of a 25-lire fine.¹⁵⁵ In other words, pretend battles were prone to escalate into real ones. I have not found any such arrests in Bologna, but in Siena the podestà’s *familia* arrested eight men for playing a violent game (*ad pugnosc et boccatas*) in the Campo Foro in June 1305. And in 1306, Siena’s podestà sentenced a certain Niccoluccio to a 15-lire fine for throwing snow at and verbally abusing his female servant (*famula*).¹⁵⁶ So concerned were Bologna’s lawmakers by the potential for snowballs to cause enmity that they also prohibited the throwing of snow at weddings.¹⁵⁷ In their elusive quest for the commune’s “good and peaceful state,” any behavior that had the potential to spawn enmity was a fair target for police action.

Conclusion: Legislating in the Shadow of Violence

This chapter has shown the multiple ways Bologna and other communes policed vendetta and enmity itself. On daily patrols, the podestà’s *familia* worked to confiscate the tools of violence and ensure no one walked the city streets armed for battle, at least without the government’s license to do so. The permit system ensured that the *familia* would focus their attention on men who had, or thought they might have, mortal enemies. Furthermore, the podestà used the arms-bearing laws, in combination with other coercive measures such as house arrest, to target families and individuals who were in conflict. Indeed, the policing of illegal weapons seems to have been part of a broader trend whereby government officials increasingly tried to prevent violence from taking place outside of public collectives and suppress it when it did. Other statutes and police actions tried to preempt such violence altogether by disciplining behaviors that had the potential to generate enmity among citizens. In sum, communal governments did not sanction vendetta in the sense of authorizing it; rather, they increasingly sanctioned vendetta (and behaviors associated with it) in the sense of penalizing it.

¹⁵⁴ For example, Perugia’s statutes threatened a 100-lire fine to anyone starting a *batalia* in the city, except for the *batalia* that was generally accustomed to take place in the *Campo Prelii*; see *Statuto* 1279, 1:291. More broadly see Settia, *Comuni in guerra*, 29–52; Zorzi, “Battaglie”; Rizzi, *Ludus/ludere*, 39–52, 89–102.

¹⁵⁵ ASB, Corone 15, 1306 (40 fols.), 20v: “Item quod nulla persona parva vel magna audeat vel presumat ludere ad ludum rombolorum sive ad ludum bisogni vel aliud ludum unde nasseretur rumor vel scandalum pena vigintiquinque librarum Bononie pater tenebitur pro filio vel in cuius potestate esset.” For other bans see ASB, Sindacato 3 (32 fols.), 1286II, 30r; Sindacato 5, 1288II, 32v; Sindacato 6, 1289I (19 fols.), 13r.

¹⁵⁶ ASS, Podestà, Malefizi 10, 9r–13v; 11, 269r.

¹⁵⁷ *Statuti* 1288, 1:253. For a general inquisition that explicitly covered this prohibition, see ASB, Corone 11, 1300 (82 fols.), 75r.

Indeed, the evidence above suggests the communes' elites increasingly sought to constrain vendetta, feud, and warfare through hegemonic justice. To be clear, this is not to argue for the state's inevitable or progressive monopolization of the right to use violence.¹⁵⁸ The communal "state" was not a unitary actor, and its institutions evolved through a highly contingent and dynamic process. These institutional changes still beg for further study and explanation—minus the teleology of earlier scholarship. Since it is widely accepted that the communes were not modern, Weberian states and thus had no monopoly on the legitimate use of violence, it should be no surprise that many communes did not expressly prohibit vendetta. Indeed, it is hardly worth noting the "legitimation" of an institution that traditionally enjoyed legitimacy, but it is worth exploring how that institution was gradually delegitimated. As North, Wallis, and Weingast remind us, the challenge is to explain how a state monopoly on violence might emerge from a premodern social order without any concept of such a monopoly.

By extension, this chapter is also meant to illustrate the shortcomings of functionalist approaches to the history of institutions. By explaining how well institutions "worked" to maintain social cohesion, functionalism can overlook the drivers of change and even explain it away. Indeed, because they focus on the logic of existing institutions, functionalist approaches can have the unintended effect of implying that thirteenth-century Italy had little need for new institutions, such as third-party policing. Citizen-legislators obviously felt otherwise.

Furthermore, studies that treat vendetta as an institution of dispute resolution misinterpret its social function. Vendetta is better described as a deterrent than a "balancing mechanism." Insofar as vendetta has a "positive value" in limiting violence, it does not derive from a symmetrical exchange that prevents escalation. Rather, it derives from the threat of retaliation, which aims to deter would-be offenders from acting violently in the first place. Thus, when an act of violence occurs between enemies, the institution has already failed. Moreover, this deterrent often does fail, because people frequently overestimate the advantage they have over their enemies and perceive the harms they suffer as worse than the harms they inflict. These cognitive biases make people prone to risk violence and escalate conflicts out of proportion to the original offense.¹⁵⁹ Put another way, if vendetta is a "political game," the players often have different understandings of the rules to the game and are likely to miscalculate.¹⁶⁰ Thus, vendetta functions as a self-regulating mechanism more in theory than in practice. Reading vendetta as a process of dispute resolution effectively de-problematizes its violence and glosses over the instability inherent in the institution.

In reality, the problem of violence is one of the key drivers of social organization and institutional change.¹⁶¹ The communes' elites voluntarily expanded their governments' police power in part because they saw their own violence as a problem in need of a better solution. Elites knew the destabilizing effects of vendetta all too well, and they did not believe existing practices of conflict resolution were adequate for their security. If

¹⁵⁸ For recent critiques of this narrative, see Firnhaber-Baker, *Violence*, 5–10; Zorzi, "Justice," 513.

¹⁵⁹ Pinker, *The Better Angels*, 529–47.

¹⁶⁰ For similar arguments, see Hyams, "Neither Unnatural Nor Wholly Negative," 220; Brown, *Violence*, 9, 17–20. For vendetta as a "political game," see Zorzi, "Legitimation," 49, 51.

¹⁶¹ This is the fundamental premise of North, Wallis, and Weingast, *Violence and Social Orders*. See also North et al., eds., *In the Shadow of Violence*; Schlichte, *In the Shadow of Violence*.

historians are to explain the growth of police power and hegemonic justice in the communes, they should understand violence the way the communes' elites did—namely as a challenge to be addressed, not a solution to conflict itself. These institutional changes were neither linear nor inevitable, but they did take place in the context of political and social competition where violence was an omnipresent threat.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Capitano del popolo, Giudici del capitano del popolo

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio del giudice al sindacato

Governo

Provvisori dei consigli minori

Riformagioni del Consiglio del Popolo

Archivio di Stato di Orvieto

Podestà, capitano del popolo e vicario, Sentenze, condanne e assoluzioni

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

Archivio di Stato di Siena

Podestà, Malefizi

PUBLISHED PRIMARY SOURCES

Bonazzi, Giuliano, ed. *Chronicon Parmense: ab anno MXXXVIII usque ad annum MCCCXXXVIII*. Vol. 9, pt. 9. *Rerum Italicarum Scriptorum*. Città di Castello: Lapi, 1902.

Caggese, Romolo, Giuliano Pinto, Francesco Salvestrini, and Andrea Zorzi, eds. *Statuti della Repubblica fiorentina. Statuto del podestà dell'anno 1325*. New ed. Florence: L.S. Olschki, 1999.

Caprioli, Severino, ed. *Statuto del comune di Perugia del 1279*. 2 vols. Perugia: Deputazione di storia patria per l'Umbria, 1996.

Doeberl, Michael, ed. *Monumenta Germaniae selecta ab anno 768 usque ad annum 1250*. Munich: J. Lindauersche buchhandlung, 1889.

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267*. 3 vols. Bologna: Regia Tipografia, 1869–1877.

Griffoni, Matteo. *Memoriale historicum de rebus Bononiensium (aa. 4448 A.C. – 1472 D.C.)*. Edited by Lodovico Frati and Albano Sorbelli. New ed. Vol. 18, pt. 2. *Rerum Italicarum Scriptorum*. Città di Castello: San Lapi, 1902.

Henderson, Ernest F., ed. *Select Historical Documents of the Middle Ages*. London: George Bell & Sons, 1892.

- Imperiale di Sant'Angelo, Cesare, ed. *Codice diplomatico della repubblica di Genova*. 3 vols. Rome: Tipografia del Senato, 1936.
- Piccolo, Paolo, ed. *Liber Augustalis di Federico II di Hohenstaufen: le costituzioni di Melfi, 1231*. Naples: Luciano, 2001.
- Powell, James M., trans. *The Liber Augustalis; or, Constitutions of Melfi, Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*. Syracuse: Syracuse University Press, 1971.

SECONDARY SOURCES

- Algazi, Gadi. "Pruning Peasants: Private War and Maintaining the Lords' Peace in Late Medieval Germany." In *Medieval Transformations: Texts, Power, and Gifts in Context*, edited by Esther Cohen and Mayke De Jong, 245–74. Leiden: Brill, 2001.
- . "The Social Use of Private War: Some Late Medieval Views Reviewed." *Tel Aviver Jahrbuch für deutsche Geschichte* 22 (1993): 253–73.
- Althoff, Gerd. "Königsherrschaft und Konfliktbewältigung im 10. und 11. Jahrhundert." *Frühmittelalterliche Studien* 23 (1989): 265–90.
- Artifoni, Enrico. "Corporazioni e società di 'popolo': un problema della politica comunale nel secolo XIII." *Quaderni storici* 74 (1990): 387–404.
- Barthélemy, Dominique, François Bougard, and Régine Le Jan, eds. *La vengeance, 400–1200*. Rome: École française de Rome, 2006.
- Bellabarba, Marco. "Pace pubblica e pace privata: Linguaggi e istituzioni processuali nell'Italia moderna." In *Criminalità e giustizia in Germania e in Italia pratiche giudiziarie e linguaggi giuridici tra tardo Medioevo ed età moderna. Atti del convegno tenuto a Trento nei giorni 21–23 ottobre 1999*, edited by Marco Bellabarba, Gerd Schwerhoff, and Andrea Zorzi, 189–213. Bologna; Berlin: Il Mulino; Duncker & Humblot, 2001.
- Blanshei, Sarah Rubin. *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Boehm, Christopher. "The Natural History of Blood Revenge." In *Feud in Medieval and Early Modern Europe*, edited by Jeppe Büchert Netterstrøm and Bjørn Poulsen, 189–203. Aarhus: Aarhus University Press, 2007.
- Brown, Warren C. *Violence in Medieval Europe*. New York: Longman, 2011.
- Burckhardt, Jacob. *The Civilization of the Renaissance in Italy*. Translated by S.G.C. Middlemore. 1878. Reprint, New York: Modern Library, 2002.
- Burke, Peter. *The Historical Anthropology of Early Modern Italy: Essays on Perception and Communication*. Cambridge: Cambridge University Press, 1987.
- Carbonnières, Louis de. "Le pouvoir royal face aux mécanismes de la guerre privée à la fin du Moyen Âge. L'exemple du Parlement de Paris." *Droits. Revue française de théorie, de philosophie et de cultures juridiques* 46 (2007): 3–18.
- Cavallar, Osvaldo. "Regulating Arms in Late Medieval and Renaissance Italian City-States." In *Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society*, edited by Julius Kirshner and Laurent Mayali, 57–126. Berkeley: Robbins Collection, 2002.
- Cecchini, Giovanni. "L'assassinio del padre del Poliziano." *Bullettino senese di storia patria* 60 (1953): 202–41.

- Celli, Roberto. *Studi sui sistemi normativi delle democrazie comunali: secoli XII–XV*. Florence: G.C. Sansoni, 1976.
- Cohen, Elizabeth S. "Honor and Gender in the Streets of Early Modern Rome." *The Journal of Interdisciplinary History* 22 (1992): 597–625.
- Dean, Trevor. *Crime and Justice in Late Medieval Italy*. New York: Cambridge University Press, 2007.
- . "Gender and Insult in an Italian City: Bologna in the Later Middle Ages." *Social History* 29 (2004): 217–31.
- . "Marriage and Mutilation: Vendetta in Late Medieval Italy." *Past & Present* 157 (1997): 3–36.
- . "Violence, Vendetta, and Peacemaking in Late Medieval Bologna." *Criminal Justice History* 17 (2002): 1–18.
- Donahue, Charles. "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law." In *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, edited by Morris S. Arnold, 127–58. Chapel Hill: University of North Carolina Press, 1981.
- Dorini, Umberto. "La vendetta privata al tempo di Dante." *Giornale dantesco* 29 (1926): 56–68.
- Enriques, Anna Maria. "La vendetta nella vita e nella legislazione fiorentina." *Archivio storico italiano* 19 (1933): 85–146, 181–224.
- Epstein, Steven. *Genoa and the Genoese, 958–1528*. Chapel Hill: University of North Carolina Press, 1996.
- Fasoli, Gina. "Le compagnie delle armi a Bologna." *L'Archiginnasio* 28 (1933): 158–83, 323–40.
- Firnhaber-Baker, Justine. "Seigneurial War and Royal Power in Later Medieval Southern France." *Past & Present* 208 (2010): 37–76.
- . *Violence and the State in Languedoc, 1250–1400*. New York: Cambridge University Press, 2014.
- Foschi, Paola. "I conti di Panico e i loro consorti nella montagna occidentale." In *Il Liber Paradisus e le liberazioni collettive nel XIII secolo: cento anni di studi, 1906–2008*, edited by Armando Antonelli and Massimo Giansante, 177–200. Venice: Marsilio, 2008.
- Fрати, Lodovico. *La vita privata di Bologna dal secolo XIII al XVII*. Bologna: N. Zanichelli, 1900.
- Freund, Julien. *Sociologie du conflit*. Paris: Presses universitaires de France, 1983.
- Garnot, Benoît, and Rosine Fry, eds. *L'infrajudiciaire du Moyen Age à l'époque contemporaine. Actes du colloque de Dijon, 5–6 octobre 1995*. Dijon: Editions Universitaires de Dijon, 1996.
- Gazzini, Marina. "I Disciplinati, la milizia dei frati Gaudenti, il comune di Bologna e la pace cittadina: statuti a confronto (1261–1265)." *Bollettino della Deputazione di Storia Patria per l'Umbria* 101 (2004): 419–37.
- Geary, Patrick. "Extra-Judicial Means of Conflict Resolution." In *La giustizia nell'alto Medioevo, secoli V–VIII: 7–13 aprile 1994*. Spoleto: Centro italiano di studi sull'alto Medioevo, 1995.
- Gluckman, Max. "The Peace in the Feud." *Past and Present* 8 (1955): 1–14.

- Gonthier, Nicole. *Le châtement du crime au Moyen Age: XIIe–XVIe siècles*. Rennes: Presses universitaires de Rennes, 1998.
- Gottlieb, Beatrice. *The Family in the Western World from the Black Death to the Industrial Age*. New York: Oxford University Press, 1993.
- Gowing, Laura. *Domestic Dangers: Women, Words, and Sex in Early Modern London*. Oxford: Clarendon Press, 1996.
- Gozzadini, Giovanni. “Di alcuni monumenti che ricordano i conti di Panico.” *Atti e Memorie della Deputazione di Storia Patria per le Province di Romagna*, n.s., 5 (1880): 1–21.
- Grundman, John P. *The Popolo at Perugia, 1139–1309*. Perugia: Deputazione di storia patria per l’Umbria, 1992.
- Gualandi, Enea. “Le origini dei Conti di Panico.” *Atti e Memorie della Deputazione di Storia Patria per le Province di Romagna*, 3, 26 (1908): 285–384.
- Guarisco, Gabriele. “Il ‘popolo’ e le pratiche della vendetta a Parma.” In *Conflitti, paci e vendette nell’Italia comunale*, edited by Andrea Zorzi, 131–54. Florence: Firenze University Press, 2009.
- Heers, Jacques. *Family Clans in the Middle Ages: A Study of Political and Social Structures in Urban Areas*. Amsterdam: North-Holland, 1977.
- Hyams, Paul R. “Neither Unnatural Nor Wholly Negative: The Future of Medieval Vengeance.” In *Vengeance in the Middle Ages: Emotion, Religion and Feud*, edited by Susanna A. Throop and Paul R. Hyams, 203–20. Burlington, VT: Ashgate, 2010.
- Isenmann, Moritz. “From Rule of Law to Emergency Rule in Renaissance Florence.” In *The Politics of Law in Late Medieval and Renaissance Italy: Essays in Honour of Lauro Martines*, edited by Lawrin D. Armstrong, Julius Kirshner, and Lauro Martines, 55–76. Toronto: University of Toronto Press, 2011.
- Jansen, Katherine L. *Peace and Penance in Late Medieval Italy*. Princeton: Princeton University Press, 2017.
- . “‘Pro Bono Pacis’: Crime, Conflict, and Dispute Resolution. The Evidence of Notarial Peace Contracts in Late Medieval Florence.” *Speculum* 88 (2013): 427–56.
- Kaeuper, Richard W. *War, Justice, and Public Order: England and France in the Later Middle Ages*. Oxford: Clarendon Press, 1988.
- Kaminsky, Howard. “The Noble Feud in the Later Middle Ages.” *Past & Present* 177 (2002): 55–83.
- Klapisch-Zuber, Christiane. “The ‘Mattinata’ in Medieval Italy.” In *Women, Family, and Ritual in Renaissance Italy*, translated by Lydia Cochrane, 261–82. Chicago: University of Chicago Press, 1985.
- Kohler, Josef. *Das Strafrecht der italienischen Statuten vom 12.–16. Jahrhundert*. Mannheim: J. Beusheimer, 1895.
- Kuehn, Thomas. “Contracting Marriage in Renaissance Florence.” In *To Have and to Hold: Marrying and Its Documentation in Western Christendom, 400–1600*, edited by Philip Lyndon Reynolds and John Witte, 390–420. Cambridge: Cambridge University Press, 2007.
- . *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy*. Chicago: University of Chicago Press, 1991.
- Kumhera, Glenn. *The Benefits of Peace: Private Peacemaking in Late Medieval Italy*. Leiden: Brill, 2017.

- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Le Goff, Jacques, and Jean-Claude Schmitt, eds. *Le Charivari: actes de la table ronde organisée à Paris, (25–27 avril 1977) par l'Ecole des hautes études en sciences sociales et le Centre national de la recherche scientifique*. Paris; New York: L'Ecole; Mouton, 1981.
- Maire Vigueur, Jean-Claude. *Cavaliers et citoyens. Guerre, conflits et société dans l'Italie communale, XIIe–XIIIe siècles*. Paris: Ecole des hautes études en sciences sociales, 2003.
- . “Progetti di trasformazione della società nei regimi di Popolo.” In *La ricerca del benessere individuale e sociale: ingredienti materiali e immateriali (città italiane, XII–XV secolo): 22o Convegno internazionale di studi, Pistoia, 15–18 maggio 2009*, edited by Centro italiano di studi di storia e d'arte (Pistoia, Italy), 281–316. Rome: Viella, 2011.
- Martines, Lauro, ed. *Violence and Civil Disorder in Italian Cities, 1200–1500*. Berkeley: University of California Press, 1972.
- Martone, Luciano. *Arbiter-arbitrator: forme di giustizia privata nell'età del diritto comune*. Naples: Jovene, 1984.
- Maugain, Gabriel. *Mœurs italiennes de la renaissance. La vengeance*. Paris: Les Belles lettres, 1935.
- Mazzoni Toselli, Ottavio. *Racconti storici estratti dall'archivio criminale di Bologna ad illustrazione della storia patria*. 3 vols. Bologna: A. Chierici, 1868.
- McGee, Timothy J. *The Ceremonial Musicians of Late Medieval Florence*. Bloomington: Indiana University Press, 2009.
- Muir, Edward. *Mad Blood Stirring: Vendetta and Factions in Friuli During the Renaissance*. Baltimore: Johns Hopkins University Press, 1993.
- . *Ritual in Early Modern Europe*. 2nd ed. New York: Cambridge University Press, 2005.
- Netterstrøm, Jeppe Büchert. “The Study of Feud in Medieval and Early Modern History.” In *Feud in Medieval and Early Modern Europe*, edited by Jeppe Büchert Netterstrøm and Bjørn Poulsen, 9–67. Aarhus: Aarhus University Press, 2007.
- Niccolai, Franco. *I consorzi nobiliari ed il comune nell'alta e media Italia*. Bologna: N. Zanichelli, 1940.
- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Rev. ed. Cambridge: Cambridge University Press, 2013.
- North, Douglass C., John Joseph Wallis, Steven Benjamin Webb, and Barry R. Weingast, eds. *In the Shadow of Violence: Politics, Economics, and the Problem of Development*. Cambridge: Cambridge University Press, 2013.
- Padoa Schioppa, Antonio. “Delitto e pace privata nel pensiero dei legisti bolognesi. Brevi note.” *Studia Gratiana* 20 (1976): 269–87.
- Palmer, James A. “Piety and Social Distinction in Late Medieval Roman Peacemaking.” *Speculum* 89 (2014): 974–1004.
- Perrot, Ernest. *Les cas royaux: origine et développement de la théorie aux 13e et 14e siècles*. Paris: Arthur Rousseau, 1910.

- Pertile, Antonio. *Storia del diritto italiano, dalla caduta dell'Impero romano alla codificazione*. 2nd ed. Vol. 5, *Storia del diritto penale*. Turin: Unione tipografico-editrice, 1892.
- Pinker, Steven. *The Better Angels of Our Nature: Why Violence Has Declined*. New York: Viking, 2011.
- Poloni, Alma. "Disciplinare la società. Un esperimento di potere nei maggiori Comuni di Popolo tra Due e Trecento." *Scienza e politica* 37 (2007): 33–62.
- Reuter, Timothy. "Peace-Breaking, Feud, Rebellion, Resistance: Violence and Peace in the Politics of the Salian Era." In *Medieval Politics and Modern Mentalities*, edited by Janet L. Nelson, 355–87. Cambridge: Cambridge University Press, 2006.
- Rizzi, Alessandra. *Ludus/ludere: giocare in Italia alla fine del Medio Evo*. Treviso; Rome: Fondazione Benetton; Viella, 1995.
- Roberts, Gregory. "Vendetta, Violence, and Police Power in Thirteenth-Century Bologna." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 3–26. Lanham, MD: Lexington Books, 2018.
- Rosenwein, Barbara H., ed. *Anger's Past: The Social Uses of an Emotion in the Middle Ages*. Ithaca, N.Y: Cornell University Press, 1998.
- Rubinstein, Nicolai. *Studies in Italian History in the Middle Ages and the Renaissance*. Edited by Giovanni Ciappelli. Vol. 2, *Politics, Diplomacy and the Constitution in Florence and Italy*. Rome: Edizioni di storia e letteratura, 2004.
- Salvemini, Gaetano. *Magnati e popolani in Firenze dal 1280 al 1295*. Florence: Carnesecchi, 1899.
- Schlichte, Klaus. *In the Shadow of Violence: The Politics of Armed Groups*. Frankfurt; New York: Campus Verlag, 2009.
- Schnapper, Bernard. "Testes inhabiles. Les témoins reprochables dans l'ancien droit pénal." *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du droit / The Legal History Review* 33 (1965): 575–616.
- Sensi, Mario. "Per una inchiesta sulle 'paci private' alla fine del Medio Evo." In *Santuari, pellegrini, eremiti nell'Italia centrale*, 3:1455–92. Spoleto: Fondazione centro italiano di studi sull'alto Medioevo, 2003.
- Settia, Aldo A. *Comuni in guerra. Armi ed eserciti nell'Italia delle città*. Bologna: CLUEB, 1993.
- Shaw, Christine. "Honour, Faction and Private Wars." In *Barons and Castellans: The Military Nobility of Renaissance Italy*, 67–99. Leiden: Brill, 2015.
- Skoda, Hannah. *Medieval Violence: Physical Brutality in Northern France, 1270–1330*. New York: Oxford University Press, 2013.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- . "Hatred as a Social Institution in Late-Medieval Society." *Speculum* 76 (2001): 90–126.
- . "Violence and Predation in Late Medieval Mediterranean Europe." *Comparative Studies in Society and History* 54 (2012): 1–28.
- Throop, Susanna A., and Paul R. Hyams, eds. *Vengeance in the Middle Ages: Emotion, Religion and Feud*. Burlington, VT: Ashgate, 2010.

- Toulet, Michel. "L'incrimination de port d'armes au bas moyen-âge." *Mémoires de la société pour l'histoire du droit et des institutions des anciens pays bourguignons, comtois, et romands* 45 (1988): 435–48.
- Vallerani, Massimo. *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- . "Pace e processo nel sistema giudiziario del comune di Perugia." *Quaderni storici* 101 (1999): 315–54.
- . *Il sistema giudiziario del comune di Perugia: conflitti, reati e processi nella seconda metà del XIII secolo*. Perugia: Deputazione di storia patria per l'Umbria, 1991.
- Vicinelli, Augusto. "La famiglia dei Conti di Bologna." *Atti e Memorie della Deputazione di Storia Patria per le Province di Romagna*, 4a, 15 (1925): 181–207.
- Wickham, Chris. *Courts and Conflict in Twelfth-Century Tuscany*. Oxford: Oxford University Press, 2003.
- Wray, Shona Kelly. "Instruments of Concord: Making Peace and Settling Disputes Through a Notary in the City and Contado of Late Medieval Bologna." *Journal of Social History* 42 (2009): 733–60.
- Youngs, Deborah, and Simon Harris. "Demonizing the Night in Medieval Europe: A Temporal Monstrosity?" In *The Monstrous Middle Ages*, edited by Bettina Bildhauer and Robert Mills, 134–54. Toronto: University of Toronto Press, 2003.
- Zorzi, Andrea. "Battagliole e giochi d'azzardo a Firenze nel tardo Medioevo: due pratiche social tra disciplinamento e repressione." In *Gioco e giustizia nell'Italia di comune*, edited by Gherardo Ortalli, 71–108. Rome: Viella, 1993.
- . "Conflits et pratiques infrajudiciaires dans les formations politiques italiennes du XIIIe au XVe siècle." In *L'infrajudiciaire du Moyen Age à l'époque contemporaine. Actes du colloque de Dijon, 5–6 octobre 1995*, edited by Benoît Garnot and Rosine Fry, 19–36. Dijon: Editions Universitaires de Dijon, 1996.
- , ed. *Conflitti, paci e vendette nell'Italia comunale*. Florence: Firenze University Press, 2009.
- . "Consigliare alla vendetta, consigliare alla giustizia. Pratiche e culture politiche nell'Italia comunale." *Archivio storico italiano* 170 (2012): 263–84.
- . "La cultura della vendetta nel conflitto politico in età comunale." In *Le memorie e la storia: In onore di Arnold Esch*, edited by Roberto delle Donne and Andrea Zorzi, 135–70. Florence: Firenze University Press, 2002.
- . "'Fracta est civitas magna in tres partes.' Conflitto e costituzione nell'Italia comunale." *Scienza & Politica. Per una storia delle dottrine* 39 (2008): 61–87.
- . "'Ius erat in armis.' Faide e conflitti tra pratiche sociali e pratiche di governo." In *Origini dello stato: processi di formazione statale in Italia fra medioevo ed età moderna*, edited by Giorgio Chittolini, Anthony Molho, and Pierangelo Schiera, 609–29. Bologna: Il Mulino, 1994.
- . "Justice." In *The Italian Renaissance State*, edited by Andrea Gamberini and Isabella Lazzarini, 490–514. Cambridge: Cambridge University Press, 2012.
- . "Legitimation and Legal Sanction of Vendetta in Italian Cities from the Twelfth to the Fourteenth Centuries." In *The Culture of Violence in Renaissance Italy: Proceedings of the International Conference (Georgetown University at Villa Le Balze, 3–4 May, 2010)*, edited by Samuel K. Cohn, Jr. and Fabrizio Ricciardelli, 27–54. Florence: Le Lettere, 2012.

- . “Pace e conflitti nelle città comunali italiane.” In *Idees de pau a l’edat mitjana: reunió científica. XIII Curs d’Estiu Comtat d’Urgell celebrat a Balaguer els dies 2, 3 i 4 de juliol de 2008*, edited by Flocel Sabaté and Maite Pedrol. Lleida: Pagès, 2010.
- . *La trasformazione di un quadro politico*. Florence: Firenze University Press, 2008.

Chapter 6: The Social Impact of Third-Party Policing

In October 1286, the *familia* found a knife on a table under the portico of Giovanni Mezzovillani's house in Strada Maggiore. The record does not indicate why, but they charged a certain Giovanni di magister Alberto, perhaps because he was standing nearest. In his defense, this Giovanni argued that the weapon was in fact a tailor's knife and belonged to Giovanni Lambertini da Stifonte, who had placed it there upon returning from outside the city. Two witnesses, who claimed to have been traveling with Giovanni da Stifonte, confirmed the defendant's story. According to one of them, a notary named Mattiolo di Pietro, the other Giovanni had placed the knife on the table upon returning to the city so that he would not run afoul of the *familia*. However, three days later—and with no indication as to why—the judge launched an inquisition against a tailor named Guido, who lived and perhaps worked in the house Giovanni Mezzovillani, alleging that he had coached the witnesses of the defendant Giovanni to testify falsely and “free him from the statutory penalty” for the knife.¹ The inquest did not suggest Guido's motive, but it is possible that this tailor's knife actually belonged to him, and he was loath to lose it to the commune. Whatever the case, the judge opened the inquest with a noncontroversial question, asking Guido if the *familia* had found a knife on his table on the day in question. Guido prevaricated, however, responding that he was not aware of any knife at the time he was standing there. The judge, apparently annoyed, abandoned further questioning and ordered Guido to produce a written list of all his apprentices and everyone who worked in his shop, “so that he might know whose knife it is and so that the podestà and commune might have their honor concerning the said knife.”² He also had Guido jailed until he could produce a guarantor. A few days later, Guido submitted the names of four legal minors, none more than 14 years old, as his apprentices. The first one to testify claimed that the knife belonged to a certain (and unnamed) “rustic” from Stifonte. However, the next apprentice, Cescolo, said he did not know whom the knife belonged to, and that his master Guido had instructed him on the way to court to tell the judge that it belonged to a “rustic” from Stifonte. The notary made special note of the fact that Cescolo—at considerable risk to his future livelihood, one imagines—gave this testimony with Guido present in court, “before his face.”³

The trial record abruptly ends there. If the marginal note is correct, the court ultimately acquitted Guido (on what grounds is anybody's guess), but no verdict is given for the original defendant, Giovanni. Regardless of the outcome, the case provides a colorful glimpse of how the commune's police power changed—and failed to change—life in a medieval city. The *familia*'s patrols gave teeth to laws that would otherwise have been toothless, such that city residents could not even leave a knife on a table in public view without risking criminal charges. Because of this, individuals feared arrest by the *familia* and changed their behavior to avoid it, as Giovanni da Stifonte allegedly did when he

¹ ASB, Corone 1, 1286II, 38v–40r: “Ad ipsum liberandum a pena statutorum pro uno cutello invento ipsi Johanni per familiam domini potestatis.” The *familia*'s *relatio* does not survive.

² ASB, Corone 1, 1286II, 40r. “Ad hoc ut scire possit cuius sit ipse cutellus et potestas et comune habeant honorem suum de dicto cutello.”

³ ASB, Corone 1, 1286II, 40r: “Et hoc dixit presente dicto magistro et coram eius facie, quod ei dixerat quod deberet dicere quod erat cuiusdam rustici de Stifonti.”

deposited his knife upon reentering the city from abroad. By routinely forcing citizens to defend themselves in court, policing also promoted legal literacy. Giovanni's *intentio* above showed sophistication in arguing that the knife was not an illegal kind and belonged to another man, two points that would have beaten the *familia*'s allegation, if proven. Yet, however much police power changed "the rules of the game," it remained a game of cat and mouse between the *familia* and citizens. The podestà's capacity to coerce did not deter citizens from lying, cheating, and doing whatever they could to avoid legal penalties. In the case above, one is struck both by the judge's determination to uncover the truth behind an abandoned knife and the apparent lengths people would go to beat even a minor charge.

This chapter explores how the growth of third-party policing impacted the norms that governed communal society. It starts first with the formal rules enshrined in written law. In the language of contract law, the *familia*'s patrols effectively made certain statutory offenses mandatory rules. For example, the statutory ban on knives was not to be invoked only when citizens disagreed about the legality of someone carrying a weapon; it was a binding rule that the commune would enforce at all times.⁴ New laws were proclaimed and enforced almost immediately through policing, making communal society more of a rules-based order. Furthermore, the growing primacy of rational-legal authority forced town residents to reckon carefully with written law and judicial procedure. It rewarded individuals for legal savvy (or for hiring a savvy lawyer) and even fostered a culture of legalism, in which the letter of the law could favor defendants as much as their accusers. In this respect, the growth of police was both a product and driver of the broader cultural shift from custom to written law in medieval Europe, as discussed in Chapter 3. The chapter then discusses the impact of this new legalism on informal norms and the behavior of local residents. Witness testimony leaves little doubt that the *familia*'s regular patrols affected the behavioral calculus of locals. The credible threat of arrest and punishment made residents "fear" the *familia* and think twice about whether certain behaviors, like carrying a knife, were worth risking.

This did not necessarily mean that police patrols effectively prevented violence, however, or that third-party policing fundamentally changed the logic of the social order. Indeed, the *familia*'s policing struggled to live up to the intent of the commune's legislators in at least three ways. First, whatever success the *familia* had in disciplining particular feuds (see Chapter 5), it did little to transform the entrenched culture of violent self-help. Armed conflict remained normal in the medieval communes, both on an individual and factional scale, and the podestà's *familia* did not enjoy a place of trust as the guarantor of public safety, despite its third-party status. Experience gave locals ample reason to be wary of armed groups in the city streets, and they mistrusted the *familia* accordingly. Second, locals tended to view the podestà's *familiari* with hostility, if not outright enmity. In principle, the *familia* was supposed to provide the law courts with an impersonal source of accusations, untainted by personal hatreds. In practice, however, locals did not take kindly to being denounced to the podestà by anyone, and viewed the *berrovarii* more as personal enemies than respected public officials. The *berrovarii* did little to help themselves in this regard since, as Chapter 2 showed, they routinely pushed the boundaries of their legal authority and earned the animosity of locals in the process. Finally, the podestà's

⁴ On the concept of default versus mandatory rules, see Ayres and Gertner, "Filling Gaps in Incomplete Contracts"; Mnookin and Kornhauser, "Bargaining in the Shadow of the Law."

familiaries—despite their ostensibly impartial role—were susceptible to corruption. This reflected not so much the subversion of a well-established rational-legal order as the persistence of a traditional culture of patronage and personal favors. Nonetheless, corruption did little to help the legitimacy of foreign officials who were paid solely to uphold the commune’s laws on an impartial basis.

Given these shortcomings, one may well ask why citizen-legislators continued to employ foreign police forces to enforce their laws aggressively. Here, it is important to remember the evidence of the previous chapters. Despite their shortcomings, the *familia* was reasonably effective at prosecuting violators of certain statutes. They enforced the law more impersonally than city residents ever could have and enhanced the government’s ability to deal with threats (both internal and external) to the social order. At the same time, the governing elite increasingly managed to shield themselves from the hegemonic justice system they created. This chapter concludes with a discussion of legal privileges in Bologna, which proliferated during the late thirteenth and early fourteenth century as the popular coalition that had expanded political access mere decades earlier became more exclusive and oligarchical. Political elites increasingly exempted themselves from prosecution for certain offenses, to include arrest and denunciation by patrolling *familiaries*. In doing so, lawmakers transformed an institution that originally involved some degree of self-repression into a tool for repressing “others,” mainly non-elites and political opponents. At the same time, it is noteworthy that elites did this by passing more legislation. Even when written laws served to enshrine elite privileges and close political access, they contributed to the growing ascendancy of rational-legal authority. In the end, the chief legacy of the communes’ experiment with more impersonal law enforcement was to normalize government coercion, even as those governments served the interests of an increasingly narrow elite.

Mandatory Rules

The sum effect of the *familia*’s patrol activity was to make communal statutes more constraining. In the language of contract law, the effect was to make them mandatory rules. In traditional societies, the criminal law generally functions as a system of default rules. Public courts do not prosecute crimes unless members of the community report them, and community members tend to report crimes only when their relationship with the alleged perpetrator has broken down and they are unable to make peace outside of court. In such a system, it is often up to the community (or officials elected from the community) to apprehend criminals. Magistrates have relatively little stake in apprehending the offender and holding him or her to account. By contrast, under the communes’ police regime, the government worked proactively to enforce its laws, making the statutes more like a contract concluded (if frequently amended) among elite citizens.

The thoroughness with which heralds proclaimed new laws suggests that the commune’s lawmakers intended their legislation to have an immediate, binding effect. For example, in August 1293 Bologna enshrined the customary regulations concerning armed travel into written law.⁵ The heralds first announced the ordinance on 18 August, but so important were these rules to the life of the commune that the heralds blazoned them 15

⁵ *Statuti 1288*, 1:568–69.

more times over the following weeks, with the last proclamation coming on 22 September.⁶ According to the 1288 statutes, the heralds had to blazon such proclamations from 204 different locations in the city—in effect, within earshot of every domicile—so that every city resident would know what rules they were to follow.⁷

The *familia* also enforced new legislation as soon as it was proclaimed. A prime example of this comes from 1290, when Bologna issued a ban on knives with points. The law was far-reaching to the point of absurdity, as it essentially called for every knife in the commune to have its tip blunted. Nevertheless, the heralds proclaimed the ban on 4 July, and the first denunciation by the *familia* came about six weeks later.⁸ On 19 August, a *berrovarius* denounced the gardener Danisio di Omobono for carrying a small, pointed knife. Danisio confessed this was true, but argued in his defense that the “little knife” (*cultelinus*) found on him was a bread knife that he used to cut grass as well as bread. It was therefore neither suspicious nor malicious. Furthermore, Danisio claimed he had been out of town since mid-June—before the podestà entered office—and thus did not know of any proclamation made against bread knives. After three witnesses corroborated his defense, the judge acquitted Danisio on the strength of his defense and “since the knife was not fraudulent.”⁹ Three similar cases followed that semester. On 28 October, a *berrovarius* denounced a tailor named Ugolino for carrying “a bread knife with a point.” Although Ugolino and his defense witnesses argued that the knife had a broken point and was not malicious, the judge convicted Ugolino and fined him 10 lire.¹⁰ Just one day after Ugolino’s arrest, on 29 October, another *berrovarius* charged a carpenter named Massinerio with carrying “a bread knife with a point” through the Campo del Mercato. Massinerio argued in his defense that he was carrying the knife for use in his trade, as was customary for carpenters, but the judge convicted him all the same.¹¹ Lastly, on 5 December a *berrovarius* discovered Bonaparte di Giannino carrying a *cultellus de ferire* with a “somewhat” (*aliquantulum*) broken point. Bonaparte and his defense witnesses claimed that he had been taking the knife to a craftsman to have the point remade, since he was a member of the Society of the Cross—a popular militia 2,000-strong that was then preparing for a campaign in Imola—and needed to have the point remade so that he could “better go in the service of the commune.”¹² The judge acquitted Bonaparte.

