

A Game of Norms

Migrants, Crime, and Criminal Justice in Early Modern Bologna

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Abstract

While the treatment of migrants in the criminal justice system has recently been designated one of the most relevant research directions in the history of crime, scholarship on the period before the nineteenth century and outside of the United Kingdom or the Netherlands remains few and far between. This article offers an initial exploration of the role of offenders' geographical origins in the administration of criminal justice in an early modern Italian city. It scrutinizes patterns of prosecution and sentencing for three distinct types of crime (pauper mobility, theft, and violence) brought before Bologna's secular criminal court in the seventeenth and eighteenth centuries. By doing so, it reveals both the variability of repertoires of inclusion and exclusion across the spectrum of criminalized behaviours, and the different stages at which a migrant past could pose a disadvantage in the personalized game with the norms we call early modern criminal justice.

Introduction

The treatment of migrant groups within the criminal justice system has recently been designated one of the most relevant future research directions in the history of crime.¹ This assessment can be considered a response from the scientific field to the past decades' political and media discourses about immigration control as matters of criminal justice and homeland security, as well as overarching stereotypical concerns about

1 M. van der Heijden, 'Future research on women and crime', *Crime, Histoire & Sociétés* 21 (2017) 123–133, 124, <doi:10.4000/chs.1833>.

crime-prone ‘deviant foreigners’.² With immigration, ethnicity, crime, and criminal justice as subjects of continuing contemporary debate, the importance of a thorough consideration of legal inequalities in times past has come into clear focus. So far, the historical relationships between mobility, foreignness, and crime have been explored predominantly as part of nineteenth- and twentieth-century processes of modernization, largely foregoing the period before the 1800s. This inattention is an oversight, since local authorities already actively engaged with the regulation of migration before the rise of nation-states.³ Early modern cities should be viewed as nodes of constant movement, in which urban authorities endeavoured to attract wanted migrants and to repel those classified as unwanted migrants through a range of local institutions. Vagrants and beggars – especially those with a migration background – bore the brunt of institutional exclusion from the sixteenth century onward, as a Europe-wide ‘anti-pauperism offensive’ increasingly associated begging with dishonest living, bad habits, and delinquency.⁴ By the eighteenth century, the enlarged ‘floating population’ had made public order and the control of migrant and minority groups a major policy concern.⁵

The relevance of vagrants and beggars in migration policies notwithstanding, recent scholarship has pointed to important disparities in bargaining positions bound up with the dynamic distinction between wanted and unwanted migrants.⁶ All types of migrants were at times confronted with the ‘repertoires of inclusion and exclusion’, if not by differential treatment by institutions of control and repression, then by legal, social, cultural, and/or financial barriers

2 R. Belli, J.D. Freilich, G.R. Newman, ‘Migration and crime’, in: M. Natarajan (ed.), *International crime and justice* (Cambridge 2010) 19-25, 20.

3 H. Greefs and A. Winter, ‘Introduction’, in: H. Greefs and A. Winter (eds), *Migration policies and materialities of identification in European cities. Papers and gates, 1500-1930s* (New York 2018) 3-23, 4-5; M. De Koster and H. Reinke, ‘Policing minorities’, in: P. Knepper and A. Johansen (eds), *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 268-284, 269-272, <doi:10.1093/oxfordhb/9780199352333.013.11>.

4 De Koster and Reinke, ‘Policing minorities’, 269-270; F. Giusberti, ‘La città assistenziale. Riflessioni su una sistema piramidale’, in: *Forme e soggetti dell'intervento assistenziale in una città di antico regime* (Bologna 1986) 13-29, 14-15; M. Tosti, ‘I poveri di fronte alla povertà. Mendicizia, criminalità e mobilità in alcuni recenti studi’, *Archivio Storico Italiano* 145 (1987) 467-477, 471.

5 L.P. Moch, *Moving Europeans. Migration in Western Europe since 1650* (Bloomington 1992) 88; De Koster and Reinke, ‘Policing minorities’, 270-272; P. Avallone, ‘Il controllo dei “forestieri” a Napoli tra XVI e XVIII secolo. Prime note’, *Mediterranea* 3 (2006) 169-178.

6 B. De Munck and A. Winter, ‘Regulating migration in early modern cities. An introduction’, in: B. De Munck and A. Winter (eds), *Gated communities? Regulating migration in early modern cities* (Burlington 2012) 1-22, 7.

to prospective members of institutions such as citizenship, guilds, associational life, and public or private poor relief.⁷ Among the arenas where distinctions between wanted and unwanted were negotiated were early modern criminal courts. It seems plausible that a hardening stance towards migrants translated to a disadvantageous position for many categories of migrants within the criminal justice system, yet the current body of scholarship is not conclusive about the extent and forms of this disadvantage. Ariadne Schmidt's recent study of various cities in the Dutch Republic found migrants overrepresented among convicted offenders during large parts of the seventeenth and eighteenth centuries and moreover noted important differences in sentencing between local-born defendants and migrants.⁸ For eighteenth-century Antwerp, Gerrit Verhoeven observed that migrants were summoned as suspects slightly more often than their local counterparts, though he argued that these differences were relatively small.⁹ Peter King conversely observed no systematic conviction biases against migrant communities in late eighteenth- and early nineteenth-century London, but he did argue that specific groups might face serious discrimination depending on the contexts and in relation to certain types of crimes.¹⁰

This article presents an initial in-depth exploration of the role of notions of foreignness and settledness in repertoires of exclusion in the administration of criminal justice in an early modern Italian city. Even though analyses of the treatment of migrants within the criminal justice system before the nineteenth century outside of the United Kingdom and the Netherlands are few and far between, there are ample reasons to suspect practices of differentiation. Italian cities' criminal bylaws reveal judges' significant discretionary space, emphatically allowing them to weigh defendants' and plaintiffs' so-called personal qualities alongside factors such as cause, place, and time of the crime when passing judgment.¹¹ Furthermore, mechanisms of hegemonic and

7 Greefs and Winter, 'Introduction', 4; De Munck and Winter, 'Regulating migration in early modern cities', 3.

8 A. Schmidt, *Prosecuting women. A comparative perspective on crime and gender before the Dutch criminal courts, c. 1600-1810* (Leiden 2020) 95, 104, <doi:10.1163/9789004424913>.

9 G. Verhoeven, 'How do these foreigners blend in? Migration and integration in late eighteenth-century Antwerp (1715-92)', *Cultural and Social History* 13 (2016) 161-177, 174, <doi:10.1080/14780038.2016.1166410>

10 P. King, 'Immigrant communities, the police and the courts in late eighteenth and early nineteenth-century London', *Crime, Histoire & Sociétés* 20 (2016) 1-32, 25, <doi:10.4000/chs.1639>.

11 *Bando generale dell'illustrissimo, e reverendissimo sig. Benedetto card. Giustiniano legato di Bologna, pubblicato alli 23. di Giugno, & reiterato alli 24. di Luglio 1610* (Bologna 1610) 72.

negotiated justice continued to complement each other throughout the early modern period.¹² As a consequence, the highly personalized character of justice, in which all parties had personal qualities either restricting or enforcing their rights, is considered one of the major defining elements of Italy's early modern justice system.¹³ What the influence was of migrant status in this 'personalized game with the norms', is a question that has so far received too little scrutiny.¹⁴ The importance of this question is only heightened by characterizations of early modern Italian cities as relatively open towards immigrants, with admittance to various important urban resources and institutions such as citizenship, guilds, and local welfare institutions resting not on provenance, but on settledness as demonstrated by enrollment in city guilds, possession of real estate, prolonged residence, or marriage to a local.¹⁵ Some scholars have nevertheless contended that migrants were among those most touched by judicial rigour and legislative oppression in early modern Bologna.¹⁶ This observation renders a closer look at the treatment of migrants by the criminal court all the more pertinent.

What shape did exclusion take before Bologna's early modern criminal court? How and under which circumstances did migrant status affect patterns of prosecution, sentencing, or access to instruments of conflict settlement? While vagrancy and begging may have been among the most obvious and best-examined forms of unwanted pauper mobility, this article aims to deepen our understanding of the treatment of migrants within the early modern criminal justice system by exploring the mechanisms of exclusion across three different types

12 P. Broggio, *Governare l'odio. Pace e giustizia criminale nell'Italia moderna (secoli XVI-XVII)* (Rome 2021); O. Niccoli, 'Rinuncia, pace, perdono: Rituali di pacificazione della prima età moderna', *Studi storici* 40 (1999) 219-261; A. Bettoni, 'Fama, shame punishments and the history of justice in the sixteenth and seventeenth centuries', in: J. Rowbotham, M. Muravyeva and D. Nash (eds), *Shame, blame and culpability. Crime and violence in the modern state* (London 2013) 32-42.

13 R. Ago, 'Una giustizia personalizzata. I tribunali civili di Roma nel XVII secolo', *Quaderni Storici* 34 (1999) 389-412, 408-409.

14 A notable exception is D. Rizzo's work on violence in late eighteenth- and nineteenth-century Rome, 'Forestieri nelle pratiche di giustizia. Opportunità e rischi (Roma, secoli XVIII-XIX)', in: A. Arru and F. Ramella (eds), *L'Italia delle migrazioni interne: Donne, uomini, mobilità in età moderna e contemporanea* (Rome 2003) 131-159.

15 E. Canepari, 'Who is not welcome? Reception and rejection of migrants in early modern Italian cities', in: Winter and De Munck (eds), *Gated communities?*, 101-115, 103; B. Zucca Micheletto, 'Documents and local networks. Monitoring migrants and workers in eighteenth-century Turin', in: Greefs and Winter (eds), *Migration policies and materialities of identification*, 87-110; S. Cerutti, R. Descimon and M. Prak, 'Premessa', *Quaderni Storici* 30 (1995) 281-286.

16 C. Casanova, 'Povertà e assistenza nell'Italia settentrionale dell'età moderna: A proposito di un libro di Marina Garbellotti', *Archivio Storico Italiano* 167 (2009) 127-136, 129.

of crimes: the aforementioned pauper mobility, along with theft and violence. Taken together, these crimes represented the overwhelming majority of the criminal court's caseload in Bologna, and each crime category reveals distinct ways in which foreignness could prove to be a liability, both in social interactions and relationships with the institutions of repression and control.

Similar to their use in the court documents, the terms 'migrants', 'non-locals' and 'foreigners' are used loosely and interchangeably in this article, but it is geographical origin that is taken as the basis for inquiry in this article. For analytical purposes three categories are distinguished: those born in the city of Bologna, individuals born somewhere in Bologna's papal legation (*legato*) and hinterland, and foreigners from farther away. Mentions of geographical origin are furthermore examined in conjunction with more context-dependent nuancing terms used in the criminal court records such as *forestiero/a* (literally foreigner, though commonly used to denote either those who were not subject to papal rule or simply those not born in the city), *contadino/a* (literally meaning peasant, but used to designate those from Bologna's hinterland) or *incola Bononien* for settled resident aliens.¹⁷

This article sets out with a discussion about the institutional dynamics of inclusion and exclusion in early modern Bologna. Against the backdrop of other important institutions involved in the control of migrants in the city, it centers above all on Bologna's early modern criminal court, the *Tribunale del Torrione*, and on the ways in which legislative and administrative practices advanced the social and legal construction of foreignness during the seventeenth and eighteenth centuries.¹⁸ The subsequent sections scrutinize the role that migrant status played in various stages of the judicial process in cases of recorded pauper mobility, theft, and violence. These crimes are presented in order of social alarm in regards to foreigners (high to low) and the crime's share of the total caseload (low to high). By examining these types of crimes alongside each other, this article demonstrates

17 The meaning of the word *forestiero* is also discussed by Zucca Micheletto, 'Documents and local networks', 89; Canepari, 'Who is not welcome?', 102; Rizzo, 'Forestieri nelle pratiche di giustizia', 132.

18 All criminal court records have been collected based on samples of the years 1655, 1675, 1705, 1725, and 1755. General statements about the shares of different crime categories investigated by the criminal court are based on sample 1 (910 *processi*), while the more in-depth scrutiny of the impact of foreignness in this article is based on samples 2a, 2b, and 3 (1007 denunciations and 281 *processi*). For more information on the sources and samples used, see S. Muurling, *Everyday crime, criminal justice and gender in early modern Bologna* (Leiden 2021) 17-20, 44-107, 227-228, <doi:10.1163/9789004440593>.

that biases against foreigners did not solely affect the especially marginalized group of the wandering poor, but could also constitute an important disadvantage to other segments of the migrant population.

Geographical origin and the criminal justice system in Bologna

Each Italian city had its own dynamics of inclusion and exclusion, depending to a large degree on the prevalence and dominant type of migration, involving a variety of different institutions. Continual population movement was a regular feature of life in Italy as elsewhere in early modern Europe, yet Bologna was no migrant city par excellence. As a provincial capital, Bologna was the second-largest city in the Papal States after Rome and served as an important economic, industrial, cultural, and administrative center for both the city itself and its surrounding countryside of 4,000 square kilometers. While known for being a home to one of Europe's oldest universities, Bologna first and foremost relied economically on the production of textiles within its city walls, employing large segments of the urban population.¹⁹ As such, the city drew in students and professors and, as an important center of trade and transit, provided temporary shelter to large numbers of travellers, but it did not belong to the important pull areas for temporary migration or agricultural mobility on the Italian peninsula and did not experience significant demographic growth during the seventeenth and eighteenth centuries.²⁰ We may therefore surmise that any heightened social alarm concerning migrants during this time rested less on practical necessity than on altered anxieties and changing repertoires of exclusion.

For early modern Bologna we may distinguish three important types of institutions engaged with the control of migrants in one way or another: a quasi-governmental network of charitable institutions operating under the heading *Opere Pie*; a civic magistracy of the *Ufficio*

19 A. Guenzi, 'L'identità industriale d'una città e del suo territorio', in: A. Prosperi (ed.), *Storia di Bologna nell'età moderna (secoli XVI-XVIII)* (Bologna 2008) 449-524, 464-465.

20 C. Rose, *A renaissance of violence. Homicide in early modern Italy* (Cambridge 2019) 9, <doi:10.1017/9781108627948>; M. Sanfilippo, 'Il fenomeno migratorio italiano. Storia e storiografia', in: A. Miranda and A. Signorelli (eds), *Pensare e ripensare le migrazioni* (Palermo 2011) 245-272; J. Lucassen, *Migrant labour in Europe 1600-1900* (London 1987) 259; D. Carpanetto and G. Ricuperati, *L'Italia del settecento* (Bari 2008) 23; L. Mocarrelli and G. Ongaro, *Work in early modern Italy, 1500-1800* (Cham 2019) 32.

delle Bollette; and Bologna's secular criminal court, the *Tribunale del Torrione*. Though each had distinct aims – the last sought to secure public order; the second to register and tax ‘foreigners, Jews and prostitutes’; and the first to provide assistance to those deserving of it – boundaries of authority and jurisdiction between these and other institutions remained blurry and often overlapped.²¹ What the impact of these institutions' control was on the everyday lives of migrants during the seventeenth and eighteenth centuries has so far received little scholarly scrutiny. A general trend in the attitude of charitable institutions may be discerned by taking into consideration the century before it. Most of Bologna's sixteenth-century welfare services appear to have excluded the mobile poor, generally speaking preferring to expulse them instead.²² Only those living in the city for longer than three years could be granted access to the poorhouse, for example, and only after a request of admittance had been made by a local parish priest, reputable neighbours, or relatives. Final decision of admittance would be based on ‘worthiness’ – a nebulous appraisal that included among other criteria potential recipients' settledness. However, many of the more privileged conservatories refused to accept foreigners altogether and would only provide assistance if one parent had been born in Bologna.²³ Research on charitable institutions in Trento, Modena, Verona, and Florence indicate that origin and settledness probably only rose in prominence as criteria for access to assistance during the seventeenth and eighteenth centuries.²⁴

The aforementioned institutions did not only control aspects related to newcomers' integration into the urban fabric, but were also responsible for the social construction of foreignness itself. All foreigners were required to register and purchase a license from the *Ufficio delle Bollette*, allowing them to stay in the city for a certain number of days. Failing to obtain such a license could result in a hefty ten lire fine or a vagrancy charge. Like other civic governing bodies, the *Bollette* made the public aware of its regulations through proclamations called *bandi*. Each year, over a hundred *bandi* were proclaimed by

21 L. Tedoldi, *La spada e la bilancia. La giustizia penale nell'Europa moderna (secc. XVI-XVIII)* (Rome 2008) 103-112.

22 N. Terpstra, *Cultures of charity. Women, politics and the reform of poor relief in Renaissance Italy* (Cambridge 2013) 73, 88.