Given the practical difficulties of enforcing a ban on pointed knives, one might assume this law was not really meant to be enforced. Yet the cases above clearly belie this assumption. Lawmakers’ repeated issuance of the ban on pointed knives—perhaps after high-profile knife attacks—also attests their seriousness of purpose. Indeed, this particular ban seems to have passed into and out of effect in Bologna. Lawmakers had first issued the

⁶ ASB, Sindacato 10, 1293II (50 fols.), 20r–20v.

⁷ *Statuti 1288*, 1:47, 84–90. For a map of these locations see Bocchi, ed., *Bologna*, 2:91. These locations numbered 32 in 1250, 45 in 1252, 60 in 1259, and 87 in 1267; *Statuti 1245*, 3:81–89.

⁸ ASB, Sindacato 7, 1290II (38 fols.), 4v.

⁹ ASB, Corone 3, 1290II (110 fols.), 20r: “Absolutus quia cutelus non erat fraudulosus et fecit de predictis defensionem.”

¹⁰ ASB, Corone 3, 1290II (110 fols.), 57r–58v: “Unum cutellum de pane cum punta.”

¹¹ ASB, Corone 3, 1290II (110 fols.), 53v–55r.

¹² ASB, Corone 3, 1290II (110 fols.), 79r–82r: “Ipse Bonapartas est de societate duorum milium et ideo fieri volebat facere dictam pontam ad hoc ut poset servicio comunis melius ire.” On the Society of the Cross, see Carniello, “The Rise of an Administrative Elite,” 328–29; Pini, “Manovre di regime”; Paolini, “Le origini della Societas Crucis.”

ban in 1286 before reissuing it in July 1290 in the example above.¹³ The ban resurfaced again in 1316, when the heralds issued a proclamation against pointed, sharp, or malicious knives separately from their usual reminders not to bear arms contrary to the statutes.¹⁴ By 1324 the ban included more precise guidelines: any knife or little knife (*cultilinus*) that was pointed, sharp, or malicious and of a length greater than one span of the knight's or discovering officer's hand—to include both the blade and handle—was forbidden, with the penalty at the podestà's discretion.¹⁵ Evidently, lawmakers were serious about prohibiting the use of pointed knives, even including eating utensils. Together, this legislation and the cases cited above offer a startling example of how thoroughly the commune's elites tried to regulate city life through third-party policing.

Such impersonal rule enforcement imposed real costs on elites and non-elites alike, albeit to different degrees. The drastic income inequalities of thirteenth-century Italy meant that legal penalties could impose serious financial burdens on non-elites.¹⁶ As noted in Chapter 1, fines for curfew, arms-bearing, and gambling offenses were relatively high in Bologna and Siena. Consider that, in a 1291 case, a servant in an elite Bolognese household told the court that he received a yearly salary of 10 lire.¹⁷ This servant would have to give up a year's wages if he were convicted of carrying a knife in Bologna, or two and a half years' wages if he were caught gambling. Or consider that some knives sold for as little as 2 soldi at auction. The cost of the penalty for carrying such a knife was 100 times the value of the object itself. The disparity was even greater in Siena, where carrying weapons incurred a 25-lire fine. The fines for these offenses could well have been lower, as shown by the example of Orvieto, where the fine was merely 1 lira. The fines for violations of building code, trade regulations, public sanitation, and so forth were likewise modest in Bologna. Evidently, Bologna's and Siena's lawmakers intended the penalties for arms-bearing to serve as deterrents.

It will not be surprising, then, that many defendants had trouble giving surety or paying their penalties. From Bologna there survives an unusually detailed list of prisoners for the two-month period from 22 July to 25 September 1310. The list names 70 individuals incarcerated during this time and gives the crime(s) for 47 of them. In these two months, some 19 individuals were imprisoned on arms-bearing and/or gambling charges, which is to say 27 percent of the total number of inmates or 40 percent of those for whom the charge is listed.¹⁸ Of these 19, seven were charged with illicit arms-bearing, eight with gambling, and four with multiples charges that included arms-bearing and/or gambling. Five of the seven charged with arms-bearing were released within these two months once they had given surety, been acquitted, or declared mentally unfit, but only one of the eight gamblers is noted to have been released. Evidently, a 25-lire fine constituted a financial hardship for many. From Perugia, a list of 37 individuals incarcerated by the capitano in 1295 includes six charged with arms-bearing and one with failing to pay surety for an

¹³ ASB, Inquisitiones 7, reg. 4, 6v.

¹⁴ ASB, Corone 22, 1316I (50 fols.), 1v–2r.

¹⁵ ASB, Corone 29, 1324I, 105r.

¹⁶ The *estimo* of 1296–1297 suggests that about 4 percent of Bolognese citizens—more than a third of them members of the bankers' guild—possessed more than 53 percent of the total wealth; see Giansante, "Bankers, Financial Institutions, and Politics," 192.

¹⁷ The household was Testa Rodaldi's; ASB, Corone 3, 1291II (56 fols.), 6r–v.

¹⁸ ASB, Corone 18, 1310II (96 fols.), 75r–82v.

arms-bearing suspect.¹⁹ Debt seems to have been the most common grounds for incarceration by a wide margin, but illicit arms-bearing and gambling appear consistently in prison records.²⁰ Notably, no one seems to have been incarcerated for violating curfew.

Anecdotal evidence illustrates perhaps more vividly the financial burden imposed by policing. In Siena, a woman named Guiduccia appears to have spent months in jail in 1305 after she was discovered in a tavern and fined 10 lire. She managed to pay half the fine but was only released when the Nine accepted her claim of poverty—with the stipulation that she still had to pay the remaining 5 lire.²¹ In Perugia, the capitano sentenced one city resident to a fine of 10 lire and 10 soldi for carrying a sword on 31 October 1294; he was released only on Christmas Day, nearly two months later.²² In August 1290, a resident of Bologna from the village of Castenaso spent at least two months in jail after he was sentenced to a 10-lire fine for illicit arms-bearing.²³ Jailtime carried an additional financial burden because inmates had to pay their own expenses to the prison guards.²⁴ For example, in an April 1294 curfew case, the defendant, who had been jailed earlier that day on a separate charge, claimed his release had been delayed because he had no means to pay the jailer. Only after two friends loaned him 6.5 soldi was he able to secure his release, by which time it was nearly nightfall.²⁵ Thus, by making the communes' laws more constraining, third-party policing also enhanced the government's ability to collect the statutory penalties owed for "bad" behavior.

Legal Literacy

As third-party policing increasingly bound citizens to written law, it also made them more dependent on and conversant in the communes' notarial and juridical cultures. Earlier chapters showed how the technology of documentation served as a powerful tool for the *familia* in coercing criminal suspects and securing convictions. The arms permit system also forced residents to rely on official documents issued by public notaries to exercise a customary right. At the same time, defendants learned to use the primacy of written proof in the law courts to their own advantage. For example, in a 1256 case, two convicted gamblers apparently struggled to convince the podestà to accept their plea of insolvency in the face of a hefty 50-lire fine. One of the defendants, Mercadante, therefore had his procurator, the notary Martino Buttrigari, seek a legal *consilium* from a jurist (*doctor legum*) and the notary Ramberto Piatesi. Their *consilium* argued that, since Mercadante had proven his poverty and had no goods whence he could pay the 50-lire fine, it was consistent with statute for him to be flogged through the city instead of being fined. The podestà and his judge accepted this counsel and had Mercadante flogged accordingly.²⁶

¹⁹ ASP, Capitano 19, reg. 4, 44v.

²⁰ Geltner, *The Medieval Prison*, 50–51.

²¹ ASS, Malefizi 11, 26r.

²² ASP, Capitano 19, reg. 4, 18v.

²³ ASB, Accusationes 9a, reg. 11, 85r. Unusually, the defendant, Giacomo Roffredi, was convicted through private accusation in the court *ad malleficia nova*, which handled crimes in the *contado* and was presided over by a Bolognese judge even though it fell under the podestà's jurisdiction. The exact date of his sentence is not given, but the record references the past month of August, suggesting it was sometime in September. He was not released until 17 November. On the *malleficia nova* court, see Blanshei, *Politics and Justice*, 512–13.

²⁴ Geltner, *The Medieval Prison*, 38–39.

²⁵ ASB, Corone 6, 1294I (118 fols.), 62r; 1294I (84 fols.), 39v–40v.

²⁶ ASB, Accusationes 2, reg. 8, 25v–26r.

Similarly, in April 1293, after the *familia* found gamblers in a certain tavern, the tavern's owner faced possible charges for hosting illegal gaming. The tavern owner was able to exonerate himself when he produced a legal document (*instrumentum*) showing he had leased the property to someone else.²⁷

In some cases, defendants would even appeal to the notaries themselves instead of the documents they produced. If a defendant had lost his arms permit, for example, he might call on the issuing official(s) to vouch for him, as happened with a certain Guidotto in 1295. Rather than produce his license, Guidotto argued in an *intentio* that he had given surety for such a license under the present podestà. The notary Marco Pasetti had acted as his guarantor; the commune's *approbator*, Domenico di Ugolino, had approved his surety; and the notary Guglielmuccio Marchi had issued him the *boletta*. One of the podestà's notaries must have made a record of this surety, Guidotto contended. Sure enough, the notary Marco and *approbator* Domenico testified on Guidotto's behalf along with a third witness, and the court acquitted him.²⁸ Thus, third-party policing obliged people to adopt the culture of bureaucracy and written records that in many ways defined the thirteenth-century communes. Of course, people "consumed" the services of notaries and lawyers for a host of other reasons.²⁹ But the growth of policing was enabled by the broad cultural shift "from memory to written record" that had begun in the eleventh century.

Because police patrols made certain statutes an inescapable reality in everyday life, they also encouraged residents to know those statutes well—especially their exceptions and loopholes. Indeed, some defendants explicitly appealed to statutes in their legal defenses. For example, in 1291 the *familia* reportedly found Francesco Torelli after curfew without a light "on the doorstep of his house with the door open."³⁰ In his defense, he contended that the curfew law did not prescribe a punishment for someone found standing in front of his open door with a light, "as is well known through the words of the statute and the text of his discovery."³¹ In March 1294, Nicola of Cerro Maggiore cited one statute and two sacred ordinances to argue that it was legal for him to wear armor as he was leaving an inn in Bologna to return home.³² Most revealing, perhaps, is the testimony in the 1294 case of Duzolo Preti, discovered under his portico with a knife at his side, standing by his horse and still wearing spurs. In his defense, Duzolo argued that he had just come from out of town and set his cap down inside, and that, according to statute, it was licit to bear arms when returning from outside the city while wearing a cap. One of his witnesses confirmed this by claiming he had seen and read the statute, and seen those words to be contained therein.³³ Indeed, citizens were probably more intimately familiar with their statutes than their foreign magistrates, who had to learn them every time they took office in a new commune.

²⁷ ASB, Corone 5, 1293I (66 fols.), 24v–25r.

²⁸ ASB, Corone 7, 1295I (135 fols.), 35rv–38r. For a similar case, see ASB, Corone 13, 1302II (102 fols.), 10v–12r.

²⁹ Smail, *The Consumption of Justice*.

³⁰ ASB, Corone 3, 1291II (56 fols.), 24v: "Aput hostium domus sue cum hostio aperta."

³¹ ASB, Corone 3, 1291II (37 fols.), 3v: "Ut patet per verba statuti et scriptura inventionis ipsius."

³² ASB, Corone 6, 1294I (84 fols.), 73r, 74v. For a case where a barber argued for a narrow interpretation of the curfew law, see ASB, Corone 6, 1294I (84 fols.), 76r; 1294I (118 fols.), 37r.

³³ ASB, Corone 6, 1294I (84 fols.), 18r–v: "Respondit quia vidit et legit statutum in quo sic vidit contineri predicta." For the *relatio*, see 1294I (118 fols.), 29r.

Besides appealing to statute, defendants showed their legal literacy by appealing to due process. For example, in a 1294 curfew case, Albertuccio Maranesi argued not only that he was privileged, but that the judge could not proceed against him by inquisition since the statutes did not list curfew among the crimes that were subject to inquisitorial procedure.³⁴ In a case from December 1317, the defendant appealed to a law that required *ministrales* or other “good men” to be present at any inquisition taking place in their neighborhood, lest witnesses dupe foreign judges by claiming to be someone else. The defendant was Triago Toschi, jailer of the Malpaga prison, who faced charges that he ran an illicit gaming operation inside the prison. The podestà’s knight and notary held the investigation inside the prison itself, as they would at the site of any reputed gambling house (see Chapter 4). They questioned five witnesses, at least three of whom were inmates, and claimed to have done so in the presence of three “good men of the city.” For his part, Triago denied the charges in court, and after a new podestà took office in January 1318, he had a procurator submit a petition on his behalf. The petition argued that the trial could not proceed first of all because Triago (or Triaghino) was privileged, and also because no *ministrales* or neighbors were present at the inquest, rendering it “useless and lacking in force and effect.” The next day Triago submitted a defense along the same lines: the three “good men” who had witnessed the inquest at the prison, though they came from the same quarter of the city, all lived in different parishes more than a third of a mile (*miliare*) from the prison.³⁵ Although the record does not indicate if this defense carried the day, it was remarkably sophisticated in the way it highlighted procedural defects to circumvent the question of guilt or innocence. This sophistication should perhaps not be surprising, given that the Toschi family to which Triago belonged was among the most eminent in the city and had played a leading role in the popular revolt of 1228.³⁶ Nonetheless, it vividly illustrates the resourcefulness of citizens in their attempts to beat charges from their foreign magistrates.

In the same vein, some defendants claimed they had been deprived of due process if a ranking official (one of the podestà’s knights, judges, or notaries) was not present for the arrest, as statute required (see Chapter 1). In August 1310, for instance, the *familia* reportedly found Pacino Paci carrying a knife at his side while playing a dice game with three other men. Pacino happened to be from a prominent family of judges and also a magnate, as he confessed at his arraignment. He went on to submit a defense worthy of his family’s profession. To wit, he claimed that no ranking official had been present at his arrest, from the moment the *berrovarii* found him at vespers through the time they arrived at the palace. As witnesses, Pacino called on his kinsman Giovanni Paci and two members of the equally prominent Preti family. Francesco Preti, himself a judge, testified that he had witnessed some *berrovarii*—who were apparently out of uniform (*absque pannis*)—arrest Pacino that evening. He asked them then, “Where is the lord knight or judge?” “He will be coming,” the *berrovarii* replied. But Francesco stood there for a long time and no judge or knight came. Apparently incensed at this breach of due process, Francesco testified that he went to the palace later that evening after dinner in order to admonish the *familia* for its professional malfeasance—that is, for patrolling without a judge or knight and in disguise

³⁴ ASB, Corone 6, 1294II (28 fols.), loose slip 7r.

³⁵ ASB, Corone 24, 1317II (80 fols.), 77r–80r: “Reditur inquisitio inutilis et aperte carere viribus et effectu, salvis et cetera.”

³⁶ Blanshei, *Politics and Justice*, 289–90.

(*incogniti*).³⁷ Similarly, in 1320 an arms-bearing suspect argued before a judge that he “neither ought to nor could” proceed against him on the basis of the *berrovarii*’s report since they had not been accompanied by a knight or notary.³⁸

Yet other defendants seized on the legal standard that at least two *familiares* had to have witnessed the *inventio* for the *relatio* to carry weight in court. For example, in March 1318, two *berrovarii* reported finding Gerardo di Giacomo with a sword and a knife, but they disagreed as to how. According to Cherichino of Brescia, they found Gerardo in a public street under the portico of a certain house, but according to Barberio of Parma, they saw him in the house and called him outside, and only then did they find his weapons. Gerardo took full advantage of this discrepancy. Rather than submit an *intentio*, he had the notary Signorello Signorelli reproduce the statute concerning arms-bearing and write up an *exceptio* arguing that, according to the statute, Gerardo could only be tried if at least two *berrovarii* reported the same discovery. Since the reporting officers did not agree in their stories, the charge “was not proven as the statutes require.” The judge evidently agreed, since he explicitly released Gerardo on account of his defense.³⁹ According to a witness in an August 1313 case, the defendant, a certain Braccino, had refused to hand over his knife to a *berrovarius* until the podestà’s knight arrived, saying “I do not wish to give it to you, but I will give it to the knight.” When the knight arrived soon after, Braccino complied with his orders.⁴⁰ If true, the suspect was in effect demanding due process in the street, before he ever appeared before a judge. As a practical matter, Braccino might have been better off allowing the *berrovarii* (or lone *berrovarius*) to confiscate his weapon without the knight present, since then he could have the charge thrown out in court. But Braccino may also have been signaling his low regard for the hired soldiers who patrolled the city, which we will see more evidence of below.

Thus, as third-party policing forced more citizens to answer to criminal charges in court, it also gave them an incentive to learn the ins and outs of their statutes and procedural rights. To be clear, defendants also appealed to custom, social identity, and a host of extrastatutory factors that they considered legally relevant. There is no space to discuss their litigating strategies in detail here, but it is important to note that appeal to written law did not supplant appeals to custom. Nevertheless, the trial records show remarkable legal literacy and savvy on the part of ordinary citizens, and the growth of police power played an important role in fostering this culture of legalism.

³⁷ ASB, Corone 18, 1310II (96 fols.), 35r–v, 37r–v: “Dixit quod ipse testis prout supradixit dicto tempore et hora vidit quosdam berroarios domini potestatis absque pannis capere predictum Paxinum et alios in dicta inquisitione contentos, et quod ipse testis petiit ab eis ubi est dominus milix vel dominus iudex et ipsi dixerunt veniet.” No verdict is given, but Villanino Preti and Giovanni Paci gave much the same story. Pace Paci was one of Bologna’s most famous judges and politicians in the latter decades of the thirteenth century, and Pacino’s father Belvillano Paci was also a judge; see Blanshei, *Politics and Justice*, 177.

³⁸ ASB, Corone 28, 1320II (100 fols.), 15r: “Dicit [...] non debere nec posse procedi contra eum.” For another example, see ASB, Corone 3, 1291II (56 fols.), 16v, 21r.

³⁹ ASB, Corone 25, 1318I (64 fols.), 9v–10r: “Dicit etiam probatum non esse ut requireret forma dicti statuti.” For a similar example, see ASB, Corone 4, 1292I (46 fols.), 21v.

⁴⁰ ASB, Corone 20, 1313II (46 fols.), 15r: “Et dictus Braccinus recusavit dare dictum cultellum familie dicendo, ‘Nolo dare vobis, sed dabo militi.’” For the *relatio*, see 1313II (33 fols.), 17r.