23 L. Ciammitti, ‘Fanciulle, monache, madre. Povertà femminile e previdenza a Bologna nei secoli XVI-XVIII’, in: *Arte e pietà. I patrimoni culturali delle Opere Pie* (Bologna 1980) 435-520, 486.

24 M. Garbellotti, *Per carità. Poveri e politiche assistenziali nell'Italia moderna* (Freccese 2016) 48-49, 52, 63.

trumpeters and pasted to walls and buildings across the city.²⁵ They reminded inhabitants and passersby of everything from regulations concerning the upcoming fair and the sale of bread to tightened weapons bans and the registration of foreigners. To what extent the Bollette was able to monitor and enforce compliance remains unclear, and there are some indications that responsibility for some of this institution's mandates was reassigned to the criminal court from the seventeenth century onward.²⁶ Nevertheless, it has been argued that the existence and repeated communication of the regulations in itself differentiated foreigners from the rest of the Bolognese community.²⁷ The public reading of the Bollette's proclamations did not only reflect but also reinforced social order through the construction of foreigners as distinctive groups. It encouraged the members of those groups as well as the rest of the population to conceptualize them as such.

Another institution that played an important role in the control of migrants in the context of public order was Bologna's early modern criminal court, the *Tribunale del Torrone*. The Torrone was established around the 1530s following the conquest of the city of Bologna by Pope Julius II and the expulsion of the Bentivoglio oligarchs; it existed until 1796, when it was dissolved after the French invasion.²⁸ Named the 'Tribunal of the Great Tower' after the site of its court and prison in Bologna's main square, the Torrone replaced the medieval podestarial court and gradually swallowed jurisdiction over circa 4,000 square kilometers of surrounding countryside villages. Its judges were directly appointed by the pope and dealt with grave crimes such as homicide, counterfeiting, and lèse majesté, yet also oversaw myriad minor brawls and infractions of the city's decrees on public order. Each year, the criminal court's notaries produced between 2,000 and 3,000 denunciations – the initial complaint about a crime to a local official of the court – and some 300 to 400 *processi*, that is, formal investigations.²⁹ Between the mid-seventeenth and mid-eighteenth centuries, about two thirds of the denunciations concerned violent encounters of some sort, while the investigation dossiers reveal a considerable prosecutorial

25 R.M. San Juan, *Rome: A city out of print* (Minneapolis 2001) 23-56.

26 V.G. McCarthy, *Prostitution, community, and civic regulation in early modern Bologna* (PhD thesis, University of Toronto, 2015) 122-127.

27 *Ibid.*, 132.

28 G. Angelozzi and C. Casanova, *La giustizia in una città di antico regime. Il tribunale del Torrone di Bologna (secc. XVI-XVII)* (Bologna 2008) 111-115.

29 *Ibid.*, 433.

interest in offenses against property (30 percent of investigated cases) and public order (23 percent), alongside violence (42 percent).³⁰

Criminal court records feature defendants' and plaintiffs' geographical origins in multiple ways. For these individuals themselves, their *patria* or *paese* (i.e., the place from where they themselves or their ancestors originated, as well as the customs and language associated with it) was an important marker of personal identity.³¹ Roman trial dossiers reveal a multitude of foreigners continuing to use their own dialects despite their long stay in the city.³² Nicknames identifying migrants to Venice by their birthplace furthermore suggest that communities also viewed their foreignness as part of their identities.³³ From the magistrates' point of view, a non-Bolognese origin was commonly written down next to the defendant's name on the cover of the investigation dossier; this practice is a clear indication of the importance attached to this detail. Diligent questioning about one's migration past was also part of many interrogations, particularly in the case of a property offense. Establishing a defendant's *fama*, their reputé and social worth, was an important aim of such interrogations. One's occupation, property, wealth, social network in the city as well as one's provenance constituted credibility's building blocks. Bologna's criminal bylaws explicitly gave judges the discretion to take such 'personal qualities' into account when passing judgement.³⁴

How did the criminal court's consideration of geographical origin manifest itself in practice? Legal inequalities could take many different forms; though, lacking much evidence to the contrary at present, all draw on the assumption of disadvantage. For example, we may witness a growing body of repressive legislation targeting particular types of foreigners seemingly disproportional to their share of the population. Foreigners might have been overrepresented among defendants, suggestive of biased prosecution policies, may be prosecuted for different types of offenses than locals, or may have received different

30 For a more elaborate discussion of the differences between the denunciations and the investigation dossiers and the underlying dynamics responsible, see Muurling, *Everyday crime, criminal justice and gender*, 44-107.

31 E.S. Cohen and T.V. Cohen, *Daily life in Renaissance Italy* (Santa Barbara 2019) 314.

32 C. Vasta, "Vostra Signoria era al tempo dell'uva quando venni à Roma, io sono forastiera de qua": Stranieri e forestieri negli incartamenti processuali del tribunale criminale del governatore di Roma (secoli XVI-XVII), in: S. Cabibbo and A. Serra (eds), *Venire a Roma, restare a Roma: Forestieri e stranieri fra Quattro e Settecento* (Rome 2017) 345-359, 354-355.

33 M. Chojnacka, *Working women of early modern Venice* (Baltimore 2001) 94.

34 *Bando generale dell'illustrissimo, e reverendissimo sig. Benedetto card. Giustiniano*, 72.



Illustration 1 People's social standing could be partially determined by dress. Pictured: a peasant woman, a gentlewoman, and a bride according to Bolognese fashion, engraving by Bartolomeo Grassi c. 1585. (source: Collection Rijksmuseum (<http://hdl.handle.net/10934/RM0001.COLLECT.443424>).

types of sentences. For foreign victims, access to justice may have been impeded by either a lack of knowledge of local institutional mechanisms or prosecutorial disregard by the authorities. Alternatively, foreign defendants were perhaps required to meet additional demands by magistrates or plaintiffs to settle grievances through infrajudicial means. Gender may further complicate these matters: did the magistrates' judicial paternalism benefit female migrants compared to their male counterparts and, if so, under which circumstances, and how?³⁵

Until further scholarly scrutiny takes place, answers to any of these questions raised will remain tentative. With the systems of control mainly targeting poor and unsettled migrants, it is clear that not all migrants were alike in the eyes of the law.³⁶ The following discussion

35 C. Casanova, 'Crimini di donne, giudici benevoli (Bologna, XVI-XVIII secolo)', *Historia et Ius* (2016) 1-11.

36 S. Feci, 'Cambiare città, cambiare norme, cambiae le norme: Circolazione di uomini e donne e trasformazione delle regole in antico regime', in: A. Arru and F. Ramella (eds), *L'Italia delle migrazioni interne: Donne, uomini, mobilità in età moderna e contemporanea* (Rome 2003) 3-31, 9.

of suspicious mobility, theft, and violence recorded in the Torrone's casebooks between the mid-seventeenth and mid-eighteenth centuries will demonstrate that repertoires of exclusion furthermore differed substantially for different categories of crimes.

Vagrancy, begging, and suspicious behaviour

Among the types of criminalized behaviours most commonly associated with migration are vagrancy and begging. Legislation for these concerns were ample, entrusted to a rich collection of proclamations and edicts between the sixteenth and eighteenth century in lieu of a systematized and organized legislative corpus that would only come into existence a century later.³⁷ Through the aforementioned *bandi*, Bologna's authorities' desire to control various forms of mobility left a considerable paper trail. A steady stream of proclamations issued by the Bollette provided a yearly reminder to newcomers as well as the keepers of inns, stables, and lodging houses of the hefty fines prescribed for not reporting their arrival or for accommodating an unregistered foreigner.³⁸ In addition to the perpetual reiteration of the requirement for travellers to obtain licenses, further seventeenth- and eighteenth-century *bandi* addressed specific groups and particular issues related to undesired mobility. Most bans focusing on *forestieri* targeted the lowly segments of the populace. Not uncommonly captured under the same heading as *forestieri* were vagrants, beggars, gypsies, the unruly (*discoli*), *scandalosi*, thieves, bandits, rogues, criminals (*malviventi*), and harbourers of delinquents, as well as idlers (*oziosi*).³⁹ This last category speaks to the authorities' judgment of the lack of a stable job as dangerous to society, a propensity recorded in a range of documentary sources from the sixteenth century onward.⁴⁰ Idleness was commonly associated with gambling, relations with prostitutes, and general social disorder, and immediately generated suspicion.