Fear of the *Familia*

To what extent did the *familia*'s patrols deter local residents from engaging in illegal behavior? This is a difficult question to answer for the obvious reason that individuals who were deterred from carrying a knife or breaking curfew have generally left no trace in the archives. Furthermore, it is virtually impossible to isolate police patrols as the determining factor in the behavioral calculus of individuals, especially at a remove of some seven centuries. Nonetheless, the trial records leave important clues about the psychological effects the *familia*'s virtual omnipresence had on city residents.

Defendants commonly cited their "fear of the *familia*" (*timor familie*) as the reason why they fled or otherwise attempted to evade the podestà's men.⁴¹ In most such cases, the defendants apparently were not so "afraid" of the *familia* as to be deterred from breaking the law; rather, they feared getting caught and did what they could to avoid it. Thus, in 1294 one particularly honest curfew breaker told the court that he had fled from the *familia* simply because "he did not want to fall under the penalty of the commune of Bologna."⁴² Yet other defendants implied their "fear" in describing how they had attempted to abide by the statutes. In a 1294 curfew case (also mentioned in Chapter 5), witnesses said the defendant had ordered lights to be set up on the wall of his house in case the *familia* came by as they watched a Carnival dance at a neighbor's house.⁴³ In a 1292 arms-bearing case, the defendant argued that, on his way back from a vineyard outside of town—and well before the *familia* arrested him for carrying only a sheath—he had handed his knife off to one of his travel companions since that individual was wearing a cap and "it was thus licit for him to carry [the knife]."⁴⁴ Even more revealing is a case from 1305, where one defendant claimed he had been so "overcome by his fear" of the *familia* that he tossed his knife under a table when he saw them, even though he was carrying it tied shut while on his way out of town to pick grapes.⁴⁵ In other words, he did not trust that the *familia* would recognize his status as a traveler. Such testimony was obviously self-serving, but it is at least plausible that these individuals had taken steps to avoid running afoul of the *familia*. At a minimum, it attests the place occupied by the *familia* in the public imagination.

Defense witnesses also attested their "fear of the *familia*" in incidental testimony, suggesting this phrase was not simply a euphemism for fear of getting caught. In a 1294 curfew case, the law students Francesco of Messina and Santorio of Puglia argued in their defense that, just before the *familia* discovered them, they had sent their servant into a nearby house to relight their candelabra, which a strong wind had blown out. When the *familia* arrived shortly thereafter, their servant "did not dare exit the house then with the

⁴¹ For typical examples, see ASB, Corone 1, 1287I (34 fols.), 21r, 24v; Corone 4, 1292I (46 fols.), 5r.

⁴² ASB, Corone 6, 1294I (40 fols.), 7v: "Qui confessus fuit quod affu[g]it coram dicte familie quia nolebat cadere in penam comunis Bononie." For a similar example, see ASB, Corone 8, 1296I (80 fols.), 9v.

⁴³ ASB, Corone 6, 1294I (84 fols.), 12r–13r.

⁴⁴ ASB, Corone 4, 1292II (54 fols.), 41r: "Item quod ipse Martinus, dum esset extra ciriclam Burgi Sancti Martini, dedit quendam cultellum dicto Phylippo eo quod dictus Phylippus habebat cappellum ita licitum erat sibi deferre." For another armed traveler who described his law-abiding intent, see Corone 8, 1296I (80 fols.), 58r.

⁴⁵ ASB, Corone 14, 1305–1306, 3v: "Qui timore preteritus cum vidit familiam proiecit ipsum [cultellum] ita ligatum subtus uno banco in capella sancti Juliani."

candelabra.”⁴⁶ The servant himself, Stefano of Rome, affirmed this in his testimony: “I did not dare exit the said house with the said candelabra fearing lest the *familia* might arrest me and lead me to prison.” When the judge pressed him as to why he would not exit the house with the candelabra lit—which was no violation of statute at all—he simply repeated that he did not dare exit, and added that the women in the house would not allow him to.⁴⁷ Two of those women confirmed that they would not let Stefano out of the house to help his masters. As one Cristina put it, the *familia* came “making such a noise with their weapons that we feared lest they were something else.”⁴⁸ A 1293 curfew case also featured two defense witnesses who claimed they were too afraid of the *familia* to exit their homes and give surety for their neighbor.⁴⁹ Granted, pleading fear of the *familia* was a litigating tactic, but it is also entirely plausible that some residents would not risk giving surety for their neighbors for fear of being arrested themselves. Indeed, as Chapter 2 showed, such incidents were hardly unheard of in the commune. If the *familia* deterred licit behaviors in this fashion, it stands to reason they also deterred would-be lawbreakers.

Other cases describe friends and neighbors advising or helping each other to follow the statutes, suggesting that the *familia*’s presence made citizens mindful of the law. Witnesses in curfew cases reported discussing when it was time go inside or light a lamp, and a similar rule consciousness is evident in arms-bearing and gambling cases.⁵⁰ For example, in 1290, the notary Guido Canisi relayed how he had counseled the defendant, a certain Franco, to carry his knife openly in his hands and tie it to its sheath with cords before they entered the city gate. Guido also advised Franco to light some candles before they parted ways.⁵¹ In December 1299, the court investigated Bartolomeo of Lucca after the *familia* found gambling paraphernalia in a raid on his home, which he rented from Pietro Savioli. Testifying as a witness, Pietro told the court that, two months earlier, he had gone to Bartolomeo and told him not to host gamblers in his house because he was afraid of the podestà and of losing the property under a *bannum*. He threatened to denounce Bartolomeo to the podestà himself if he did not stop hosting gamblers there. In a separate gambling inquest one month earlier (November 1299), three witnesses reported gossip in the neighborhood that the taverner in question would be “ruined” (*destructus*) one day because he hosted illicit gaming.⁵² Indeed, the court went on to sentence him to a 100-lire fine, a sum that may well have been ruinous. Whatever the veracity of these particular testimonies, they evidence a community where rules and rule enforcers were never far from the minds of residents.

⁴⁶ ASB, Corone 6, 1294I (84 fols.), 31v: “Et famullus predictus non fuit ausus tunc ipsam domum exire cum doplerio.”

⁴⁷ ASB, Corone 6, 1294I (84 fols.), 33r–v: “Ego non fui aussus exire dictam domum cum dicto doplerio timens ne ipsa famillia me caperent et me ducerent in carzeris.”

⁴⁸ ASB, Corone 6, 1294I (84 fols.), 32r–v: “Ipsa famillia faciente rumore cum armis ita quod timuimus ne fuisset aliud.”

⁴⁹ ASB, Corone 5, 1293II (53 fols.), 19v–20r.

⁵⁰ ASB, Corone 4, 1292II (50 fols.), 41v; Corone 6, 1294I (84 fols.), 29v–30r, 49v; Corone 10, 1299 (10 fols.), 3r.

⁵¹ ASB, Corone 3, 1290II (110 fols.), 39r–v. “Et cum fuerunt ibi sero facto erat dicendo idem testis tunc dicto Franchio, ‘Caveas qualiter vadas pro cutello. Acipias cutellum in manu ligando ipsum cum corigiis guayne.’ Et tunc idem Franchus ita fecit.”

⁵² ASB, Corone 10, 1299–1300 (41 fols.), 8v–10r, 18v, 21r.

A group of sumptuary violations from 1286 also provides a window into the psychological effects of policing on city residents. Here, the podestà's notary denounced three women—the sisters Andrucchia Beccadelli and Bellina Tencarari and their sister-in-law Bartolomea—for wearing golden tiaras near the basilica of San Francesco on the Feast of the Epiphany (6 January). The witness testimony suggests that the defendants were well aware of the laws and even expected the notary's patrol. For example, Pietro dalle Tavole testified he had heard the ban against tiaras blazoned by the heralds. Indeed, records confirm the heralds proclaimed that ban on 5 January 1286, exactly one day before the feast day when these women were discovered.⁵³ Additionally, Pietro claimed to have been present when Salvuccio Beccadelli, "on the Sunday when there were supposed to be searches for women wearing tiaras," sent word to his wife Andrucchia not to wear a tiara in violation of statute.⁵⁴ Two other witnesses, including the servant who had delivered the message, confirmed this story in their own testimony. Separately, a witness reported hearing Giacomo Tencarari say he was grieved (*dolebat*) that his wife Bellina had been wearing a tiara, presumably because he was aware of the ban. Another witness testified similarly about Bartolomea's husband.⁵⁵ Interestingly, multiple witnesses also claimed they had seen women wearing tiaras for years and never heard of anyone being convicted for it.⁵⁶ This testimony and the apparent lack of a verdict in all three cases may indicate that the podestà was generally not expected to enforce these sumptuary laws, as Carol Lansing has suggested.⁵⁷ However, in January 1286 the sumptuary laws were still quite new.⁵⁸ The witnesses' complaint that no one had ever been penalized for wearing tiaras could be read as a complaint about the laws themselves and how they infringed on custom, rather than their enforcement. After all, at least some of the witnesses knew that Bologna's statutes prohibited women from wearing tiaras and that the podestà's notary would be looking for violations of that ban on Epiphany. Given the predictable nature of the crown's notary's inspections of major churches (see Chapter 1), Bologna's elites likely expected their wives to be fined if they were foolhardy enough to wear their finery to Mass. The advance warning of one husband and aggrieved state of two others certainly seem to suggest this.

Importantly, however, residents' fear of the *familia* did not mean they had internalized the rules the *familia* enforced or believed those rules were legitimate, even if they or their peers had legislated them. Rule consciousness, in other words, could easily translate into consciousness of how to circumvent the rules. Gamblers especially employed a range of tactics to avoid getting caught. They might use lookouts to some effect, as in a 1287 case where a *berrovarius* approached a tavern and heard a small boy on the doorstep

⁵³ ASB, Inquisitiones 7, reg. 3, 5r.

⁵⁴ ASB, Inquisitiones 7, reg. 11, 4r: "Dicit quod die dominica qua debuit fieri cerca pro mulieribus portantibus coronas dictus Salvuccius, se teste presente et audiente, mandavit Francische famule sue quod iret ad dominam Andreuzam et prohiberet ei quod non portaret sertum contra formam constitutionum Bononie."

⁵⁵ ASB, Inquisitiones 7, reg. 11, 5r.

⁵⁶ ASB, Inquisitiones 7, reg. 11, 5r–6r.

⁵⁷ Lansing, *Passion and Order*, 45–46.

⁵⁸ With two exceptions—a 1233 law ordering women to veil themselves and a 1250 ordinance governing prostitutes' dress—Bologna's sumptuary laws first emerged in the 1280s. Muzzarelli, ed., *La legislazione suntuaria*, 8; Stuard, *Gilding the Market*, 65; Thompson, *Revival Preachers*, 187. In July 1284, one of the podestà's notaries ordered Bologna's *ministrales* to designate two good men over the age of 40 in each neighborhood to read out the law concerning mourning (*quod tractat de omnibus non flentibus*) every month, suggesting that law (and related legislation) was new. See ASB, Inquisitiones 1, reg. 16, 1r.

call inside, “Stop playing! The podestà’s *familia* is here!” The *familia* was unable to find any dice or money, and the court ultimately acquitted all eight suspects, including two Zovenzoni and a Pepoli.⁵⁹ Other gamblers chose to play near waterways so they could quickly dispose of the evidence. Thus, in a 1290 case, two alleged gamblers on a bridge over the Aposa threw their dice into the water as soon as they saw the *familia*. They later denied gambling or even having dice in court.⁶⁰ Yet other gamblers sought safety in numbers and sudden movements. In a 1286 case, for instance, three *berrovarii* came upon what they believed to be two dice games near the basilica of San Francesco. The seven suspects stood up so quickly when the *familia* came that the officers could not say who was at which game and who was playing or merely spectating. The judge went on to acquit them, despite the discovery of money and dice at the scene, “since it was not fully evident that they were playing.”⁶¹ For their part, armed men sometimes tried hastily to pass their weapons to legal minors or women in order to avoid prosecution. For example, in 1313 Jacopo Borghesani confessed that he had fled from the *familia* and handed off his knife to a boy (*puer*) so that he would not be caught with it.⁶² Similarly, in 1326 the *familia* alleged that a certain Bertolino had handed off the knife he was carrying to his neighbor, a widow named Dolce, as soon as he saw them.⁶³

Lastly, suspects sometimes lied about their identities when confronted with a charge. Chapter 4 featured cases where outlaws gave false names to avoid corporal punishments, but the Crowns and Arms registers show residents attempting similar ploys to escape far lesser penalties. For example, in August 1299 the *familia* reportedly found Tingo (or Dingo) Dati, a university student from the diocese of Florence, wearing a gorget in the city streets. Later in court, Tingo confessed he had told the podestà’s knight that his name was Giovanni di Ventura and produced an arms permit with Giovanni’s name on it. He claimed to have found the permit on the ground about two weeks earlier. Asked why he gave a false name, Tingo explained simply that he did not want to be convicted for wearing armor. How the *familia* saw through his deception is unclear, but the court convicted Tingo accordingly.⁶⁴ In a 1289 case, the *familia* reported that one Raynerio Pilizario—discovered out at night with a certain Giacomo Visconti of Modena—had told the podestà’s knight that he and Giacomo were both watchmen, even though Giacomo, a foreigner, was not. Again it is unclear how the *familia* discerned this, but Raynerio confessed before the judge Alberto Gandino that he had lied for Giacomo.⁶⁵ The presence of the *familia* and their proactive patrols clearly changed the behavioral calculus of citizens. But that only meant citizens had to learn new rules, not that they were deterred from breaking them.

⁵⁹ ASB, Corone 1, 1287I (34 fols.), 6v: “Cum fuit ad domum Caselle de Cerveleriis invenit super hostia dicte domus quemdam puerum parvum dicentem contra infrascriptos, ‘Nolite ludere quia ecce familia potestatis.’” For other examples, see Corone 2, 1287II, 6r; Corone 10, 1299–1300 (41 fols.), 6v.

⁶⁰ ASB, Corone 3, 1290II (110 fols.), 2r.

⁶¹ ASB, Corone 1, 1286II, 47v: “Absoluti et relaxati fuerunt omnes infrascripta quia non plene constabat ipsos ludere et cetera.”

⁶² ASB, Corone 20, 1313II (48 fols.), 8r. For other cases where suspects appear to have passed illegal weapons to minors, see ASB, Corone 3, 1291II (56 fols.), 50r; Corone 7, 1295II (10 fols.), 3r–v; Corone 9, 1298 (28 fols.), 2r–v.

⁶³ ASB, Corone 30, 1326II (88 fols.), 59r–v.

⁶⁴ ASB, Corone 10, 1299 (34 fols.), 26v–27r.

⁶⁵ ASB, Sindacato 6, 1289I (19 fols.), 18v.

Violent Self-Help

As the impartial guarantors of law and order, the podestà and his *familia* were supposed to provide for public safety, if not the individual safety of the commune's residents. Some of the corporal sentences presented in Chapter 4 expressed the podestà's responsibility to protect travelers, students, and others who "entrusted" themselves to the commune's jurisdiction from violent crime. This concern is even more explicit in a 1306 proclamation issued by Bernardino da Polenta, who came to Bologna to restore order in the wake of a political conspiracy. On 18 March, by Bernardino's decree, the heralds ordered merchants and tradesmen to continue going about their business, "since the lord podestà wishes all of them all to live and maintain their commerce and trades safely under his protection and that of the commune and people of Bologna."⁶⁶

However, the *familia*'s daily patrols did little to change the norms of violent self-help in communal society. The right to violence continued to be shared among a range of armed groups with varying degrees of political legitimacy, from popular militias at the more legitimate end of the spectrum to the *consorterie* of powerful families at the other. In this context, the potential for violent conflict among city residents remained high, and the *familia* was only one armed group among many. Despite the *familia*'s routine efforts to limit violence from local enmities and personal *guerre*, third-party policing did not effect a sea change in the social norms surrounding violence. As a case in point, three weeks after Bernardino issued the above decree, he had to order all shops and public offices closed until the *popolo* could take vengeance against the magnate(s) who had assaulted or killed one of their members. And the following month (May 1306), he ordered all outlaws and rebels of the White party of Florence, Siena, Lucca, and Prato to leave the city within three days, after which any citizen would have the authority to accuse and arrest them.⁶⁷ Personal hatreds and factional conflicts continued to be the order of the day in communal politics, despite third-party efforts to limit their destabilizing effects.

It did not help that the podestà's *berrovarii* were not readily distinguishable from less legitimate armed groups, especially when residents encountered them at night or at a distance. As noted in Chapter 1, if the *berrovarii* wore uniforms, they were not distinct enough to make them easily identifiable, and claims of mistaken identity are common in the trial records.⁶⁸ For example, incidental testimony in a 1294 curfew case suggests that the defense witness did not recognize the *familia* even as they were escorting several curfew breakers back to the palace. After passing this party in the street, the witness asked some nearby women: "What commotion is this? What people are those? And where are they going to?" The women replied, "Those guys are from the podestà's *macinata*. They arrested the men whom they are leading away since they were out at night."⁶⁹ In 1295, an alleged curfew breaker told the court that he had been "found by some armed men whom he did

⁶⁶ ASB, Corone 15, 1306 (40 fols.), 4r: "Quoniam dominus potestas ipsos omnes et eorum mercationes et artes vult vivere et manere securos sub protectione sua et comunis et populi Bononie."

⁶⁷ ASB, Corone 15, 1306 (40 fols.), 10r-v, 15r.

⁶⁸ ASB, Corone 2, 1289II (74 fols.), 27r-v; Corone 19, 1313I (67 fols.), 14v-15v.

⁶⁹ ASB, Corone 6, 1294II (28 fols.), 27r: "Et dixi illis feminabus, 'Quis rumor est iste? Et que gens est illa? Et quo vadit inde viam?' Et ille femine dixerunt, 'Sunt de macinata domini potestatis, qui ceperunt homines quos ducunt viam pro eo quod ibant de nocte.'"

not know,” as if to question the legitimacy of his arrest.⁷⁰ Even the podestà’s *familiares* were not always certain whom to count among their own. For example, in the 1286 gambling raid described in the Introduction, the *familia* arrested a mercenary named Biancardo. According to Biancardo’s testimony, the *berrovarius* who had arrested him asked in the middle of the chaos, “Are you one of ours?” “I am,” Biancardo replied, likely as a ploy to avoid arrest. In court, however, Biancardo claimed that, when he said this, he thought a conflict had broken out between citizens and the podestà’s *familia*, and he wanted to align himself with the correct side.⁷¹

Quite reasonably for a city where armed conflict was common, residents tended to fear the worst when they heard the sound of armed men in the streets. The ruckus could signal a factional clash breaking out, a mob descending on the object of its rage, or personal enemies coming to exact vengeance in the night. The 1318 curfew defense of Michele Baldi is telling in this respect. Michele argued that, when he was caught, he had stepped out onto his doorstep because he heard “the sound of weapons” (*sonitum armorum*) and, not realizing it was the *familia*, wanted to know who was going by.⁷² Even more illustrative is the case of Bolognino (or Bolognetto) di Gandolfino, charged with fleeing the *familia* one night in March 1294. Bolognino pleaded at his arraignment that he had fled because he feared the *berrovarii*—two of whom were carrying spears and the third a mace—were his enemies.⁷³ In his *intentio*, Bolognino turned his confession into a hypothetical: “If he made any motion which made it seem like he tried to flee [...] he made it fearing lest the said *familia* were his enemies, and when he heard that it was the podestà’s *familia*, he stood firm without trying to flee or fleeing.” His defense also claimed that Bolognino and his neighbors had mortal enemies from whom they guarded themselves, and that he had just exited the house of his neighbor Compagno to investigate the *rumor* the *familia* was making in their alleyway. Another neighbor named Zenta, testifying as a witness, described his own uncertainty at hearing the *rumor* of men in their alley that night. He too feared they were Bolognino’s enemies until the *familia* identified themselves and told him to go inside and shut his door.⁷⁴ Whatever the truth of this particular story, the principle undergirding it is unassailable: the appearance of armed men in an alleyway at night likely signaled grave personal danger, not the arrival of help from public officials. In this social context, the approach of the *familia* did little to inspire confidence or a sense of security in city residents. Indeed, Bolognino was hardly the only defendant to claim he had mistaken the *familia* for his personal enemies.⁷⁵

⁷⁰ ASB, Corone 7, 1295II (32 fols.), 10r: “Predictus Tomasinus interrogatus si fuit inventus per dictas superguardias [...] respondit quod fuit inventus per quosdam armatos quos non cognovit in dicta platea since lumine.” For a similar example, see ASB, Corone 1, 1264, 4v.