37 E. Grantaliano, 'Le categorie sociali e l'emarginazione', in: M. Calzolari, M. Di Sivo and E. Grantaliano (eds), *Giustizia e criminalità nello Stato pontificio: Ne delicta remaneant impunita* (Rome 2001) 93-121, 94.

38 E.g. Collection Bandi Merlani, 1655, R.M. XXII antica 233; 1755, R.M. LIII antica 48. Similar orders were issued elsewhere in Italy too, see Chojnacka, *Working women of early modern Venice*, 85.

39 E.g. Collection Bandi Merlani, 1639, R.M. XVI/2 225 antica 225; 1663, R.M. XXIV antica 137; 1696, R.M. XXXIII antica 354; 1702, R.M. XXXVI antica 10; 1751, R.M. LII antica 171.

40 Grantaliano, 'Le categorie sociali e l'emarginazione', 95-96.

As reflected by the *bandi*, concerns about idleness as the germ of crime and evil grew during the eighteenth century when, among other things, the unfolding textile crisis rendered increasingly large parts of the population un- or underemployed.⁴¹ In Naples and Mantua, as elsewhere in Europe, the idle and wandering poor aroused significant alarm and caused them to be officially categorized as dangerous individuals during the second half of the eighteenth century.⁴² According to Bologna's 1756 *Bando Generale* – the city's summation of criminal bylaws issued at the beginning of a new legateship – all *forestieri* who could not provide for themselves were required to leave the city within five days on penalty of corporal punishment or a five-year sentence to the galleys, effectively criminalizing foreigners' unemployment.⁴³ This progressive marginalization forebode what was to come during the nineteenth century, when concerns about disaffiliation and disintegration heightened further due to increased mobility, urban growth, state formation, and the development of modern systems of policing and administrative institutions.⁴⁴

Evidence of the control of undesirable mobility came before Bologna's early modern criminal court as offenses against public order under the heading of *contravvenzione bannimenti*: violations of the public bans. Public order offenses made up about a quarter of the Torrone's caseload at the investigation level and included a great variety of crimes such as arms bearing within city walls, insults or threats to officials, forgery, participation in or organization of illegal dances, and gambling. In the year 1755, just over a third of the investigations into public order pertained to the control of specific mobility-types of offenses, such as vagrancy, wandering around aimlessly at night, acting or looking 'suspicious', and violation of banishment. The share of these 'mobility crimes' was similar to that of the control of arms – generally considered one of the pillars of public order legislation – which signified the importance of this issue in the eyes of the authorities.⁴⁵

41 G. Angelozzi and C. Casanova, *Don Antonio e i suoi giudici: Storie criminali fra foro laico e foro ecclesiastico (Bologna, fine XVII-metà XVIII secolo)* (Bologna 2009) 3.

42 G. Alessi, *Giustizia e polizia: Il controllo di una capitale, Napoli 1779-1803* (Naples 1992) 7; A. Agri, *La giustizia criminale a Mantova in età Asburgica: Il Supremo Consiglio di Giustizia (1750-1786)* (PhD thesis, Università degli Studi di Milano-Bicocca, 2015) 38-39, 198-199.

43 *Bando generale della legazione di Bologna e suo contado, fatto pubblicare li 12. ottobre 1756 dall'eminētiss., e reverēdiss. sig. cardinale Fabrizio Serbelloni, legato a latere di detta città* (Bologna 1756) 116.

44 De Koster and Reinke, 'Policing minorities', 272.

45 Rose, *A renaissance of violence. Homicide in early modern Italy*, 186.

Even though the court records include examples of locals arrested for vagrancy because of their unemployment, foreigners appear to have been particularly vulnerable to end up before the criminal court. Some scholars have argued that when people were caught begging by Bologna's sixteenth- and seventeenth-century lawmen, natives were escorted to charitable institutions while non-locals were returned to one of the city gates rather than brought before the court.⁴⁶ Even if the practices of policing had changed by the mid-seventeenth century, non-locals appear to have predominated among the perpetrators of these undesirable mobility-related offenses brought within Bologna's criminal court's purview. Two approximately twenty-year-old men from Riolo nearby the city of Imola seeking employment as servants were arrested near the city's Merchant Hall for looking 'suspicious' in March 1655.⁴⁷ Had they not been able to present a letter of recommendation from their former employer, the Bolognese *signore* Giulio Guidalotti, they would have probably faced a harsh penalty. Bolognese offenders were not absent from the docket, but there were often aggravating circumstances leading up to their arrest. In 1725, two Bolognese brothers Gaetano and Alessandro Nosi were arrested for begging from three or four gentleman.⁴⁸ One of the brothers was a bricklayer and seller of spirits, the other a seller of used goods who had not worked ever since he had been released from prison three months prior. The latter admitted to always having had *mala fama*, bad repute, and that they had gone begging 'to the effect of not doing bad things.' Clearly viewed as bad apples, the two were banished from the city on penalty of a five-year sentence to the galleys. Nevertheless, around 60 percent of cases of vagrancy, begging or acting 'suspicious' were not native to Bologna. The majority of offenders were foreigners and came from places such as Venice, Bergamo, and Modena, or were simply referred to as 'gypsies' (*zingari*). Another handful came from rural or suburban communities within the territory of Bologna but outside of the city walls, such as borgo di San Pietro, Crevalcore, and borgo di San Giuseppe.

Possible sanctions for offenses such as vagrancy, begging, and acting 'suspicious' were quite severe. According to the *bandi*, they ranged from public corporal punishment such as whipping for female offenders and the *strappado* for men to a five-year sentence to perform forced labour

46 Terpstra, *Cultures of charity: Women, politics and the reform of poor relief in Renaissance Italy*, 92.

47 Archivio di Stato di Bologna (hereafter ASBo), Tribunale del Torrione, Atti e processi (hereafter Torrione), book 6653, folio 286-292.

48 ASBo, Torrione, book 7869-2, booklet 25.

in the papal galleys.⁴⁹ In practice, however, banishment and criminal injunctions were more common outcomes. Banishment was not mentioned as an option for any crime in any of the *bandi*, but it was nevertheless regularly used to moderate strict laws and was the most common punishment for serious crimes throughout the seventeenth and eighteenth century.⁵⁰ The convicted suffered expulsion from the entire papal legation of Bologna for lengthy, often indeterminate periods of time, until the offender was pardoned by the legate. Another unmentioned yet important sanction was the *precetto*: a conditional fine or sentence that would be reverted if the offender upheld the requirements defined in the injunction.⁵¹ For mobility-related offenses recipients could be instructed to better their lives and ‘apply themselves’ work-wise, that is, to find work (*precetto de se applicando*). Cesarina Casanova argued that banishment was almost only imposed for such crimes in seventeenth-century Bologna when offenders were deemed incorrigible.⁵² The aforementioned brothers Nosi are a good example of this last category.

A closer look at the Bolognese court records reveals that sentencing options were not weighed solely by ideas about incorrigibility, but that they also bore distinctions related to geographical origin and settledness. Beatrice Zucca Micheletto’s examination of Turinese prisoner registers between 1760 and 1762 suggests that defendants’ social network and embeddedness in the community was pivotal in being able to successfully defend oneself against allegations such as begging and vagrancy.⁵³ Statements from an employer or the parish priest were important to prove the good standing and settledness of the accused. Perhaps related to the difficulties of obtaining such testimonies for recently settled or unsettled foreigners, or due to discriminatory policies, sentencing in Turin diverged significantly. While locals were made to swear an oath, non-locals were told to leave the city within three days.⁵⁴ A similar distinction can be found in the Bolognese court records: foreigners were nearly always banished for any of these pauper mobility offenses when lacking a license of rightful stay. Only if they could provide proper documentation legitimizing their stay in

49 *Bando generale della legazione di Bologna e suo contado*, 115-119.