⁷¹ ASB, Corone 1, 1286II, 13v: “Interrogatus quare fugiebat, respondit quia non fugiebat, imo fuit captus a quodam baroario qui dixit, ‘Es tu de nostris?’ Et ipse dixit ‘Sum.’ Et credebat quod aliqua discordia esset inter cives et dictam familiam, et ideo dixit, ‘Ego sum de vestris.’”

⁷² ASB, Corone 25, 1318I (48 fols.), 7r.

⁷³ ASB, Corone 6, 1294I (118 fols.), 44r, 45r.

⁷⁴ ASB, Corone 6, 1294I (84 fols.), 29v–30r: “Item quod si quem motum fecit per quem videretur velle fugere dicta nocte cum esset inventus per familiam domini potestatis, fecit timens ne dicta familia esset de ymimis suis. Et cum audivit quod erat familia potestatis, incontinenti stetit firmus absque eo quod vellet fugere vel fugeret.”

⁷⁵ ASB, Corone 1, 1287I (34 fols.), 17r, 31v; ASP, Capitano 5b, reg. 8, 11r.

The same conundrum presented itself in the *contado*, where armed men on horseback were at least as likely to prey on locals as to protect them on behalf of the commune. In a 1297 case, two men caught by the *familia* in someone else's vineyard said they had fled because they did not realize it was the *familia* who was pursuing them. One of the defendants, a certain Schiatta, claimed he had fled because he thought the *familia* were certain cavalymen (*stipendiarii*) who had come to do them harm.⁷⁶ The other defendant, a cobbler named Franceschino, explained further that he had mistaken the armed men for certain *stipendiarii* with whom he had "had words" one day, implying that he and Schiatta were in a relationship of enmity with some of the commune's constabulary force.⁷⁷ Even if this particular story was a fabrication, it shows again the rationality of flight from the *familia*. In the countryside of medieval Italy, the approach of rapid hoofbeats was often a signal to run. Their story also hints at the sometimes poor relations between local residents and the foreign mercenaries hired by their government, discussed further below.

Rather than flee, some locals chose to resist the *familia* as they would any armed foe. Certain cases of violent resistance against the *familia* may indicate little more than the desperation of known outlaws trying to avoid arrest at all costs. This was likely the case in the 1296 incident where two men assault a *berrovarius* attempting to bring one of them into custody, mentioned in Chapter 3. A few cases may even hint at open warfare between powerful nobles and the commune's forces. For example, the chronicler Matteo Griffoni tells how in May 1306 Count Doffo da Panico and the archpriest of San Lorenzo in Collina attacked the podestà's knight as he was returning from an assault on the da Panico's forces near Casalecchio di Reno, freeing three captives from the knight's custody.⁷⁸ However, there are cases where the defendant appears to have done nothing worse than violate the arms-bearing laws, yet chose to resist arrest. Simo da Bondanello, for instance, confessed in January 1296 to drawing his sword on the *familia*, knowing full well who they were, after they found him with a sword and knife and no helmet on the road to San Giorgio. Simo explained to the judge that he did this "in the spirit of trying to defend [myself] and flee lest [I] be captured by them."⁷⁹ His statement shows little esteem for the *familia* as a legal entity and suggests an underlying belief that it was perfectly rational to resist arrest, even for minor infractions. Indeed, Guido Ruggiero has found that patrol officers were frequent victims of assaults (some of them deadly) in fourteenth-century Venice. It would hardly beggar the imagination if this were the norm across the cities of communal Italy.⁸⁰

Urban elites continued to live by the norms of violent self-help, as a case from 1303 colorfully illustrates. In January of that year, Bologna's podestà opened an inquest against Opizzo Foscherari, whose family belonged to Bologna's merchant-banking elite, for

⁷⁶ ASB, Vigne 1, 1297, 10r.

⁷⁷ ASB, Vigne 1, 1297, 10v: "Credebat quod essent aliqui ex stipendariis comunis Bononie cum quibus una die habuit verba."

⁷⁸ Griffoni, *Memoriale*, 30. In another episode in 1302, a certain Guglielmo attacked the podestà's knight and police with a polearm (*roncone*) while they were on patrol in Varignana. Guglielmo was attempting to free a captive but was struck down by a member of the cavalcade; see ASB, Corone 13, 1302II (152 fols.), 72r.

⁷⁹ ASB, Corone 8, 1296I (80 fols.), 22r: "Interrogatus si ipse traxit dictam spatam de fodro contra dictos beroerios dicti domini potestatis et si tunc cognovit eos, respondit sic bene animo volendi se defendere et fugere ne caperetur ab eis." The court fined Simo 50 lire, 10 more than double the fine for his two weapons.

⁸⁰ Ruggiero, *Violence*, 140–43. For examples from Florence, see Jansen, *Peace and Penance*, 106–07, 114–15. For convictions of assault against *familiaries* of the podestà or capitano in other communes, see ASP, Capitano 2, reg. 1, 20v; ASS, Malefizi 11, 67v, 258r.

throwing “a large and terrible stone” at the *familia* from his window, nearly striking them as they stood below his house one night.⁸¹ Questioned in court, Opizzo freely admitted that he threw the stone “in order to induce fear in the armed men whom he saw there.” Opizzo claimed he did not know who the armed men were “but believed them to be certain enemies of his or thieves who wanted to break into and pillage his house.”⁸² Opizzo’s witnesses, including two members of the elite Pascipoveri family, recounted how a young neighbor had alerted him to the presence of armed men “of bad condition” below his house that night after dinner. Opizzo called down to the men to identify themselves, and when they did not, Opizzo threw the stone into the street, not with the intention of harming anyone, but rather to strike fear into the men so that they would depart.⁸³ The record never indicates why the *familia* was at Opizzo’s house that night—with two of the podestà’s knights present, no less—but the judge acquitted him in the end. Elites like Opizzo were used to defending their homes—or more precisely, their towers and family compounds—in civil wars, coups, and riots. The presence of a police force in the city did not change their calculus when armed men appeared on their doorsteps at night.

The commune’s elites may well have viewed the podestà’s *familia*, despite their ostensible impartiality, as a rival household or armed group opposed to their interests. This mentality comes through in the testimony surrounding one of the *familia*’s interventions at the da Panico-Romanzi house, discussed in the previous chapter. In February 1299, the *familia* denounced three of Count Ugolino’s retainers for carrying illegal weapons under the portico of his house. They were apparently well-armed: each had a sword and armor, and two of them had knives as well. A procurator submitted an *intentio* on the defendants’ behalf, arguing that the portico in question was a “private place” (*locus privatus*) that belonged to the Count and the Romanzi. The defense argued further that the defendants were standing guard for the Count when the *familia* came under the portico. They did not know who the *berrovarii* were or what their purpose was, so they descended the stairs to intercept them.⁸⁴ As a defense witness, Scannabecco Romanzi testified that he, too, thought the *berrovarii* might have been enemies of the Count when he first saw them, but he recognized them just in time to intervene and prevent the situation from escalating. As he told the court: “I believe that if I had not gone toward them, something might have been said to them that they would not have liked, since the *familiares* of the Count did not recognize the *familia* of the podestà.” The podestà’s knight arrived on the scene shortly thereafter, and the defendants stood down and obeyed his orders.⁸⁵ The testimony of another witness, Tarlatto di Novello, clarified what Scannabecco meant by his statement. As evidence of the portico’s private status, Tarlatto explained that he had never seen

⁸¹ ASB, Inquisitiones 58, reg. 4, 1r: “Magnus et horribilis lapis.” For the Foscherari, see Blanshei, *Politics and Justice*, 123.

⁸² ASB, Inquisitiones 58, reg. 4, 1v–2r: “Interrogatus qua de causa proiecit dictum lapidem, respondit causa inferendi timorem quibusdam armatis quos ibi videbat. Interrogatus qui erant illi armati, respondit quod nesciebat sed credebat eos esse quosdam inimicos suos vel latrones qui vellent frangere vel depredare domum suam.”

⁸³ ASB, Inquisitiones 58, reg. 4, 3r–v. For the Pascipoveri, see Gozzadini, *Delle torri gentilizie*, 400–02.

⁸⁴ ASB, Corone 9, 1298–1299 (48 fols.), 38v. For the *relatio*, see 11v.

⁸⁵ ASB, Corone 9, 1298–1299 (48 fols.), 39r: “Et credo quod nisi ivissem versus eos, quod forte dictum esset eis de eo quod non placuisset sibi, quia ipsi familiares domini comitis non cognoscebant familiam domini potestatis.”

anyone besides friends of the Count and the Romanzi cross it, “except once I saw two men go there at a time when Rolandino Romanzi was in a feud, and I saw then that Rolandino did dishonor to those men, saying to them, ‘Why are you going through this portico? What business do you have here?’”⁸⁶ The Count’s retainers, in other words, were there to defend the Count from his enemies and might have insulted the *berrovarii* as presumed enemies if Scannabecco had not intervened. In the end, the judge acquitted the Count’s retainers “since they were not found blameworthy,” suggesting he accepted the argument that the portico was private.⁸⁷ Despite the sophistication of the legal defense, the episode at the heart of the case boils down to a tense encounter between two armed groups: the *familiars* of the Count of Panico and the *familiars* of Bologna’s podestà. One household had the backing of public law, the other of private patronage. Yet at a basic level, they were more alike than different, serving as the “muscle” for powerful men with competing interests. For families like the da Panico, third-party policing was merely another one of the commune’s infringements on their customary way of life, to be resisted accordingly.

Police-Community Relations

Besides limiting the violence of the culture of hatred, the *familia* was supposed to diminish the role of personal relationships of amity and enmity in the administration of justice. In theory, their denunciations were more trustworthy because they came from a neutral third-party, and the statutes lent them greater credence accordingly. However, the commune’s employment of impersonal law enforcers did not change the fundamental fact that, in communal society, a legal accusation was often grounds for mortal enmity. Insofar as the podestà’s *familiars* acted as captors, accusers, and hostile witnesses toward locals, they adopted roles typically played by personal enemies. It should be no surprise, then, that locals seem to have regarded the *familia* more as enemies than executors of justice.

To some extent, this adversarial relationship was a product of the inherently antagonistic nature of the *familia*’s interactions with locals. As one taverner put it in his legal defense in January 1299, residents were loath to be “bothered, troubled, and condemned” by the *familia*’s denunciations and testimony.⁸⁸ Arrests were publicly humiliating for the detainee and especially for elite citizens. This is explicit in an appeal (*protestacio*) submitted to the capitano del popolo by Giacomo di Ugolino Paci in October 1320. Giacomo alleged that one of the podestà’s judges had ordered him to be detained by the *berrovarii* and criers until he drew up a bill of sale for a house that was the subject of a legal dispute. He estimated the damages he suffered at 100 lire, since, among other harms, he was arrested and led to the palace “as if a thief or criminal [...] publicly, with everyone seeing.”⁸⁹

⁸⁶ ASB, Corone 9, 1298–1299 (48 fols.), 41v–42r: “Non video aliquem ire per dictam porticum nisi fuerit et sit amicus dicti domini comitis et illorum de Romanciis, excepto quod semel vidi duos homines ire per dictam porticum tempore quo dominus Rolandinus de Romanciis habebat guerram. Et tunc vidi quod ipse dominus Rolandinus fecit dedecus ipsis hominibus dicendo eis, ‘Quare vaditis per istam porticum? Quid habetis vos facere hic?’”

⁸⁷ ASB, Corone 9, 1298–1299 (48 fols.), 11v: “Quoniam non sunt reperti inculpi.”

⁸⁸ ASB, Corone 9, 1298–1299 (48 fols.), 35r: “Hanc defensionem facit Bertholomeus Zilioli capelle sancti Jacobi de Carbonensibus ad hoc ne molestetur et inquietetur nec condepnetur occaxione quod.”

⁸⁹ ASB, Giudici 682, 18r: “Et quod ipse intercetera extimabat iniuriam sibi factam eo quia detenptus in palatio et ductus tamquam latro vel malefactor captus et detentus publice, gentibus et hominibus videntibus, c. libris Bononie.” See also Blanshei, *Politics and Justice*, 621.

A 1318 gambling case illustrates even more colorfully how encounters between the *familia* and locals could resemble confrontations between enemies. The formulaic *relatio* and *intentio* offer few details: the *familia* reported arresting Pietro Clerico and Lippo di Zaccaria Buvali for gambling, and the duo argued simply that they were playing *tabule* and not any dice game.⁹⁰ Their witnesses, however, told a more interesting story. According to Pietro Cazia, the two defendants had been “trying” to play a dice game (*ludus alearum*)—apparently of a legal sort—under the portico of Pietro Clerico’s house when two *berrovarii* approached and accused them of playing the game *azardum*. The defendants explained that they were playing a game of *alee*, not *azardum*, and so the *berrovarii*, apparently taking them at their word, began to depart. But then Pietro Clerico said to one of the *berrovarii*, “You’re a boor, saying that we are playing the game of *azardum* when we are playing the game of *tabule*.” (The text does not name the games consistently.) This evidently did not please the *berrovarius*, who promised in turn to accuse them of playing *azardum* anyway, which he apparently did as soon as the podestà’s knight arrived on the scene.⁹¹ Three more witnesses corroborated this story, albeit with minor variations in the phrasing of the insult. Whatever actually transpired during this encounter, the story conveys a truth about the relationship between *familiares* and locals. For city residents, the salient feature of the *familia* was not their political neutrality so much as their power to place them in legal jeopardy. In practice there was little to stop a *berrovarius* from leveling bogus charges against locals—for example, when he felt his honor had been offended. This imbalance of power did little to endear them to the communities they policed.

Besides abusing their office in the street, the *familia* may have pressured defendants to confess their guilt once in custody. The 1313 case of Albizzo da Dugliolo, who came from a prominent family of merchants and bankers and was charged with carrying a knife in July of that year, offers a tantalizing glimpse of this. Albizzo’s *intentio* is not recorded, but he seems to have argued: first, that the *familia* had found the knife in a house, not in the public street; and second, that the podestà’s knight Bonaventura had told him he could not leave the palace under penalty of 100 lire until he confessed that the knife was discovered on him. Three witnesses upheld Albizzo’s contention that the *miles* had essentially tried to force a confession out of him. According to one of them, the knight ordered Albizzo not to leave the palace under penalty of 100 lire, and then later, around terce, said to him, “Do you wish to confess that the knife was found on you by the *familia*?” Albizzo replied, “If you want me to confess about every weapon, I’ll do it.”⁹² Indeed, Albizzo confessed to the crime at this arraignment, before submitting his *intentio* refuting it. Unfortunately for Albizzo, two witnesses contradicted his assertion that the *familia* had found the knife in a house.

⁹⁰ ASB, Corone 26, 1318II (48 fols.), 15r; 1318II (78 fols.), 37v.

⁹¹ ASB, Corone 26, 1318II (78 fols.), 37v–38r: “Et tunc dicta familia et beroarii qui preibant diserunt, ‘Vos luditis ad ludum azardi.’ Et ipsi responderunt, ‘Nos non ludimus ad ludum azardi, sed ludimus ad ludum alearum.’ Et tunc familia recedebat, et tunc ipse Petris Clericus dixit cuidam ex ipsis beroariis cuius nomen ignorat, ‘Tu es rusticus homo quando nos ludimus ad tabulas et tu dicis quod nos ludimus ad ludum azardi.’ Et tunc ipse respondit, ‘Ego dicam quod vos luditis ad ludum azardi.’ Et tunc pervenit dominus miles domini potestatis.”

⁹² ASB, Corone 20, 1313II (46 fols.), 9v: “Et post hec in hora tercie dixit dictus dominus Bonaventura dicto Albizzo, ‘Vis tu confiteri quod tibi inventus fuit cultellus per familiam?’ Et tunc dictus Alpizzus respondit et dixit, ‘Si vultis quod ego confitear de omnibus armis, faciam.’” For the *relatio*, see ASB, Corone 20, 1313II (33 fols.), 6v.

They each testified that the *familia* had seen Albizzo carrying the knife in the street and followed him into a house.⁹³ To the judge, this was the pivotal fact: Albizzo had been carrying the knife in a public street and was therefore convicted and fined 10 lire. Nonetheless, the knight's apparently successful effort to force Albizzo to confess his guilt in court may hint at a common pressure tactic otherwise concealed by the trial records. At a minimum, it epitomizes the fundamentally adversarial relationship between *familiares* and citizens.

Unsurprisingly, then, some defendants expressed indignation at what they perceived as deliberate wrongdoing by the *familia*. For example, in a May 1299 curfew trial, two members of the Piatesi family accused the *familia* of ignoring the fact that the curfew bell had sounded earlier than usual that evening—before nightfall while the city gates were still open—when they detained two *fumantes* from San Venanzio. Bittino Piatesi claimed not only that he had never heard the bell sound as early as it did that evening, but also that the podestà's knight, notary, and *berrovarii* knew it to be true.⁹⁴ In October 1313, three men rounded up in a tavern raid contended not only that they had not been gambling, but also that the *familia* had “arrested them since they arrested everyone they could find in that location”—i.e., with no apparent regard to who had been gambling.⁹⁵ More explicitly, in August 1293 the taverner Corradino Vittori protested that the podestà's notary had taken away his drinking vessels—allegedly of a nonstandard measure—“against God and justice and with malicious intent.”⁹⁶

In the same vein, defense witnesses sometimes claimed that the *familia*'s arrests had caused bewilderment or outrage in the community. For example, in March 1295 the *familia* charged a student, Bernard the Burgundian, with carrying a knife found on the ground near him. In his defense, Bernard argued that the *familia* had found him far from the knife in a piazza near the basilica of San Domenico. His witnesses confirmed this and reported public anger at his arrest. In the words of one, “many men” who were present asked why the *berrovarii* had arrested Bernard “since he was far away from where the knife was found,” and said “an injury had been done” to him.⁹⁷ Another witness said bystanders called the arrest “a great shame” (*magnum peccatum*), since the *familia* had not found Bernard actually carrying the knife.⁹⁸ Similarly, in a February 1292 case of alleged flight from the *familia*, the defendant argued, in part, that it was publicly said in his neighborhood that he had been charged “wrongfully and against the truth.”⁹⁹ To be sure, it generally behooved defendants

⁹³ ASB, Corone 20, 1313II (46 fols.), 9v–10r.

⁹⁴ ASB, Corone 10, 1299 (34 fols.), 8r–9v.