50 C. Nubola, ‘Giustizia, perdono, oblio: La grazia in Italia dall’età moderna ad oggi’, in: K. Härter and C. Nubola (eds), *Grazia e giustizia: Figure della clemenza fra tardo medioevo ad età contemporanea* (Bologna 2011) 11-42, 14; M. Bellabarba, *La giustizia nell’Italia moderna* (Bari 2008) 84.

51 Muurling, *Everyday crime, criminal justice and gender in early modern Bologna*, 74-75.

52 Casanova, ‘Povertà e assistenza nell’Italia settentrionale dell’età moderna’, 129.

53 Zucca Micheletto, ‘Documents and local networks’, 93.

54 *Ibid.*, 94.

the city, did they stand half a chance of being released without facing expulsion.⁵⁵ In the absence of aggravating circumstances such as verbal or physical aggression, locals and to a certain extent also the inhabitants of nearby towns or villages within the *legato* had significantly better odds of receiving only a surety or criminal injunction (*prechetto*), ordering them to better their lives and to find work. As such, sentencing patterns underscore the conditionality of a foreigner's welcome.

The Torrone's casebooks furthermore delineate how the administration of justice was affected by gender norms. Most individuals denounced for vagrancy, begging, and acting suspicious were men: women only made up between 10 and 20 percent of the accused based on the type of sources examined. Lacking information about the size or composition of the migrant population in Bologna between the seventeenth and eighteenth centuries, it is difficult to conjecture whether this difference is due to a lower female migration rate. What we do know is that women in general were more readily considered deserving poor.⁵⁶ While migration or vagrancy was a prevalent response to dire socioeconomic circumstances by single men, charity and public assistance had women and children as its particular recipients.⁵⁷ This situation held true for most of early modern Europe, but Italy had a remarkably expansive network of specialized semi-public charitable institutions aimed specifically at helping, supervising, and correcting at-risk or 'problematic' women in various stages of their lives.⁵⁸ Archival records from other Bolognese institutions suggest that in the seventeenth century wandering 'at-risk' women were liable to be picked up from the streets at night and sequestered in institutions such as the S. Gregorio conservatory, rather than being prosecuted by the criminal court.⁵⁹ The same mechanism is observable in the eighteenth century – albeit with an increased punitive edge – when, after the famines of 1764-1767, Bologna's parishes requested that women caught roaming the streets at night would be remanded to an unspecified

55 E.g. ASBo, Torrone, book 7028, folio 260-264.

56 Moch, *Moving Europeans*, 91.

57 Tosti, 'I poveri di fronte alla povertà', 475.

58 S. Cohen, *The evolution of women's asylums since 1500. From refuges for ex-prostitutes to shelters for battered women* (Oxford 1992) 3, 8; Terpstra, *Cultures of charity*, 17; Garbellotti, *Per carità*, 121-142; S. Muurling, J. Kamp and A. Schmidt, 'Unwed mothers, urban institutions and female agency in early modern Dutch, German and Italian towns', *The History of the Family* (2020) 1-18, <doi:10.1080/1081602X.2020.1767677>.

59 A. Giacomelli, 'Conservazione e innovazione nell'assistenza bolognese del Settecento', in: *Forme e soggetti dell'intervento assistenziale in una città di antico regime* (Bologna 1986) 163-302, 233-234.



Illustration 2 Punishment of a criminal for blasphemy, theft, bearing prohibited arms, and drunkenness. Etching by Bartolomeo Pinelli from *Nuova raccolta di cinquanta costumi incisi all'acquaforte pittoreschi* (Rome: Giovanni Scudellari, 1817).

house of corrections for a month's worth of forced labour on bread and water.⁶⁰ None of these enclosures necessitated the administrative attention of the criminal court, which could help explain women's scant appearances among this type of offenses in the Torrone's casebooks.

A particular type of control only exerted on women's mobility concerned their nighttime roaming (*vagare la notte*). Here the criminal court records reveal a distinctly discriminatory edge to the institutional logics of gendered indulgence related to foreignness. On 6 May 1755, Bologna's lawmen encountered and arrested two women who had been wandering the streets together during the second hour of the night.⁶¹ One of them, Giovanna Sacchetti, was a widowed maker of gloves, lace, and socks, who was native to the city. The other was a migrant woman called Maria Damiani, who was born in Fano, a town by the Adriatic Sea some 160 kilometers away from Bologna. Both women were described as being women of ill repute (*poco buon nome*), and Giovanna had even been incarcerated for the same offense before. Nevertheless, Giovanna 'only' received an injunction to not roam the streets at night

60 *Idem*, 260.

61 ASBo, Torrone, book 8171-2, booklet 24.

again on penalty of public whipping, while Maria was expelled from the city without even having been interrogated. Clearly, the Torrone differentiated not only based on notions of gender, but did so also in conjunction with ideas about geographical origin and foreignness.

Theft

In addition to the various forms of pauper mobility, the Bolognese authorities also considered property offenses grave violations of public and private order. Bologna's seventeenth-century criminal bylaws prescribed severe penalties for 'theft and other similar offenses', such as a place in the pillory combined with expulsion from the city for a first-time thief, to a 10-year sentence to the galleys or death by hanging for thefts of objects of great value or for repeat offenders.⁶² This attitude towards property offenses hardened during the eighteenth century, a development that we may at least in part attribute to the growing social concern about the increasing unemployment and impoverishment of the population due to the textile industry crisis.⁶³ The heavily revised criminal bylaws of the mid-eighteenth century defined in much more detail what was understood as theft, which categories were distinguished, and what the corresponding sentences were to be.⁶⁴ For a first-time theft of an item worth 50 to 100 lire, a sentence of five years to the galleys was prescribed, though this sentence was easily raised to a longer or unlimited period or death by hanging if aggravating circumstances were present. The bylaws specifically mention that this rigorous punishment was necessitated by the social dangers of theft: the growing human malice and proclivity for this offense required such sentencing, because without it, it would be impossible to cope with the 'impetuous torrent of thieves'.⁶⁵ Many of these perpetrators consisted of being locals, but the fear was that the city would swell with wandering poor from outside city walls seeking to line their pockets.

On an annual basis, this concern about thieving and other crimes against property led to several hundreds of denunciations to the criminal court and an average of around 80 criminal investigations in

62 *Bando generale dell'illustrissimo, e reverendissimo sig. Benedetto card. Giustiniano*, 26-29.

63 G. Angelozzi and C. Casanova, *La giustizia criminale a Bologna nel XVIII secolo e le riforme di Benedetto XIV* (Bologna 2010) 142-147.

64 *Bando generale della legazione di Bologna e suo contado*, 39-62.

65 *Ibid.*, 39.

the city of Bologna; just under a third of the total caseload. The property crimes reported to the Torrione ranged from violation of the terms of seizure; to property damage to animals, trees, shops, or houses; to robbery, cutpursing or pickpocketing, swindle, and theft. Theft (*furto*) consisted of the successful or attempted theft of goods or animals of values large or small, with or without breaking in, during the day or at night. This category furthermore included receiving stolen goods, since neither the criminal bylaws nor the court records' own classifications differentiated between acts of stealing and receiving.⁶⁶ Combined, three quarters of the identified male and female property offenders who came before the Torrione had been accused of involvement in theft.

Economic conditions, experiences of poverty, and high levels of mobility have played important roles in the scholarly thinking about the contexts of thieving in the early modern period. Most historians tend to agree that theft was an important survival strategy employed by the poor in times of need, and that fluctuations in property crimes were tied to economic conditions in one way or another, but that it is difficult to pinpoint the exact nature of this relationship.⁶⁷ Various scholars have furthermore stressed an important link between high mobility, economic vulnerability, and theft. Inspiration for this association can be found in Olwen Hufton's concept of the 'economy of makeshifts', which described a wide range of disparate activities and survival strategies employed by the poor to complement temporary and poorly paid jobs, ranging from gleaning, begging, and subsistence migration to drawing on formal and informal relief, as well as various types of marginal criminality such as prostitution and petty theft.⁶⁸ In his well-known contribution on women's criminality in eighteenth-century Surrey, John Beattie contrasted the socioeconomic profile of thieving women to those who came before the court for violence. While most of the women accused of crimes against the person were married,

66 G. Angelozzi and C. Casanova, *Donne criminali: Il genere nella storia della giustizia* (Bologna 2014) 96; *Bando generale della legazione di Bologna e suo contado*, 53-55.