⁹⁵ ASB, Corone 20, 1313II (46 fols.), 27v: “Sed ipsos ceperunt quia ceperunt omnes quos potuerunt inventos in dicto loco.”

⁹⁶ ASB, Fango 5, 1293II (115 fols.), 71r: “Contra Deum et justitiam et malo animo accepit dictos vigeas dicto Coradino.”

⁹⁷ ASB, Corone 7, 1295I (135 fols.), 66r–v: “Et ego intellexi tunc a multis hominibus dicentes, ‘Quare capiunt isti beroarii istum Bernardum quia erat ita lonze ab illo ubi inventus fuit cultellus?’ scilicet bene per tre perticas et ultra. Et dicti homines dicebant inguria est facta isti Bernardo.” For the *relatio*, see ASB, Corone 7, 1295I (30 fols.), 20r–v.

⁹⁸ ASB, Corone 7, 1295I (135 fols.), 66v–67r. Nevertheless, the court convicted Bernard and consigned his knife for resale; see 1295I (30 fols.), 20v.

⁹⁹ ASB, Corone 4, 1292I (46 fols.), 16v: “Item quod publicum est et publice dicitur et vulgarizatur in contrata in qua moratur dictus Bencivenni quod ipse ad tortum et contra veritatem est culpatus de fuga quam dicitur eum fugisse.”

and their witnesses to portray the *familia*'s actions as illegitimate, but it is difficult to write off all such grievances as purely self-serving.

Even harder to disregard is incidental testimony that describes bystanders rebuking the *familia* for their perceived misconduct. A prime example comes from a set of curfew cases from January 1313, where the *familia* reported finding three men near the basilica of San Francesco before the morning bell had sounded. All three defendants countered, in varying ways, that it was clearly daytime even though the commune's bellringer had temporarily gone on strike because he had not been paid his salary.¹⁰⁰ In one case, a certain Figlietto testified that he had found the defendant Biagio already in custody near his house when he went outside that morning. Figlietto complained to the podestà's knight that it was daytime and the friars' bell had rung for prime. After confirming with Biagio that he had only just been arrested, Figlietto again reproached the knight for making a curfew arrest in daytime.¹⁰¹ A second witness named Bittinello said he was already on his way back from church when he saw Biagio in the hands of the *familia*. "Why are you leading this man away?" he said to them. "It's clear day. He can rightly go about without any impediment."¹⁰² Once again, the trial records convey a perception among certain residents that the *familia* had wronged their neighbors.¹⁰³

In sum, locals did not have to know *familiares* by name or have a personal history with them to perceive them as a hostile force of dubious legitimacy. At the level of the *berrovarii* and *milites*, the podestà's *familiares* seem to have been more interested in securing convictions, creating the perception that they were doing their jobs, than being true to the facts of the case. Because of this, the *familia*'s patrols could represent a public nuisance and legal hazard more than the impartial administration of justice by the commune. One may well wonder why self-governing citizens would continue to tolerate this sort of policing, or why aggressive *berrovarii* do not seem to have sullied the reputations of most podestà. Yet the persistence of the institution over decades suggests citizens calculated that police patrols, though a blunt instrument, were a necessary coercive tool to ensure the survival of their government.

Public Corruption

Besides aggressive tactics, public corruption likely undermined the legitimacy of *familiares* as well. As foreign officials, the podestà and his *familia* were supposed to be less susceptible to the personal influence of the residents they policed. Yet there is little reason to think that foreign officials were less susceptible to bribery, graft, political favors, and other forms of corruption than locals who held public offices. For one, corruption is endemic to limited access orders; it is highly unlikely that the Italian communes were

¹⁰⁰ The barber Federighino, who said he had been on his way to shave two clients, provided this detail about the bellringer's apparent strike. See ASB, Corone 19, 1313I (67 fols.), 4v.

¹⁰¹ ASB, Corone 19, 1313I (67 fols.), 3v.

¹⁰² ASB, Corone 19, 1313I (67 fols.), 4r: "Et tunc dixit familie, 'Cur ducitis istum? Est dies clara. Bene potest ire absque aliquo preiudicio.'"

¹⁰³ For an incident where a local confronted the *familia* for alleged misconduct during a gambling raid, see ASB, Corone 1, 1286II, 36r.

exceptional in this regard.¹⁰⁴ Furthermore, with respect to the communes' foreign officials in particular, the cases below hint at a culture where bribes and deal-cutting were a "normal" part of the administration of justice.

For instance, in May 1283 Perugia's capitano and podestà found Senso, nicknamed Fra Lasca, guilty of "many procurements, frauds, and deals" with the men of Perugia and the *familia* of the previous podestà, in particular his notary Leonardo. Through witness testimony and Senso's own confession, the court uncovered six different occasions where he had arranged for defendants to pay Leonardo to have them acquitted or their trials suspended. According to the sentence, Senso was guilty of "inducing and seducing with his fraudulent dealings" the men of Perugia to give many gold florins and other money to Leonardo "in corruption of the said household [of the podestà] and against their proper oath, profaning God, *ius*, and justice." The new podestà and capitano jointly sentenced him to pay four times the total of the bribes he had arranged, a ruinous sum of 128 gold florins and 16 lire.¹⁰⁵

In a case from July 1303, Bologna's podestà had a longtime crier of the commune named Alberto da Roffeno (mentioned in Chapter 5) decapitated as a thief, homicide, and "contaminator of the *familie* of the rulers of the commune and people of Bologna." His lengthy confession enumerated crimes dating back to at least 1287, including cattle theft, robbery, and multiple homicides. Most pertinent to this discussion, however, were the multiple counts of public corruption, which suggest the commune's "impersonal" law enforcers were quite susceptible to personal influence. Among these, Alberto described four specific instances under four different podestà where he had procured acquittals—or at least promised to procure an acquittal—for defendants facing charges from the *familia*. To take one example, in 1303 under Bernabò Confalonieri, Alberto arranged for a *berrovarius* to testify that a curfew breaker had been found with a light, for which Alberto and the *berrovarius* each made 15 soldi. Assuming the accused paid both sums, then the 30-soldi cost of securing his acquittal was some 70 soldi less than the statutory fine for breaking curfew. Alberto had also arranged for his own acquittal in 1287, under Gerardo da Giosano, after he was found carrying a knife. On that occasion he paid 30 soldi each to the podestà's knight and "the knight's prostitute"—presumably for sexual services for the knight—and received his "grace" (*gratia*) in return.¹⁰⁶ Here and elsewhere in Alberto's confession, the language suggests that the podestà's knights and notaries kept prostitutes as mistresses, which may have been a common, if unofficial, benefit of employment while serving abroad with podestà. Overall, Alberto's confession—which spanned more than 15 years and recounted other corrupt practices—suggests that official corruption was an engrained feature of the commune's justice system. Alberto had profited not from a few

¹⁰⁴ North, Wallis, and Weingast, *Violence and Social Orders*, 37, 73. See also Jordan, "Anti-Corruption Campaigns," and the essays in Kroeze, Vitória, and Geltner, eds., *Anticorruption in History*, especially Watts, "The Problem of the Personal."

¹⁰⁵ ASP, Capitano 7b, 4, 68v–69v: "Semssus cui dicitur Frater Lasca quia cunstat [...] dusisse et fecisse multas rufianas et fraudes et tratatus cum hominibus civitatis Perusii et familia dicti domini Johannis Arzonis, et masime cum Leonardo tunc notario dicti domini potestatis, inducendi et seducendo suis fraudolosis tratatibus homines civitatis Perusii dare quamplures florinos auros et aliam pecuniam dicto Leonardo in corrucione dicte familie et contra eorum proprium juramentum, profanando Deum, jus, et justitiam."

¹⁰⁶ ASB, Accusationes 25b, reg. 15, 15v–16r: "Predictus Albertus est homo male fame et infama latronis et furis publici et homicide et contaminatoris familliarum rectorum comunis et populli Bononie."

bad actors under a specific podestà or two, but from a political culture where legal favors could be purchased for a price.

As a crier and man of the court, Alberto may have used his close relationships with successive *famiglie* to avoid prosecution. Incidentally, he had been investigated in 1291 after a notary found him and two other criers gambling in the palace while they were supposed to be guarding a recently arrested gambling suspect. Testimony in that case reveals that Alberto was also a member of one of the popular militias, the Society of the Keys.¹⁰⁷ In the end, however, Alberto's downfall happened to be a police raid in the countryside, an expedition led by one of the podestà's knights to capture criminals in Bologna's *distretto*. According to Alberto's confession, the knight forbade everyone in the expedition from taking any plunder under pain of losing his foot. Nevertheless, when they were in Anzola at a house where the knight captured certain *malefactores*, Alberto bagged a candlestick, linens, and a robe for himself—"which things he said he took for his labor."¹⁰⁸ In other words, it was his understanding—and probably the customary one—that participants in official expeditions were entitled to unofficial compensation for their troubles. Indeed, Alberto confessed that he had done the same thing years ago under Corso Donati of Florence (in either 1283 or 1288). While riding with a Bolognese force some 400 strong, "taking certain vengeance" in the countryside on behalf of the commune, "he robbed so many things there" that he made 40 soldi from their resale.¹⁰⁹ Another crier named Pietro di Semprebene was also convicted for looting on the expedition to Anzola. In his own confession, Pietro said he had taken a metal pot at Alberto's urging—again, "for his labor"—even though the podestà's knight had expressly forbidden looting. This was apparently Pietro's first offense, however, so the podestà only barred him from going near the piazza or palace for the next six months, under pain of losing his foot.¹¹⁰ Looting on a police raid may not fit the definition of corruption as neatly as the *quid pro quo* seen above, but the knight's strict prohibition against such plunder and the court's thorough inquisition against Alberto after the fact show that the authorities understood such actions to undermine the legitimacy of their violence and justice. If the commune's officials plundered while capturing purported outlaws, then their raids were hardly better than those of a rebellious *contado* lord or opposing political faction. The raid in Anzola illustrates once again how custom and traditional norms worked against the new institutions legislated by the communes' elites.

Despite the commune's efforts to keep policing free of corruption, bribes and extralegal dealings probably happened more than the sources make explicit. Individual defendants did not necessarily need a Senso or an Alberto to serve as a go-between with the *familiars* who had charged them. In this respect, a 1293 curfew case provides a rare glimpse of what may have been a common occurrence. The trial record itself describes a fairly ordinary curfew case: two watchmen arrested Lotorengo di Bonagiunta for violating curfew one evening in September and led him to the palace. Lotorengo's defense hinged on his good reputation and the circumstances of his arrest. He argued that he had been

¹⁰⁷ ASB, Corone 3, 1291II (56 fols.), 32r, 38r.

¹⁰⁸ ASB, Accusationes 25b, reg. 15, 15v: "Quas res dixit se accepisse pro labore suo."

¹⁰⁹ ASB, Accusationes 25b, reg. 15, 15v: "Item dixit et confessus fuit quod ipse tempore domini Curssi Donati potestatis Bononie ibat per episcopatum Bononie cum quatuor centum hominibus dicte civitatis pro dicto comuni faciendo certas vindictas, et derobavit ibi tot res de quibus habuit quatragesima bononienses grossos."

¹¹⁰ ASB, Accusationes 25b, reg. 15, 16v.

working in the shop of his employer, Bonavoglia, pressing cloth that evening when he stepped outside for a moment to relieve himself, not wearing any shoes or trousers. As soon as he began to urinate, the watchmen seized him and led him off to the palace, half-dressed as he was. According to Lotorengo, it was also well-known in his neighborhood that his captors hated him and had conspired to arrest him out of spite even though he was an honest, hard-working man. Although Bonavoglia's witnesses could not all attest this, the judge acquitted Lotorengo of the charge.¹¹¹

If this were all we knew of Lotorengo's case, it would be unremarkable. But two months later in November 1293, a notary of the podestà named Guglielmo Ruscha and the *berrovarius* Alberto da Montono confessed to taking bribes from Lotorengo (also identified as Loterio of Florence). According to Alberto's confession, he first accepted 4 soldi from Lotorengo to allow him to sleep in his own chambers, rather than the commune's prison, on the evening of his arrest. About two weeks later—after Lotorengo had been released, it seems—he approached Alberto and told him he would gladly spend a gold florin to avoid a conviction for breaking curfew. Alberto went to the notary Guglielmo and told him about Lotorengo's proposal, suggesting that he procure Lotorengo's acquittal. Guglielmo initially refused the offer, but later returned to Alberto and said he would do Lotorengo's deed in exchange for a pair of gloves and a silk fillet. Alberto passed the message back to Lotorengo, who then gave Alberto 12 soldi—8 soldi initially and the other 4 later—to give to Guglielmo. Alberto duly delivered the payments to the notary, but also hinted to Lotorengo that his payments were below Guglielmo's asking price, advising him to reach an agreement with Guglielmo directly. In his own confession, Guglielmo admitted to taking the 12 soldi delivered by Alberto, plus an additional gift of 20 soldi. As he recounted, Lotorengo later came to his chambers as Alberto had suggested and said he wished to give him more money. Guglielmo told Lotorengo he did not want to take his money and had already procured his acquittal, but if he wished to leave him something extra, he should leave it on his doorstep—perhaps because he thought it unseemly to take money directly from Lotorengo's hand. So Lotorengo left another 20 soldi on his doorstep, which Guglielmo then pocketed, bringing his total profit from this favor to 32 soldi. In light of these confessions—which were heard by two Bolognese judges in addition to the podestà's criminal judge—the court stripped both Guglielmo and Alberto of their offices and sentenced them to spend the rest of the podestà's term in prison, or longer as the *anziani* and Council of the *Popolo* saw fit. The record does not say what, if anything, happened to Lotorengo.¹¹² It is worth noting that Lotorengo seems to have attempted to bribe the notary only after his legal defense failed to produce convincing testimony. It was a rational economic decision: even after paying 36 soldi to a *berrovarius* and notary, he had saved himself 64 soldi compared to the statutory fine. Nonetheless, the evidence suggests once again that foreign officials who were paid to uphold the law impersonally could easily be tempted to supplement their incomes.

In light of the cases above, dubious reversals in other trials may well be read as evidence of corruption. For example, in August 1291 the *familia* reported finding three gamblers in the neighborhood of San Giorgio, one of them a priest named Facciolo. Facciolo and one of his co-defendants were placed in prison, apparently unable to give surety. A full

¹¹¹ ASB, Corone 5, 1293II (53 fols.), 13v–15r.

¹¹² ASB, Accusationes 12b, reg. 12, 6r–v.

month later, in September, the podestà's knight Martino and some of his *familiaries* suddenly "remembered, asserted, and said" that Facciolo had not been playing.¹¹³ Facciolo was the only one of the three defendants acquitted. Perhaps they had wrongly accused him in the first place, or the podestà did not want to anger the bishop by convicting a priest in a secular court. But it is equally plausible that Facciolo had paid them or otherwise arranged for them to retract their denunciation. A similar reversal took place in September 1313 after the *familia* reported finding six men playing dice in the crossroads of Porta Ravegnana. Ten days after the initial *relatio*, the *berrovarii* appeared before the judge "to correct the error of the *inventio*," stating that they had found the six men near the tower of the capitano, not in the crossroads, and had not seen them gambling at the time.¹¹⁴ Also suspect is a series of three cases from July-August 1292 that all ended in acquittals because of the same procedural deficiency, namely that no judge or knight had been present on the *familia*'s patrol. In the first case, three men found playing dice confessed that they had indeed been gambling and were *marochi*. Despite their confession, the court determined that no ranking official had been present and acquitted them accordingly. A few weeks later, after a curfew violator confessed his guilt, the court again discovered that no knight had been present and acquitted him as well. When the issue surfaced in another gambling case shortly thereafter, the presiding judge became suspicious. He asked three of the four defendants if they had given, promised, or had somebody else give or promise something to the *familia* to help them avoid conviction. All three swore they had done no such thing, however, and so the judge acquitted them as well.¹¹⁵ In all three cases it is unclear who brought the alleged procedural error to the attention of the court. While it is possible that the particular crown's notary who led these patrols kept repeating the same mistake, it is more likely that the defendants had paid some *familiaries* to attest that their arrests had not been lawful.

Of course, money did not necessarily have to change hands to influence law enforcement. While many cases show foreign judges were not afraid to prosecute local elites, some acquittals smack of personal or political favors to those same elites. For example, in 1302 the *familia* reported that Pascipovero di Vianisio Pascipoveri, a notary and the son of a law professor, had been carrying a "sharp and malicious" knife in Strada Maggiore. The court acquitted him, however, because "it did not seem to the podestà or his household that the knife was malicious and suspicious."¹¹⁶ Such a subjective determination by the judge—especially in contradiction of what other *familiaries* had initially reported—would seem to reflect the social status of Pascipovero and his family. Also telling, in January 1318 the *familia* reportedly found two men gambling in a tavern owned by Romeo Pepoli, where his servant (*famulus*) Guido was the taverner. The notary initially wrote that Guido had been hosting the gamblers there, but later crossed this out. The court went on to acquit him, even though there is no indication that Guido produced witnesses or submitted a

¹¹³ ASB, Corone 3, 1291II (56 fols.), 23r: "Die jovis xiii setembris prefati inventores, scilicet dictus dominus Martinus et alii qui secum fuerunt ad dictam inventionem, bene recordati fuerunt asseruerunt et dixerunt quod dictus Facciolus non ludebat."

¹¹⁴ ASB, Corone 20, 1313II (33 fols.), 28r.

¹¹⁵ ASB, Corone 4, 1292II (54 fols.), 19r, 28v–29r.

¹¹⁶ ASB, Corone 13, 1302II (102 fols.), 35v: "Restitutus fuit dictus cutellus eidem Paxipovero quia non fuit vissum domino potestati nec eius familie quod dictus cutellus esset maliciosus et suspectus." For Pascipovero and his father Vianisio, see Livi, *Dante*, 18.

defense. Moreover, the court determined that the two alleged gamblers were in fact *ribaldi*—a status hardly ever accorded to gamblers found in taverns—and had them doused with water instead of fined.¹¹⁷ One cannot help but wonder if this was all a favor to Romeo, who in 1318 was at the height of his influence as the *proto-signore* of Bologna.

In weighing the evidence above, it is important to keep in mind that the commune's citizen-legislators did not publicly condone the use of personal influence to affect the outcomes of criminal trials. In fact, they instituted a range of anti-corruption measures to combat it. For instance, in May 1287, Bologna's council passed a resolution that the podestà could only send his notaries into the *contado* to conduct inquisitions for the crimes of homicide, robbery, kidnapping (or rape), and arson. They deemed this necessary because the podestà's knights and notaries were making "foul and iniquitous exactions" in the *contado* under the pretext of inquisition. To further limit this extortion, the council required these foreign officials to have two or more men of the locality present at the inquisition to vouch for the identity of the witnesses.¹¹⁸ More broadly, communes "audited" their podestà in a process known as the *sindacato*. General inquisitions investigated corruption among public officials, and the heralds periodically reminded citizens that they were not to bribe the podestà's *familia*.¹¹⁹ Furthermore, when the authorities got wind of specific allegations, they do seem to have investigated suspects accordingly, as in the 1286 inquest against two criers said to have taken bribes.¹²⁰ In the end, however, these anti-corruption measures merely demonstrate the persistent and pervasive threat of corruption to the commune's justice system, not success in countering it.

Legal Privilege

As discussed in earlier chapters, third-party policing represented a new, more impersonal mode of governance in the mid-thirteenth century. Citizen-legislators sought to prevent everyone—regardless of status—from engaging in behaviors they deemed threatening to the public interest. However, this trend always stood in tension with the fundamental inequalities enshrined in the statutes, which prescribed different penalties, privileges, and procedures for different kinds of people. In the late thirteenth and early fourteenth centuries, the pendulum swung back towards greater personality in criminal justice, as political elites granted themselves legal immunity from prosecution by the podestà for a range of offenses. Over the course of decades, this proliferation of legal privilege undermined the office of the podestà and made his police force more a tool of elite repression than the guarantor of the common welfare it was intended to be.

As discussed in Chapter 2, privilege in Bologna did not evolve in a linear fashion, but it did become an increasingly powerful and contentious political tool over the course of the decades. Privileges generally waxed when the governing coalition became more closed and waned when it became more open. To an extent, privilege represented the persistence of traditional and charismatic authority—or of "personality," in North, Wallis, and Weingast's framework—in communal politics. At the same time, it embodied the new ascendancy of

¹¹⁷ ASB, Corone 25, 1318I (82 fols.), 19r, 20r.

¹¹⁸ ASB, Riformagioni 126, 22v: "Turppes exactiones et innique."

¹¹⁹ For one such general inquisition, see ASB, Corone 17, 1309I, 2r–19v. For a *ministralis* denouncing a prison guard, see ASB, Corone 26, 1319II (42 fols.), 5r–v. For one such proclamation by the heralds, see ASB, Corone 7, 1295I (44 fols.), 4v.

¹²⁰ ASB, Sindacato 2, 1286I (36 fols.), 1v–3v.

rational-legal authority in the social order. Instead of dominating through sheer force of personality and military might, as feudal lords might have, the ruling coalition enshrined their superiority in written law, not least through extraordinary advantages in trial procedures.

With regards to policing, privilege effectively created a two-tier system of law enforcement. As a 1310 privilege stated, privileged men could licitly, freely, and with impunity go about the city and *contado* (including the piazzas) by day or night as they pleased. They could also freely and with impunity carry knives and wear armor without any license or permit, provided that they carry a light at night. Otherwise they could in no way be impeded by anyone or any officials of the commune.¹²¹ The stark legal inequality such privileges created is evident in a 1293 gambling case, where the *familia* found six men gambling under the portico of Bonacossa de' Porpori's house. Four of these defendants produced notarized documents proving they were privileged and were acquitted accordingly, while at least one of the other two suffered the 25-lire fine.¹²² Indeed, at the height of privilege in Bologna (after 1306), thousands of citizens could parade through the streets armed without fear of the *familia*. Thus, a witness in a 1308 curfew case attested the privileged status of the defendants by stating he had seen them bearing arms "as privileged men do."¹²³ The most privileged citizens were even allowed to keep bodyguards. For example, in April 1308 Filippo Pepoli—himself a repeat offender against the arms-bearing laws (see Chapter 2)—produced a *privilegium* for retaining armed servants (*famuli armati*) to excuse his servant Dino Ugarelli for carrying a knife.¹²⁴ Some citizens seem to have abused their privileges outright, as in the case of six men found "going through the city playing a guitar and serenading" one evening in September 1302. Although they were all placed in prison, the charges against them were dropped after the grain lords (*domini bladi*) claimed the defendants as their officers. By law, the officials of the grain office were free to go about at night to discharge their duties. If the *familia*'s report is at all true, these men had used a privilege of public office to go carousing at night.¹²⁵

The proliferation of privilege severely hampered the podestà's ability to police the city, since privileged men had only to prove who they were in court to win immunity. Some podestà protested accordingly. For example, in August 1288, the podestà Corso Donati of Florence petitioned the Council of the *Popolo* for the authority to investigate and punish crimes as he deemed just and expedient. He complained that many crimes were committed daily in the city, and assassins and infamous persons resided in the city continually without any fear of his rule or office, because of various statutes and resolutions, and the privileges that these criminals claimed. He therefore asked the Council to absolve him of the hindrances created by such laws and privileges, and beseeched them to pass a provision addressing the fact that people carried assault weapons openly in the city every day. It is unclear what the Council did with the petition, but it is noteworthy that this podestà felt his

¹²¹ ASB, Corone 20, 1314I (40 fols.), 22r-v.

¹²² ASB, Corone 5, 1293II (53 fols.), 5r-6r.

¹²³ ASB, Corone 16, 1308I (64 fols.), 50v: "Et dixit quod bene vidit eos portare arma sicut portant homines privilegiati."

¹²⁴ ASB, Corone 16, 1308I (64 fols.), 27v.

¹²⁵ ASB, Corone 13, 1302II (102 fols.), 52v: "Eundo per civitatem sonando unam chitarram et matinando contra formam statutorum." For a reference to the *domini bladi*'s free passage at night, see Corone 13, 1302II (152 fols.), 46r.

employers were making it difficult for him to do his job a full 20 years before such privileges became truly widespread.¹²⁶ Similarly, in October 1320, the podestà argued against an appeal (*protestacio*) from Buonacatto Buonacatti that his privilege had been violated in an arms-bearing conviction. The podestà claimed that the *reformatio* granting Buonacatto his privilege was not valid because it contravened the Sacred Ordinances (*reformationes sacratas*), which expressly prohibited the bearing of arms. The podestà and his judge had sworn to uphold the Sacred Ordinances under the penalties contained therein, and said they would continue to do so (including upholding the prohibitions against bearing arms) unless the Council passed new Sacred Ordinances to the contrary.¹²⁷

The above examples are evidence not only of how difficult it could be for podestà to enforce ever-changing laws, but also of citizens' competing impulses to legislate order and preserve their personal autonomy at the same time. The political elite's overriding concern to maintain their individual liberties is explicit in other *protestaciones*, which express the outrage privileged men felt at being unjustly (or so they claimed) investigated, arrested, or punished by the podestà and his *familia*. To take one example from January 1318, a *protestacio* on behalf of the privileged citizen Pietro di Giacomino alleged that the former podestà had arrested, jailed, and placed him in leg shackles arbitrarily, "against God and justice" and "without any cause." The podestà had thereby deprived Pietro of the "license and liberty of going and standing and also returning through the city of Bologna, the palace, and piazza of the commune of Bologna" as he pleased, "which license and liberty he was supposed to have" by virtue of his privilege.¹²⁸ This and other *protestaciones* cast the plaintiff's loss of liberty as the main injury inflicted by the *familia* and betray an elite sentiment that the podestà's justice should be directed at other, lesser men, not the men who employed him.

The running tension between the impersonal policing of the *familia* and the fundamentally personal politics of communal life is epitomized in an episode from February 1294, when a routine arms-bearing stop provoked a public confrontation between the *familia* and a privileged citizen. It began when two *berrovarii* stopped Bertuccio Biselli of Borgo Colline in the parish of Santo Stefano for carrying a knife and wearing armor. According to the podestà's notary Giovanni, a crowd gathered as he and the knight Bonafacino were standing under a portico trying to book Bertuccio. Bonafacino ordered the crowd to back away and not obstruct his office under penalty of 25 lire. The bystanders complied except for Bartolomeo Bianco di Cossa, who stepped forward in an attempt "to hear and understand the things that were being said and written." Bonafacino ordered Bartolomeo to stand back under penalty of 20 soldi, but Bartolomeo refused, both verbally and in deed. The knight ordered him to back away three more times—raising the penalty each time to 100 soldi, 10 lire, and finally 25 lire—and to present himself before

¹²⁶ ASB, Rifformagioni 126, 32v. The petition is also cited in Blanshei, *Politics and Justice*, 390; Lansing, *Passion and Order*, 35; Vallerani, *Medieval Public Justice*, 278.

¹²⁷ ASB, Giudici 682, 29r–30r. See also Blanshei, *Politics and Justice*, 621.

¹²⁸ ASB, Giudici 639, 55r: "Contra Deum et iustitiam asque causa aliqua [...] propter quam detemptionem et captionem dictus dominus potestas eidem Petro abstulit licentiam et libertatem eundi et standi ac etiam redeundi per civitatem Bononie palatia et plateam comunis Bononie ad voluntatem ipsius Petri, quam licentiam et libertatem habere debebat ex forma privilegii facti tempore domini Guidonis de Valbona capitanei olim populi Bononie." See also Blanshei, *Politics and Justice*, 611–12. For similar examples, see ASB, Giudici 639, 36r–v, 61r.

the podestà as well. Each time Bartolomeo refused, “always scorning” the knight’s orders and standing under the portico for as long as the *familia* was there.¹²⁹ Bartolomeo did comply, however, with the order to present himself to the podestà that same day. He denied in court that he had spurned the knight’s orders, claiming to the contrary that he had backed away from the portico each of the four times Bonafacino told him to do so.¹³⁰ (He did not explain why he had to be told three additional times.) Three of Bartolomeo’s defense witnesses went further and placed blame on the *familia*. The notary Bianco di Pace Surici testified that Bartolomeo did leave the portico as ordered, and only returned when the knight called him forward to book him as well. Asked why the knight called him forward, Bianco speculated that it was because Bartolomeo had been saying to the knight from outside the portico, “Please don’t hinder this good man found with weapons since he is a soldier. You should accept surety from him.” According to Bianco, Bartolomeo complied with the knight’s order to leave the portico again after he was booked, saying, “I’ll do whatever you please.” The judge later asked Bianco if Bartolomeo had ever said to the knight, “I will not back away since this portico is mine and I am privileged.” Bianco maintained that Bartolomeo never refused the knight’s order, but he did say, “Very well, I’ll do what you want, but you are not allowed to order me since I am privileged.” Bianco also confirmed that Bartolomeo had asked him, as a notary, to make a record of the fact that the knight had scorned his privileged status.¹³¹ A second witness, Benedetto Mussoni, told much the same story. In his version, Bartolomeo retreated from the portico as ordered but continued to agitate. He told the knight he should show Bertuccio some courtesy (*faceret urbanitatem*) and not impede him since he was a soldier, and, perhaps more contentiously, that the knight could not expel him from his own portico. In response the knight called Bartolomeo forward to be booked. Bartolomeo, meanwhile, ordered his eventual witness Bianco Surici to make a separate record of the incident. The original suspect, Bertuccio Biselli, also testified in Bartolomeo’s defense, upholding the basic contention that he had complied with the knight’s orders. He added that Bartolomeo was singled out for booking because he had told the knight he was acting wrongfully (*malle facit*) in taking weapons from a soldier.¹³² A fourth witness named Ricardino di Caravita was less helpful in his testimony. In his telling, Bartolomeo never left the portico completely, taking only a few steps backwards when ordered, and had even threatened the knight, saying, “Watch what you do since this is my portico and I am privileged, and you can’t give me orders.”¹³³

¹²⁹ ASB, Corone 6, 1294I (118 fols.), 30r-v: “Quia peterat audire et intelligere ea que dicebantur et scribebantur. [...] Nec se separavit nec partivit ab inde contempnando semper precepta ipsius domini militis.”

¹³⁰ ASB, Corone 6, 1294I (84 fols.), 21v.

¹³¹ ASB, Corone 6, 1294I (84 fols.), 21v-22r: “Dictus Bartolomeus existens extra porticum dicebat dicto domino militi, ‘Placeat vobis non impedire istum bonum hominem inventum cum armis quia suldaterius est. Accipiatis securitatem ab ipso.’ [...] Et tunc dictus Bartolomeus bene se separavit de sub ipsa porticu dicens, ‘Ego faciam quid vobis placet.’ [...] Interrogatus si dictus Bartolomeus dixit dicto domino militi quando faciebat sibi dicta precepta aliqua vice ‘Ego non recedam quia porticus est mea et sum privilegiatus,’ respondit et dixit quod dictus Bartolomeus non dixit aliqua vice quod non recederet, sed semper dicebat, ‘Ego bene faciam id quod vultis, sed non parestis mihi precipere quia sum privilegiatus.’”

¹³² ASB, Corone 6, 1294I (84 fols.), 22v-24r.

¹³³ ASB, Corone 6, 1294I (84 fols.), 23r-v: “Sed non exivit dictam porticum sed dicebat domino millex, ‘Cavete quid faciatis quia porticus est mea et sum privilegiatus, et non potestis mihi precipere.’”

The trial record does not reveal whether Bartolomeo suffered any penalty for impeding the office of the *familia*. Of course, it is impossible to say what exactly transpired under his portico, but the basic outline would seem to tie together the threads of this chapter. Local bystanders took exception to one of the *familia*'s police actions; most of those bystanders feared the *familia* enough to back off when ordered; but one of those bystanders, apparently emboldened by his privileged status, confronted the *familia* about its supposed misconduct. Perhaps the most striking detail of this story is the way Bartolomeo ordered his notary friend, Bianco Surici, to write down what was happening at the same time he was being written up by the podestà's officials. Rather than contest a police action through violence, these local elites created a competing written narrative for later use in court—a testament to the litigious culture that had taken root in the communes by the late thirteenth century. From the *familia*'s perspective, this episode underlines the difficulty of policing a city where a sizable minority of residents were in many respects above the law. Indeed, Bartolomeo was probably right that the podestà's knight could not order him around, especially under his own portico, but the knight had no way of knowing the veracity of his claim to privilege until documents were produced in court. In the end, privileges like Bartolomeo's undermined the *familia*'s ability to discipline elites. The commune's lawmakers may have hired third-party enforcers to uphold their laws, but many did not want to be subject to police power themselves.

Conclusion: A Legacy of Government Coercion

This chapter has shown, in effect, why it is so difficult for limited access orders to transition to open access or even to adopt impersonal rules on a societal scale. Such a transition must take place within the logic of a limited access order based on identity rules, which means existing norms will always work, to some extent, against a social order that treats everyone more equally. The *familia*'s more impersonal enforcement did change the nature of certain rules in the city, making them constraining for all citizens to whom those rules applied. This in turn affected the behavior of citizen-subjects. But it did not change the logic of the social order, which continued to be based on custom, honor, and identity rules. Even the podestà's *familiari* themselves, who were supposed to embody impersonal enforcement, frequently behaved in keeping with traditional norms during the course of their work. Thus, if this book is a case study of how modern institutions might emerge from a premodern social order, as suggested in the Introduction, it is also a case study of why they are unlikely to effect transformational change.

Of course, the communes' leading citizens did not intend to change the social order by instituting new forms of policing. But they did intend for government police power to enhance their political security and legitimacy, and in this respect the institution was a resounding failure. At the macro level, Bologna and indeed most towns in northern Italy lurched from one political crisis to the next over the course of the thirteenth and fourteenth centuries, despite new and far-reaching techniques for the maintenance of public order. Even with the coming of the *signoria*, few rulers or regimes seemed to enjoy lasting stability or legitimacy. This can well be explained in terms of the direct relationship between political legitimacy and stability. According to Weber, legitimacy is marked by voluntary submission to authority, a pervasive belief that the rules and order promulgated

by that authority are obligatory and binding.¹³⁴ Building on this definition, North and Wallis have argued that social orders “work” only insofar as elites buy into the rules. It is not fear of coercion from a Leviathan government but elites’ shared belief in the legitimacy of rules—that following the rules will benefit them somehow—that produces order and stability.¹³⁵ This kind of buy-in was generally lacking in the towns of communal Italy, where elite politics were defined by what Andrea Gamberini has termed a “clash of legitimacies.”¹³⁶ Regimes governed by coercing and excluding their rivals, and, after the initial successes of the *popolo*, the political elite fractured increasingly into groups of haves and have-nots. In Bologna this played out along characteristically juridical lines, with a group of legally privileged citizens elevated above their peers, enemies, and ordinary residents alike. But this retrenchment of the elite occurred throughout Italy and effectively rendered government policing a tool of factional interests rather than the public welfare.¹³⁷

On the whole, it seems the communes’ citizens never really believed it was a matter of self-interest not to carry knives or gamble per se, so much as not to get caught doing those things. The culture of hatred and feud, for example, still dictated that men in certain situations needed to bear arms in a personal capacity. To borrow again from Dubber’s terminology (see Introduction), this tension was the product of competing urges to autonomous and heteronomous governance, a tension inherent in most political systems but especially in republics.¹³⁸ That is, the governing elite must balance the imperative to respect individual (and especially elite) rights against the need to safeguard the commonwealth to create the space for individuals to exercise those rights. Judging from the evidence above, individual *popolani* valued their personal *libertas* and not being hindered by the *familia* over the more abstract *libertas* of their governing coalition, which the *familia* was supposed to protect.

And yet, because the *familia* was tactically effective at coercion, government policing proved enduring as an institution. The next two centuries saw the size of police forces increase in the Italian city-states, even through the demographic crisis caused by the Black Death. Police forces also become a standard feature of the apparatus of government across Western Europe.¹³⁹ This normalization of police does not seem to have improved the reputation of police forces among the local populace; on the contrary, it may only have worsened as the number of police per capita increased.¹⁴⁰ However, for rulers in an age of state formation, the popularity of police forces mattered less than their capacity to coerce.¹⁴¹ Just as *signorie* retained the trappings of republican institutions to legitimate

¹³⁴ Weber, *Economy and Society*, 31–33, 946.

¹³⁵ Wallis and North, “Coordination and Coercion.”

¹³⁶ Gamberini, *The Clash of Legitimacies*. Blanshei has also seized on how popular attitudes toward the government relate to the success (or lack thereof) of government policies; Blanshei, “Homicide.”

¹³⁷ As Patrick Lantschner has pointed out, the “fragmentation of cities” was not a uniquely Italian or even European phenomenon in the late medieval and early modern period. Lantschner, *The Logic of Political Conflict*, 202–7.

¹³⁸ This tension is also a major theme in Carvalho, *The Preventive Turn*.

¹³⁹ On northern Italy, see Blanshei, “Bolognese Criminal Justice,” 65; Zorzi, “Justice,” 501; Zorzi, “The Judicial System,” 49; Stern, *The Criminal Law System*, 48–49; Manikowska, “Il controllo sulle città”; Ruggiero, *Violence*, 3–17. On Western Europe, see Bayley, “The Police.”

¹⁴⁰ For this trend in Bologna, see Hughes, *Crime*; Hughes, “Fear and Loathing.” On the unsavory reputation of the Paris police, see Merriman, *Police Stories*, 9–10; Emsley, “Policing the Streets,” 278–80.

¹⁴¹ On state formation in the fourteenth and fifteenth centuries, see Watts, *The Making of Polities*.

their autocratic rule, they also retained their police forces to legitimate their claims as the providers of justice and order.

Works Cited

ARCHIVAL SOURCES

Archivio di Stato di Bologna

Capitano del popolo, Giudici del capitano del popolo

Curia del podestà

Giudici ad maleficia

Accusationes

Libri inquisitionum et testium

Ufficio corone ed armi

Ufficio del giudice al sindacato

Ufficio delle acque, strade, ponti, calanchi, selciate e fango

Ufficio per la custodia delle vigne, palancati e broili

Governo

Riformagioni del Consiglio del Popolo

Archivio di Stato di Perugia

Capitano del popolo, Processi e sentenze della curia

Archivio di Stato di Siena

Podestà, Malefizi

PUBLISHED PRIMARY SOURCES

Fasoli, Gina, and Pietro Sella, eds. *Statuti di Bologna dell'anno 1288*. 2 vols. Vatican City: Biblioteca Apostolica Vaticana, 1937–1939.