67 J.M. Beattie, 'The pattern of crime in England 1660-1800', *Past & Present* 62 (1974) 47-95, 91; A.M. Kilday, 'Criminally Poor?' Investigating the Link Between Crime and Poverty in Eighteenth Century England', *Cultural and Social History* 11 (2014) 507-526, 507, <doi:10.2752/147800414X14056862572023>; G. Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991); J. Eibach, *Frankfurter Verhöre: Städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn 2003) 93-99.

68 O. Hufton, *The poor in eighteenth-century France, 1750-1789* (New York 1974) 259; A. Tomkins and S. King, 'Introduction', in: S. King and A. Tomkins (eds), *The poor in England 1700-1850: An economy of makeshifts* (Manchester 2003) 1-38, 12-13.

prosecutions for theft revolved around single and widowed women.⁶⁹ Similarly, Peter King found that over two thirds of female property offenders in late eighteenth-century London were single or widowed, and over half of them were born outside the metropolis.⁷⁰ Scholarship by Manon van der Heijden and Jeannette Kamp on early modern towns in Holland and in Frankfurt am Main has similarly unearthed an image of young female migrant thieves.⁷¹

Evidence for a similar large role of the mobile poor among thieving in Italy is less straightforward. An examination of thefts in fourteenth-century Venice revealed that a staggering 70 percent of those prosecuted were low-rank, non-native Venetians precariously rooted in urban society, though the majority came from the Republic's hinterland.⁷² For Bologna, Trevor Dean argued that thieves were mostly settled inhabitants rather than transients in the mid-fourteenth century, but he observed an undetermined 'high proportion of foreigners' among theft indictments a century later.⁷³ While the causes for this shift remain unexplored, it seems likely that it represents revised prosecutorial ambitions of a recently consolidated urban oligarchy as much as an altered reality of thieving. By the mid-seventeenth and eighteenth centuries, married locals rather than single migrants appear to have been prominent among Bologna's thieves. Though information is patchy, two thirds of the offenders were married, and about the same proportion (67 percent) was indicated to be *Bononien*: Bolognese. Between one in five and one in four thieves originated from outside of Bologna's 'papal legation' (*legato*), most commonly from neighbouring cities such as Imola, Ferrara, Modena, and Florence, though occasionally also from places farther away, such as Rome and even as far away as Lorraine

69 J.M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8 (1975) 80-116, 101-102, 106-107.

70 P. King, 'Female offenders, work and life-cycle change in late-eighteenth-century London', *Continuity and Change* 11 (1996) 61-90, 69, 72, 75.

71 M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016) 74; J.M. Kamp, 'Female crime and household control in early modern Frankfurt am Main', *History of the Family* 21 (2016) 531-550, 538; Schmidt, *Prosecuting women*, 97, 102, 113.

72 S. Piasentini, '*Alla luce della luna*': *I furti a Venezia, 1270-1403* (Venice 1992) 40-53, 95-104; L. Molà and R.H. Mueller, 'Essere straniero a Venezia nel tardo Medioevo: Accoglienza e rifiuto nei privilegi di cittadinanza e nelle sentenze criminali', in: S. Cavaicchi (ed.), *Le migrazioni in Europa secc. XIII-XVIII* (Florence 1994) 839-851, 839, 850.

73 According to Dean, 'only' 12 percent of the female thieves and 21 percent of their male counterparts came from outside of Bologna and its territory in the mid-fourteenth century. Unfortunately the proportions of individuals from the city and the legato are not distinguished. T. Dean, 'Theft and gender in late medieval Bologna', *Gender and History* 20 (2008) 399-415, 404, 410.

and ‘somewhere in Switzerland’.⁷⁴ In the small textile town of Prato, the large majority of criminal defendants in the eighteenth century similarly consisted of locals who were by and large born in the city.⁷⁵ As a middle to large city that did not belong to the important pull areas for temporary migration or agricultural mobility on the Italian peninsula, it does not seem incongruous that Bologna’s thieves largely came from the local population.⁷⁶

The somewhat underwhelming share of foreigners among the much-feared ‘impetuous torrent of thieves’ does by no means mean that one’s origins were no concern to the criminal court. In the early modern period in general, and in a society under papal rule in particular, laws formalized in edicts and ordinances were accompanied by expectations to take to heart the authorities’ commands seeking to regulate individuals’ moral qualities.⁷⁷ The assessment of one’s moral fiber, one’s repute (*fama*), behaviour, and relations, was therefore a perennial component in investigations by the criminal court. More so than any other type of crime, thefts led magistrates to systematically inquire into the backgrounds and ‘quality’ of offenders: into their provenance, their marital status, living situation, occupation, earnings and possession of property, familial and amicable relations, as well as former arrests or convictions.

Out of all these characteristics, credibility in theft cases was chiefly conditioned on the ability to sustain oneself through work or other income, as well as one’s integration into the community rather than place of birth per se. Nevertheless, references in the criminal court records to individuals being identified as suspects of theft primarily because they were foreigners reveal that not being native to the city garnered a base level of distrust requiring counterevidence of good local repute.⁷⁸ As such, not only *forestieri* (foreigners) and *contadini* (signifying inhabitants from Bologna’s hinterland) but also settled foreigners labelled as *incola Bononien* were explicitly distinguished from native city dwellers in the criminal court records. Especially the latter two groups painstakingly sought to claim their respectability through elaborate accounts on their long stay, steady occupation, possessions, and relations in the city, as well as witness testimonies on behalf of their personal or family honour.

74 For a discussion of the difficulties pertaining to the sources, see Muurling, *Everyday crime, criminal justice and gender in early modern Bologna*, 194-195.

75 Zuliani, ‘Reati e pene nel vicariato di Prato’, 312.

76 Sanfilippo, ‘Il fenomeno migratorio italiano’; Lucassen, *Migrant labour in Europe 1600-1900*, 259.

77 Angelozzi and Casanova, *La giustizia in una città di antico regime*, 451.

78 *Ibid.*, 455-457.

Plaintiffs – foreign and local – similarly called on their relations to testify to their honourability and credibility to support their claims.⁷⁹ For defendants, on the other hand, favourable testimonies by reputable neighbours and parish priests about their good standing were essential in moderating the harsh and life-changing sentences otherwise awaiting them – a system that disadvantaged unsettled newcomers and those otherwise precariously rooted into Bolognese society.

Practices of differentiation culminated in the sentencing of theft. Overall, banishment was the most common outcome of theft investigations in seventeenth- and eighteenth-century Bologna, while a sentence to several years of forced labour in the papal fleet (for men) or the workhouse (for women), and a discharge with a surety or a criminal injunction (*precetto*) were also by no means exceptional. A defendant's 'quality' affected patterns of prosecution and sentencing in various ways. Magistrates were often compelled to absolve female offenders before even being formally interrogated, if they had one or more male co-offenders due to paternalistic notions of women's minority and subordination, particularly in theft cases.⁸⁰ The few non-Bolognese female thieves in the sampled criminal court records unfortunately render it impossible to assess the specific impact of their origins on this process.

As a whole, however, *forestieri* had a substantially greater chance of receiving a banishment verdict (63 percent of defendants) than someone from the *legato* (38 percent) or locals, who were only banished from the city for larcenous activities in 13 percent of the cases. Moreover, foreigners' odds of being discharged with 'only' a criminal injunction or surety were also unfavourable: while nearly one third (35 percent) of the locals were discharged either with a conditional sentence or put on surety bond, this share diminished to 13 percent of the offenders from the *legato* and to a mere 5 percent of *forestieri*. Both of these outcomes must be viewed in relation to the magistrates' judgment about who was deemed worthy of trust and who was not. After all, releasing individuals back into the world with a *precetto* or surety meant trusting in defendants' compliance with the terms and conditions set out by the criminal courts based on the pressures of social relations as much as financial motivation. Banishment, on the other hand, was regarded a suitable option for when the grounds for this

79 See, for example, ASBo, Torrone, book 7028, folio 84-91; book 7028-2, booklet 7; book 7077-2, booklet 12.

80 Muurling, *Everyday crime, criminal justice and gender in early modern Bologna*, 186; Angelozzi and Casanova, *Donne criminali*, 239-242.

social trust were believed to be insufficient. In this sense, a migration background clearly constituted a notable disadvantage.

Violence

The last category of crimes examined here is interpersonal violence. While violence was considered to be a regular feature of everyday life among many early modern Western societies, scholarship has commonly described Italy as particularly violent.⁸¹ At least until the mid-eighteenth century, the criminal court dockets of many Italian towns brimmed with acts of physical violence.⁸² This was also the case in mid-seventeenth to mid-eighteenth century Bologna, where nearly half of all investigation dossiers (40 percent) and a staggering 70 percent of urban criminal complaints concerned violent offenses against the person. A small proportion of these violent encounters recorded in the criminal court's casebooks were of a lethal nature (about one percent of the complaints and one fifth of the investigation dossiers), but the lion's share consisted of assaults, as well as petty brawls and scuffles that posed – as contemporary surgeons phrased it – little or no danger to life. Still, homicide rates were substantially higher in Bologna and other Italian towns than those observed in England and Wales, the Low Countries, or Germany.⁸³ Tentative explanations for this prevalence of violence in early modern Italy range from new regimes' lack of political legitimacy to the persistence of an honour culture, in which violence was considered both legitimate and sometimes obligatory to assert, defend,

81 P. Blastenbrei, *Kriminalität in Rom 1560-1585* (Tübingen 1995) 283-284; M. Eisner, 'Long-term historical trends in violent crime', *Crime and Justice* 30 (2003) 83-142, <doi:10.1086/652229>; For a good discussion of the historiography on early modern Italy's culture of violence, see Rose, *A renaissance of violence*, 13-31.

82 S.K. Cohn, 'Women in the streets, women in the courts, in early Renaissance Florence', in: *Women in the streets: Essays on sex and power in Renaissance Italy* (Baltimore 1998) 16-38, 26; C. Vasta, *Criminal women: Women's violence in sixteenth and seventeenth-century Rome* (Unpublished paper, 61th Annual Meeting of the RSA, Berlin, 26-28 March 2015) 6; Angelozzi and Casanova, *Donne criminali*, 73, 79; Evidence for a rising importance of property offences can be found in L.S. Sardi, 'Analisi statistica sulla criminalità nel 1700 (reati e pene) con riguardo allo Stato senese', in: L. Berlinguer and F. Colao (eds), *Criminalità e società in età moderna* (Milaan 1991) 327-476, 355-368, 376-377; D. Zuliani, 'Reati e pene nel vicariato di Prato prima e dopo la <<Leopoldina>> (1781-1790)', in: L. Berlinguer and F. Colao (eds), *Criminalità e società in età moderna* (Milan 1991) 307-327, 310.

83 M. Eisner, 'From swords to words: Does macro-level change in self-control predict long-term variation in levels of homicide?', *Crime and Justice* 43 (2015) 65-134, 80-81, <doi:10.1086/677662>.

and win masculine honour and escape shame.⁸⁴ The accompanying long continuity of peacemaking procedures as a legitimate and legally sanctioned response to violence is also argued to have played a significant role in preserving a social system based on violent confrontation.⁸⁵

Though some scholars might judge these efforts largely ineffective, premodern Italian states had long attempted to contain violent behaviours. An array of statutes, civil oaths, bans, and renewals of night curfews delineated acts of violence as deviant behaviours throughout the early modern period.⁸⁶ Bologna's criminal bylaws also pronounced a disapproval of a wide range violent behaviours and prescribed harsh sentences, even for instances where no blood was drawn. For homicide, the 1756 bylaws prescribed a capital punishment, and the wounding of another person without any danger to life could result in a sentence to five years' rowing in the papal fleet. Even insults and derogatory banter could yield three pulls of the *strappado*.⁸⁷

In practice, however, statutory penalties were often deemed too harsh to apply and were consequently readily replaced by banishment. A substantial portion of violent offenders could furthermore expect to receive a pardon if peace had been made with the victims or their families, which was believed to have restored the social equilibrium. In Bologna in 1600, nearly 40 percent of convicted killers received a pardon.⁸⁸ Another one third of defendants saw the cases against them cancelled, because they were truly deemed not guilty, because there was insufficient evidence, or, importantly, because a peace agreement had been signed. Cases of pettier, non-lethal violence were overwhelmingly cancelled because the plaintiff had withdrawn the complaint following an unmentioned settlement (*rinuncia*).⁸⁹ The Torrone did not only allow but actively encouraged such settlement of these violent disputes,

84 S. Carroll, 'Revenge and reconciliation in early modern Italy', *Past and Present* 233 (2016) 101-142, 105-106, 132, <doi:10.1093/pastj/gtwo45>.

85 M. Cavarzere, 'At the crossroads of feud and law: Settling disputes in early modern Tuscany', in: S. Cummins and L. Kounine (eds), *Cultures of conflict resolution in early modern Europe* (Surrey 2016) 51-74, 55, 69; D. Boschi, 'Knife fighting in Rome, 1845-1914', in: P. Spierenburg (ed.), *Men and violence: Gender, honor and rituals in modern Europe and America* (Columbus 1998) 128-158, 150-153.

86 F. Ricciardelli, 'Violence and repression in late medieval Italy', in: S.K. Cohn and F. Ricciardelli (eds), *The culture of violence in Renaissance Italy* (Florence 2012) 55-80, 68; M. Becker, 'Changing patterns of violence and justice in fourteenth- and fifteenth-century Florence', *Comparative Studies in Society and History* 18 (1976) 281, 282.

87 *Bando generale della legazione di Bologna e suo contado*, 11-38, 108-110.

88 Rose, *A renaissance of violence*, 91.

89 Niccoli, 'Rinuncia, pace, perdono'.

aiming above all to re-establish social peace by reconciling the two parties and reintegrating the culprit into society.⁹⁰

This judicial indulgence of peacemaking in cases of violence bore great consequences for the treatment of defendants. For most types of crimes, an encounter with the law was a highly gendered process due to paternalistic notions about culpability and the appropriateness of particular types of punishments. In the case of violence, however, the use of the criminal court as a site for conflict resolution smoothed out many of these differences. Women could make up to one third of non-lethal violent offenders and the harm that they caused could be significant. Yet, like their male counterparts, over two thirds of cases of violent conflicts were settled through peacemaking practices, curtailing some of the key moments of differentiation by the authorities. For migrants similar processes were at play. Theft was a focal point of penal repression and the concomitant scrutiny of defendants' 'qualities' rendered not only the impoverished but also non-locals vulnerable to banishment. The prevalence of bottom-up processes of conflict resolution among the bulk of violent crimes, however, generated little need for the authorities to go over defendants' backgrounds with a fine-tooth comb. While many complaints to the court included some information on how offenders dressed, what their occupation was, and where they resided, indications of a culprit's origins were often lacking. Eighteenth-century Roman casebooks also only rarely recorded the assailants' origins.⁹¹ Clearly, a violent offender's provenance was considered neither a boost to a charge nor a central feature of identification for either plaintiffs or magistrates.

When the criminal court records did include information on the origins of violent offenders, they provide no indication of any overt overrepresentation of foreigners. A qualitative examination of 174 criminal court investigations from sixteenth- and seventeenth-century Rome suggests a steady presence and even a preponderance of migrants among defendants, plaintiffs, and witnesses.⁹² The casebooks of Bologna's criminal court similarly reveal the presence and involvement of migrants in all possible roles, though not to the same degree as in

90 According to Rose and others, the court records suggest that the Torrone's magistrates applied a great deal of pressure on the victims and their kin to accept their enemies' peacemaking attempts. See Rose, *A renaissance of violence*, 117; G. Angelozzi and C. Casanova, *La nobiltà disciplinata: Violenza nobiliare, procedure di giustizia e scienza cavalleresca a Bologna nel XVII secolo* (Bologna 2003) 57.

91 Rizzo, 'Forestieri nelle pratiche di giustizia', 135.

92 Vasta, 'Stranieri e forestieri negli incartamenti processuali', 350.

the capital. For the seventeenth century, it has been argued that most homicide victims in Bologna were locals and that their killers were as well.⁹³ These demographics of fatal violence were mirrored by their non-lethal counterparts: around 80 percent of the cases where the assailant's or the victim's origins were recorded indicate that they were native to Bologna. No clear-cut gender differences can be observed, less skewed as these cases of violence were by paternalistic forms of top-down control.