Fрати, Luigi, ed. *Statuti di Bologna dall'anno 1245 all'anno 1267*. 3 vols. Bologna: Regia Tipografia, 1869–1877.

Griffoni, Matteo. *Memoriale historicum de rebus Bononiensium (aa. 4448 A.C. – 1472 D.C.)*. Edited by Lodovico Frati and Albano Sorbelli. New ed. Vol. 18, pt. 2. *Rerum Italicarum Scriptorum*. Città di Castello: San Lapi, 1902.

Muzzarelli, Maria Giuseppina, ed. *La legislazione suntuaria: secoli XIII–XVI: Emilia Romagna*. Rome: Ministero per i beni e le attività culturali, Direzione generale per gli archivi, 2002.

SECONDARY SOURCES

Ayres, Ian, and Robert Gertner. "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules." *Yale Law Journal* 99 (1989): 87–130.

Bayley, David. "The Police and Political Development in Europe." In *The Formation of National States in Western Europe*, edited by Charles Tilly, 328–79. Princeton: Princeton University Press, 1975.

- Blanshei, Sarah Rubin. "Bolognese Criminal Justice: From Medieval Commune to Renaissance *Signoria*." In *Violence and Justice in Bologna: 1250–1700*, edited by Sarah Rubin Blanshei, 55–82. Lanham, MD: Lexington Books, 2018.
- . "Homicide in a Culture of Hatred." In *Murder in Renaissance Italy*, edited by Trevor Dean and K.J.P. Lowe, 106–22. Cambridge: Cambridge University Press, 2017.
- . *Politics and Justice in Late Medieval Bologna*. Leiden: Brill, 2010.
- Bocchi, Francesca, ed. *Bologna*. Vol. 2, *Il duecento*. Bologna: Grafis, 1995.
- Carniello, Brian. "The Rise of an Administrative Elite in Medieval Bologna: Notaries and Popular Government, 1282–1292." *Journal of Medieval History* 28 (2002): 319–47.
- Carvalho, Henrique. *The Preventive Turn in Criminal Law*. Oxford: Oxford University Press, 2017.
- Emsley, Clive. "Policing the Streets of Early Nineteenth-Century Paris." *French History* 1 (1987): 257–82.
- Gamberini, Andrea. *The Clash of Legitimacies: The State-Building Process in Late Medieval Lombardy*. New York: Oxford University Press, 2018.
- Geltner, Guy. *The Medieval Prison: A Social History*. Princeton: Princeton University Press, 2008.
- Giansante, Massimo. "Bankers, Financial Institutions, and Politics." In *A Companion to Medieval and Renaissance Bologna*, edited by Sarah Rubin Blanshei, 185–210. Leiden: Brill, 2018.
- Gozzadini, Giovanni. *Delle torri gentilizie di Bologna e delle famiglie alle quali prima appartennero*. Bologna: N. Zanichelli, 1875.
- Hughes, Steven C. *Crime, Disorder, and the Risorgimento: The Politics of Policing in Bologna*. New York: Cambridge University Press, 2002.
- . "Fear and Loathing in Bologna and Rome: The Papal Police in Perspective." *Journal of Social History* 21 (1987): 97–116.
- Jansen, Katherine L. *Peace and Penance in Late Medieval Italy*. Princeton: Princeton University Press, 2017.
- Jordan, William Chester. "Anti-Corruption Campaigns in Thirteenth-Century Europe." *Journal of Medieval History* 35 (2009): 204–19.
- Kroeze, Ronald, André Vitória, and Guy Geltner, eds. *Anticorruption in History: From Antiquity to the Modern Era*. Oxford: Oxford University Press, 2018.
- Lansing, Carol. *Passion and Order: Restraint of Grief in the Medieval Italian Communes*. Ithaca: Cornell University Press, 2008.
- Lantschner, Patrick. *The Logic of Political Conflict in Medieval Cities: Italy and the Southern Low Countries, 1370–1440*. Oxford: Oxford University Press, 2015.
- Livi, Giovanni. *Dante, suoi primi cultori, sua gente in Bologna: con documenti inediti, facsimili e illustrazioni figurate*. Bologna: L. Cappelli, 1918.
- Manikowska, Halina. "Il controllo sulle città. Le istituzioni dell'ordine pubblico nelle città italiane dei secoli XIV e XV." In *Città e servizi sociali nell'Italia dei secoli XII–XV: 12o Convegno di studi: Pistoia, 9–12 ottobre 1987*, edited by Emilio Cristiani and Enrica Salvatori, 481–511. Pistoia: Centro italiano di studi di storia e d'arte, 1990.
- Merriman, John M. *Police Stories: Building the French State, 1815–1851*. New York: Oxford University Press, 2006.
- Mnookin, Robert H., and Lewis Kornhauser. "Bargaining in the Shadow of the Law: The Case of Divorce." *Yale Law Journal* 88 (1979): 950–97.

- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Rev. ed. Cambridge: Cambridge University Press, 2013.
- Paolini, Lorenzo. "Le origini della Societas Crucis." *Rivista di storia e letteratura religiosa* 15 (1979): 173–229.
- Pini, Antonio Ivan. "Manovre di regime in una città-partito. Il falso teodosiano, Rolandino Passaggeri, la Società della Croce e il 'barisello' nella Bologna di fine Duecento." *Atti e memorie della Deputazione di storia patria per le province di Romagna* n.s. 49 (1998): 281–318.
- Ruggiero, Guido. *Violence in Early Renaissance Venice*. New Brunswick, NJ: Rutgers University Press, 1980.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca: Cornell University Press, 2003.
- Stern, Laura Ikins. *The Criminal Law System of Medieval and Renaissance Florence*. Baltimore: Johns Hopkins University Press, 1994.
- Stuard, Susan Mosher. *Gilding the Market: Luxury and Fashion in Fourteenth-Century Italy*. Philadelphia: University of Pennsylvania Press, 2006.
- Thompson, Augustine. *Revival Preachers and Politics in Thirteenth Century Italy: The Great Devotion of 1233*. Oxford: Oxford University Press, 1992.
- Vallerani, Massimo. *Medieval Public Justice*. Translated by Sarah Rubin Blanshei. Washington, DC: The Catholic University of America Press, 2012.
- Wallis, John Joseph, and Douglass C. North. "Coordination and Coercion: The Nature of Rules, Governments, States, and Social Dynamics." Working Paper, 2013.
- Watts, John. *The Making of Polities: Europe, 1300–1500*. Cambridge: Cambridge University Press, 2009.
- . "The Problem of the Personal: Tackling Corruption in Later Medieval England, 1250–1550." In *Anticorruption in History: From Antiquity to the Modern Era*, edited by Ronald Kroeze, André Vitória, and Guy Geltner, 91–102. Oxford: Oxford University Press, 2018.
- Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. Edited by Guenther Roth and Claus Wittich. Berkeley: University of California Press, 1978.
- Zorzi, Andrea. "The Judicial System in Florence in the Fourteenth and Fifteenth Centuries." In *Crime, Society, and the Law in Renaissance Italy*, edited by Trevor Dean and K.J.P. Lowe, 40–58. Cambridge: Cambridge University Press, 1994.
- . "Justice." In *The Italian Renaissance State*, edited by Andrea Gamberini and Isabella Lazzarini, 490–514. Cambridge: Cambridge University Press, 2012.

Conclusion

This study set out to explore the role of government police power in the life of the Italian communes, and how and why that police power burgeoned over the course of the thirteenth century. Three points should be clear by now. First, by hiring foreign officials to patrol their streets, the communes' citizens greatly enhanced their criminal courts' capacity to enforce impersonal rules and, more fundamentally, to coerce citizens as subjects. Second, the police activity of the foreign *rectores* was part of a preventive turn in public justice, built on a profusion of new legislation aimed at correcting or removing threats to the public good. Third, in the Italian communes, this preventive turn came during—and appears in part to have been a product of—a moment of growing political participation and instability. This conclusion will discuss the implications of each of these points for future studies of police, medieval justice, and state formation.

On the first point, the evident scope of the communes' police power will, I hope, make it harder for historians of police to overlook the Middle Ages as the epoch when police supposedly did not exist. For decades, the historiography of police—especially Anglo-American scholarship—has been dominated by the “state monopolization thesis,” the idea that in the nineteenth century, the state took control of criminal justice through police forces, ending a prior era in which criminal justice depended primarily on the participation of ordinary people in the community.¹ Although some scholars have challenged this state-centric model, the basic “newness” of the police forces of the 1800s—and the supposed ineffectuality of the police forces that predated them—has gone largely unchallenged. Yet much of what was supposedly novel about the professional police forces of the 1800s—that they were centrally directed, bureaucratically controlled, and publicly funded—aptly describes what was novel about the podestà's *familia* in the 1200s.² This is not to imply that northern Italy's *berrovarii* were just like London's bobbies, or that one can draw a straight line from the *berrovarii* to the *carabinieri*. But it is to argue that European and American police institutions—narrowly defined as law enforcement entities—have a much deeper and more dynamic history than the historiography would seem to allow.³

Admittedly, this study's focus on the coercive capacity of the communes' criminal courts is to some degree a reaction against scholars' recent emphasis on the negotiated aspects of medieval justice. To be sure, this recent scholarship has greatly enhanced our understanding of how medieval societies functioned by contextualizing public justice within the broader framework of dispute resolution. This study hardly denies that extra- and infrajudicial institutions such as peace agreements remained of vital importance into the fourteenth century and beyond. Yet medievalists have largely overlooked the fact that foreign police forces compelled hundreds of people, including elites, to answer charges in court each year, and made government intervention a routine feature of urban life. The historiography is curiously out of balance in this regard. After all, in most traditional

¹ For a historiographical discussion, see Churchill, *Crime Control*, 1–8.

² For this list of characteristics, see Hay and Snyder, “Using the Criminal Law,” 51.

³ For example, Mark Neocleous has shown how the ideas of Britain's late eighteenth- and early nineteenth-century police reformers—usually treated as the founders of a new tradition of policing—are rooted in continental police science; see “Theoretical Foundations.”

societies, justice is rooted in the customs of local communities and oriented toward reparation and reconciliation. It should be no surprise to find such institutions still at work in the later Middle Ages, even in urban communities with relatively complex systems of government. Rather, the shift toward hegemonic justice, aimed at punishing guilty subjects according to written laws, is the novel and interesting development. Attempting to analyze and explain this transition, moreover, does not require complicity with any “master narrative” of state or “Western” triumphalism.⁴ If the job of historians is (in part) to explain change over time, then medievalists must reckon anew with the ways later medieval governments increased their capacity to discipline and punish, including through new and expanded police measures.

Turning to the second point, a key element of the rise of hegemonic justice was a new preventive mentality—a police mentality—in public justice. Authorities increasingly sought to keep the peace and maintain order through proactive measures, rather than reacting to harms committed. This study has focused on a broad subset of preventive measures aimed at human threats: political rebels, men bearing arms, thieves in the night, vagabonds, and so forth. In other words, it has focused on what Dubber calls “people police” instead of “thing police,” keeping in mind that police treats both people and things as objects.⁵ However, “thing police”—which addresses threats to public health, public property, and the free circulation of goods—may well have constituted the larger sphere of preventive justice in the Italian communes. Chapter 1 touched on the *familia*’s efforts to regulate these domains, but much more can be said on economic and hygienic forms of police. Indeed, Foucault used the regulation of grain markets and urban planning schemes to illustrate early modern police efforts in his own lectures. Yet medievalists are just beginning to draw on his work on police and biopower in their studies of public health, commerce, and urban planning, despite their earlier embrace of his work on discipline and deviance.⁶ This study will have shown, I hope, the utility of police as a framing concept for diverse lines of effort in medieval governance, all aimed (ostensibly) at the public good. Although the “outsourcing” of police patrols was peculiar to Italy, the proliferation of police measures was a widespread phenomenon in medieval Europe, above all in cities. The origins of European police science lie in the Middle Ages, and more study is needed to illuminate the medieval contribution.

This study has focused on government police power, in particular the office of the podestà, but Foucault’s concept of police also opens up possibilities for broader inquiries into the history of public services. After all, Foucault’s work on power (including police power) in many ways transcends traditional politics. He treats power not as a social commodity wielded by discrete agents, such as sovereigns or government officials, but as a pervasive element of society, rooted in the discourses and accepted bodies of knowledge that shape society and its individual members. As such, Foucault is interested less in acts of government than practices and techniques of governance—what he calls “governmentality”—which manifest themselves in any number of organizations (schools, clinics, prisons, etc.). Adopting this expansive view of power risks transforming police (or social control more broadly) into an all-encompassing concept, and therefore one of limited

⁴ On the “Master Narrative,” see Moore, “Medieval Europe in World History.”

⁵ Dubber, *The Police Power*, 124.

⁶ See for example Geltner’s forthcoming work, *Roads to Health*.

analytical value.⁷ Nevertheless, government is not the only organization in society to exercise police power, even in the most paradigmatic of modern states.⁸ In medieval cities especially, one could well talk about the police power of guilds, militias, confraternities, religious communities, neighborhood associations, and so forth. Whether they had constitutional roles in the government or not, these organizations all played important roles in defining and constructing the public good.⁹

In light of this, this study may appear somewhat old-fashioned in its focus on the police power of public officials. Indeed, the question posed at the beginning of how seemingly “modern” institutions—namely third-party enforcement and more impersonal rules—gained traction in premodern Italy may seem to some readers to have a teleological bent. After all, one of the oldest strands in the historiography on the Italian communes views them as the precocious forebears of liberal democracies, whose republican ideals laid the institutional groundwork for the modern state and civil society. It cannot be stressed enough, then, that the aim of this study is not to understand how the Italian communes achieved a more modern (and implicitly superior) form of government. Without a doubt, institutional change is a dynamic and highly contingent process, not linear and progressive. The communes’ transition to *signorie* after a moment of increased political participation should be evidence enough of this. But the stubborn fact remains that communal governments took on a more prominent role in rule enforcement in the thirteenth century, and historians have hardly exhausted their understanding of the factors behind this important development. Moreover, very few societies in human history have succeeded in enforcing impersonal rules for any sustained period of time, and those that have may yet fail to do so in the future. It is therefore a matter of general historical interest when societies take steps toward more impersonal institutions, whether they succeed or fail to make the transition.¹⁰ The Italian communes make an especially intriguing case study in light of their political autonomy and relatively participatory systems of government. After all, the state monopolization thesis tends to treat “the state” as a single actor that expands police power to serve its own interests; it assumes the growth of police is a top-down process. The case of the communes’ makes clear, however, that the intra-state dynamics among governments and other elite organizations are more complicated and interesting than that.

This brings us finally to the third point, that the growth of police power in the communes seems to have been a direct outgrowth of a temporary expansion of access to the political elite and the political shocks that created. That, of course, is not meant to be a universalizing explanation for the growth of police power in all social orders. Nor is it to suggest that the political elite consciously or deliberately tried to claim for the government a monopoly on the legitimate use of violence, or create some form of “rule of law.” Indeed, the communes’ leading citizens had no conception of these ideals, nor did they view impersonal institutions as morally superior. Rather, it was a classic calculation of collective interest. The *popolani* newcomers to the political elite were more numerous but

⁷ For a critique of overly broad uses of “social control,” see Cohen, *Visions of Social Control*, 2–4.

⁸ Johnston and Shearing, *Governing Security*. More broadly, see Rhodes, “The New Governance.”

⁹ This is a central theme in Van der Heijden et al., eds., *Serving the Urban Community*.

¹⁰ Understanding this transition is the central concern of North, Wallis, and Weingast in *Violence and Social Orders*.

individually weaker than the families that had traditionally dominated the city. Thus, in order to protect their economic interests and constrain the violence of powerful individuals (including those within their coalition), they legislated new rules that would apply to virtually everyone in the commune, including elites. Granted, they also made use of identity rules to level the political playing field, but their legislative program was more impersonal and far-reaching than what came before it. Moreover, to ensure that enforcement would not spark vicious cycles of legal reprisals and counterreprisals, they hired a foreign military organization—embedded within the government—to enforce those rules. To borrow again from Wallis and North, the central insight here is that, in a premodern social order, the government gains its capacity to coerce through its capacity to coordinate—not the other way around, as most theories of state have assumed since Hobbes. The government’s primary function is to signify publicly the rules agreed upon by elites and their intent to abide by them.¹¹ Public enforcement by government officials is of secondary importance. The government can only legitimately coerce elites when they have broken a rule that all agreed, at least in theory, was to their collective benefit.

Again, this experiment with more impersonal institutions did not transform the basic logic of the social order. In this respect, the experience of the Italian communes is well within the historical norm. As a recent set of case studies suggests, elites have difficulty enforcing impersonal rules and opening political access because these are inherently destabilizing activities.¹² When the social order itself is predicated on exclusion and identity rules, elites have an obvious personal incentive to retain their privileges and can legitimately claim that relinquishing them would undermine stability. As a result, elites in limited access orders have tended to replace each other periodically through history rather than transition to open access. This seems to have been the case in the Italian communes, as popular coalitions fell victim to factional infighting and the reins of government passed once again to a handful of powerful families. Nonetheless, the innovations in policing spawned by this historical moment endured, leaving a powerful new coercive tool in the hands of rulers of signorial and territorial states.

¹¹ Wallis and North, “Coordination and Coercion.”

¹² Lamoreaux and Wallis, eds., *Organizations*.

Works Cited

- Churchill, David. *Crime Control and Everyday Life in the Victorian City: The Police and the Public*. New York: Oxford University Press, 2018.
- Cohen, Stanley. *Visions of Social Control: Crime, Punishment, and Classification*. Cambridge: Polity Press, 1985.
- Dubber, Markus. *The Police Power: Patriarchy and the Foundations of American Government*. New York: Columbia University Press, 2005.
- Geltner, Guy. *Roads to Health: Infrastructure and Urban Wellbeing in Later Medieval Italy*. Philadelphia: University of Pennsylvania Press, forthcoming.
- Hay, Douglas, and Francis G. Snyder. "Using the Criminal Law, 1750–1850: Policing, Private Prosecution and the State." In *Policing and Prosecution in Britain, 1750–1850*, edited by Douglas Hay and Francis G. Snyder, 3–52. Oxford; New York: Clarendon Press; Oxford University Press, 1989.
- Johnston, Les, and Clifford D. Shearing. *Governing Security: Explorations in Policing and Justice*. London: Routledge, 2003.
- Lamoreaux, Naomi R., and John Joseph Wallis, eds. *Organizations, Civil Society, and the Roots of Development*. Chicago: University of Chicago Press, 2017.
- Moore, R.I. "Medieval Europe in World History." In *A Companion to the Medieval World*, edited by Carol Lansing and Edward D. English, 563–80. Malden, Mass.: Wiley-Blackwell, 2009.
- Neocleous, Mark. "Theoretical Foundations of the 'New Police Science.'" In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus Dirk Dubber and Mariana Valverde, 17–41. Stanford: Stanford University Press, 2006.
- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Rev. ed. Cambridge: Cambridge University Press, 2013.
- Rhodes, R.A.W. "The New Governance: Governing without Government." *Political Studies* 44 (September 1, 1996): 652–67.
- Van der Heijden, Manon et al., eds. *Serving the Urban Community: The Rise of Public Facilities in the Low Countries*. Amsterdam: Uitgeverij Aksant, 2009.
- Wallis, John Joseph, and Douglass C. North. "Coordination and Coercion: The Nature of Rules, Governments, States, and Social Dynamics." Working Paper, 2013.

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