The Torrone's casebooks furthermore highlight that violent offenders did not generally belong to the dispossessed and rootless sections of society – as has been suggested for theft – but that they represented a broad section of society.⁹⁴ The group of violent offenders included servants, hawkers, and struggling textile workers, to shopkeepers, skilled artisans, and even some public officials – a characteristic that did not differ substantially between local and migrant offenders. Two thirds of the female perpetrators of violence were furthermore married; this feature, too, did not distinguish the local-born and migrant population. Finally, as has also been found for other early modern towns, violence in Bologna did not commonly challenge presiding hierarchies and structures of social and political authority.⁹⁵ This situation meant that the victims of violence by and large belonged to similar social groups as their offenders, regardless of their provenance, and that violence generally erupted from their daily affairs, such as social discourtesies, money issues, drunkenness, and competition for work.

Far from being marginalized to the social periphery, violence was a cultural repertoire shared by people of both genders and all social stripes – as was the litigation that brought these violent encounters within the purview of the criminal court.⁹⁶ While the vast majority of plaintiffs were local, complaints by *forestieri* reveal an awareness and active use of local mechanisms and institutions of justice. One baker's assistant from Milan had not been in the city for longer than a month when he made his way to the court to complain about a violent altercation with his co-worker following an insulting remark about

93 Rose, *A renaissance of violence*, 187-188.

94 For a more elaborate discussion of the social profiles of violent offenders, see Muurling, *Everyday crime, criminal justice and gender in early modern Bologna*, 145-156.

95 G. Schwerhoff, 'Social control of violence, violence as social control: The case of early modern Germany', in: H. Roodenburg and P. Spierenburg (eds), *Social control in Europe: Volume 1, 1500-1800* (Columbus 2004) 220-246, 227-228; Rose, *A renaissance of violence*, 36.

96 Schwerhoff, 'Social control of violence, violence as social control: The case of early modern Germany', 227, 241.

his colleague's craftsmanship.⁹⁷ In like manner, research on Rome has argued that one's foreignness was neither an impediment to victims seeking access to justice, nor in the subsequent practices of conflict resolution.⁹⁸

While proving no obstacle to participation in either violence or peacemaking so perennial in determining court procedures, geographical origin was not wholly inconsequential. Bologna's aforementioned theft prosecutions have underscored the importance of favourable testimonies by reputable character witnesses in a defense as evidence for settledness and the possible heightened difficulty of obtaining such testimonies for *forestieri*. For violence, the custom of bottom-up processes of conflict resolution evened out some of these disadvantages, though not all, as an intriguing case against Andrea Stanzani from 1674 illustrates.⁹⁹ Officially taken in by the chief constable for vagrancy, Andrea contended that it was actually a violent dispute and peacemaking gone wrong with his neighbour Giuliano that had led to this predicament. Following a dispute about the locking of the shared entryway, Giuliano had threatened Andrea with a harquebus, and Andrea had filed a criminal complaint about this violent altercation with the Torrone. Well-acquainted with Giuliano, the chief constable had afterwards started badgering Andrea about making peace with his neighbour and withdrawing the complaint, followed by the warning 'or else...' Andrea, a labourer, married father of six, and resident alien (*incola Bononien*) himself, said he would be willing to make peace, but that he required an additional guarantee and promise of Giuliano to engage in good behaviour and keep the peace explicitly 'because he is a foreigner, who is Modanese'. In these somewhat subtler ways preconceptions about foreignness and reliability did play an important role in criminal justice processes.

There are some indications that the authorities' attitudes towards violent foreigners hardened over time, just as it had done in regards to migrants in general. Italian criminal courts often reinforced peacemaking practices in cases of non-lethal violence by issuing a *precetto de non offendendo*, a criminal injunction requiring offending parties to keep the peace on penalty of a hefty fine, corporal punishment, or sentences such as banishment or forced labour in the galleys. Throughout the early modern period these injunctions rose in

97 ASBo, Torrone, book 7869-2, booklet 4.

98 Rizzo, 'Forestieri nelle pratiche di giustizia', 134.

99 ASBo, Torrone, book 7028, folio 113-115.

importance: in the Bolognese casebooks their share doubled between 1655 and 1755. By 1850, the *precetto* was among the measures most enacted by the Roman criminal courts, but it was issued notably less often to foreigners, who instead disproportionately faced expulsion.¹⁰⁰ While the Bolognese courts did not employ these penal measures in such a discriminatory manner a century earlier, it does not seem unlikely that such a shift also occurred there. Fuelled by economic woes and political fears, scholars have noted a rise of police control over all sorts of facets of daily life as well as a rigorous regulation of mobility from the early nineteenth century onward. According to Steven Hughes, a first step in every private or public quarrel was for the police to determine the origins of those involved: those who did not have Bolognese citizenship were allegedly swiftly sent packing.¹⁰¹ In which ways this hardened attitude towards foreigners affected the administration of criminal justice remains to be scrutinized.

Conclusion

In early modern societies, attitudes towards newcomers were as complex as they are today. On the one hand, local authorities welcomed and encouraged certain types of migrants, especially skilled artisans, diplomats, and wealthy travellers. Even so, newcomers, both temporary and permanent, also posed a threat to civic security. Fears of migrants' laying claim to local resources or potentially joining the city's lawless underclass loomed large in the burgeoning legislation specifically addressing *forestieri*. It is tempting to take the treatment of foreign vagrants, beggars, and suspicious individuals as prime evidence for a routine disparagement of migrants by early modern criminal courts. Not only did legislation clearly seek them out, non-locals were furthermore clearly overrepresented among prosecutions of these crimes and faced harsh penalties. The highly unequal treatment and sentencing of the two women caught for wandering outside at night (*vagare la notte*) – one native to the city and the other not, one ordered to behave better and the other banished without even being interrogated – constitutes one of the most flagrant examples of discriminatory practices according to origin captured in Bologna's criminal court records. However, a

100 Rizzo, 'Forestieri nelle pratiche di giustizia', 144, 152.

101 S. Hughes, *Crime, disorder, and the Risorgimento: The politics of policing in Bologna* (Cambridge 1994) 67, <doi:10.1017/cb09780511523366>.

reduction of all migrants' experiences to this type of disdain would be a veritable oversimplification.

The examination of the prosecution and sentencing of foreigners among different categories of crimes reveals a more diverse reality. Court records suggest that Bologna's criminal justice system had a basic judicial bias against foreigners which manifested itself in excessive legislative burdens, disproportional prosecution, and/or disparate sentencing. Both the wandering poor and migrant thieves found themselves at the sharp end of penal rigour. Non-locals undeniably bore the brunt of the prosecution of vagrancy, begging, and suspicious behaviour, but they ultimately represented only a small proportion of the offenders brought within the purview of the criminal court. There is no evidence for a similar overrepresentation of foreigners among the far more plentiful theft prosecutions, but they were clearly disadvantaged compared to local thieves when it came to sentencing. Foreignness was *de facto* likened to unsettledness, unless overruled by counterevidence. In the personalized game with the norms, proof of settledness was therefore pivotal in mitigating defendants' non-local origins. Sentencing patterns were embedded in a moral economy that relied on trust. Discrepancies in banishment sentences and criminal injunctions in theft cases underscore that many non-locals found this conditional social trust more difficult to maintain when involved in crimes associated with economic precariousness.

Cases of violence bring to the fore particular institutional dynamics as yet another aspect of the repertoires of inclusion and exclusion. In early modern Bologna violence was the most common reason for an encounter with the law, but the importance of bottom-up processes of conflict resolution seemingly eliminated any clear differences between locals and non-locals in either prosecution or sentencing patterns. Without a similar strong top-down crackdown on offenders that we witnessed for thefts, people were able to find more leeway in practices of peacemaking in order to even out disadvantages that their so-called personal qualities might have brought forth. The considerable judicial inattention to defendants' geographical origins in the large bulk of cases of violence was mirrored by the criminal court's disregard of women as protagonists of crime in general. Various urban institutions kept many deviant women – local and migrant – away from the criminal court and therefore out of the records that this article has scrutinized. While some gender differences in the treatment of women have already

been distinguished, the further disentangling of their histories in an intersectional manner constitutes a pivotal task for future scholarship.

About the author

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