RELIGION, CONFLICT AND CRIMINAL JUSTICE IN 13TH AND 14TH CENTURY SIENA



LIDIA LUISA ZANETTI DOMINGUES

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Short abstract

This doctoral thesis is an in-depth comparison of lay and religious sources produced in Siena (1260-1330) on the topics of criminal justice, conflict and violence. Two main trends have been highlighted in the development of criminal justice in late medieval Italy. Firstly, that the practice of revenge was still popular among members of all social classes. Secondly, that crime was increasingly perceived as a public matter that needed to be dealt with by the government, and not by private citizens. These two aspects are partly contradictory, and the extent to which these models reflect the reality of communal justice is still open to debate. This thesis aims to shed light on this question through the contribution of religious sources. Recent works have highlighted the need to associate the study of political and judicial practices of conflict to that of religious elaborations - something that scholars have started attempting only very recently. The argument underlying this research is that religious people were an effective pressure group with regards to criminal justice, thanks both to the literary works they produced and their direct intervention in political affairs, and their contributions have not received the attention they deserve. The thesis suggests that the dichotomy between theories and practices of 'private justice' (e.g. revenge) and of 'public justice' (trials) should be substituted by a framework in which three models, or discourses, of criminal justice are recognised as present in late medieval Italian communes: in addition to the trends described above, also a specifically religious approach to criminal justice based on penitential spirituality should be recognised as an influence on the policies of the communes. This case study shows that, although the models were competing, they also influenced each other; and none of them managed, in this period, to eliminate the others, but they coexisted.

Long abstract

This thesis aims to provide an in-depth analysis of the themes of physical and verbal violence, conflict and its possible means of contrast and resolution (both infrajudicial, i.e. arbitration or other forms of peace-making, and judicial) in religious texts composed in Siena in the period 1260-1330, and to compare them to the other available Sienese sources dealing with these themes -in particular those produced by the local magistracies- from the same period. The *status quaestionis* in which this research is situated is the revision of the paradigm about the role of conflict and violence in the Italian communes that has been proposed in the last twenty years. Thanks to these studies, the culture of feuding and revenge, no longer considered a residual aristocratic practice, has been recognised as a fundamental component of the political education of the members of different social classes, and has been proposed as a phenomenon legitimised by communal legislation itself. At the same time, research on late medieval criminal justice has highlighted how this period can be considered as a turning point in the passage from an accusatorial model of justice, and one in which crime was considered a 'private matter' between the criminal and the victim (and the groups they belonged to: kin, neighbourhood, friendship circle and political faction), to an inquisitorial model that was at the same time centred on the principle: 'it is of public interest that no crime goes unpunished'. The debate as to what extent these two models reflect the reality of communal justice is still open, especially as far as the legality of vendetta in the Late Middle Ages is concerned: there are works that cast doubts on whether the communes legally sanctioned an individual's right to retaliation. This thesis aims to shed light on this open historiographical question through the contribution of religious sources: recent studies of medieval concepts of peace, carried out mainly through the study of theological and homiletic sources, have highlighted an unfulfilled need to associate the study of political and judicial practices of conflict and peace-making to that of religious elaborations on the same themes. This methodological proposal allows me to open the investigation to a new set of questions stemming from the observation that there was an apparent deep contradiction between the duties imposed on an individual as a member of lay society and those springing from their membership in the *societas Christiana*. By carefully comparing different types of sources I therefore try to assess to what extent lay and religious discourses on violence and peace were conflicting or collaborating. Following the suggestions of Anglo-American scholarship on violence, I also adopt an approach that focuses more carefully on the role of emotions in disputes and on the interaction between spheres of public and privacy in conflict practices, two aspects that have not yet been analysed in depth in the study of 13th-century communal Italy.

As for the primary sources, particular attention is paid to hagiographies, a type of source hitherto used very seldom in the study of these themes for the Italian Middle Ages, but which has proved particularly interesting in the few cases in which it has been included in such research. 13th-century hagiography is indeed characterised by the increasing emphasis placed on the life of the saints, now placed more firmly in their social context, rather than on miraculous manifestations: in the case of urban saints from the Italian communes, this often translates into an active involvement of the holy figures in the political and social issues of the cities (e.g. factional strife, problems of economic ethics, promotion of a model of 'good citizen', creation of welfare institutions). For the period analysed in this thesis, the hagiographical corpus from Siena is one of the richest in Europe both in terms of quantity and of quality. The social influence of some of these saints, in particular the Franciscan tertiary Pier Pettinaio and the Dominican Ambrogio

Sansedoni, can be further investigated through a study of *laude*, papal bulls and the minutes from the General Council of Siena, which record their involvement in various capacities in the political life of the city. Another important type of source is represented by homiletic literature: also in this respect, the Sienese documentary landscape proves to be particularly abundant, since the collection of sermons from the same Ambrogio Sansedoni (1220-1287), still unpublished, offers the rare possibility of comparing hagiographies and homilies related to the same character. In addition to that, the unpublished collection attributed to the Franciscan Bindo Scremi, particularly interested in judicial matters, can offer another basis for comparison. The rich collection of city statutes promulgated in the period considered here and the minutes of the Consiglio Generale, the main political assembly of the commune, extant with few gaps from 1249, provide an insight on the stances of the political actors on the topic of violence and peace. Further information is gathered from the registers of the Biccherna, the financial office of the commune of Siena, which also preserve lists of condemnations and petitions for amnesties, the few judicial records preserved for this period (series Podestà and Capitano del Popolo, starting from 1291 and 1296 respectively) and local chronicles. This interdisciplinary research makes use both of a properly hagiographical methodology (a philological approach is used to determine the diffusion and the intended audience of the texts through a study of the manuscripts; the layering of meanings of the *topoi* is analysed in the hagiographical context) and of a historical one. Stimuli from new branches of historiography, in particular that of the history of emotions, have a central role in this research. The contribution of social sciences, in particular of religious and legal anthropology, criminology and sociology, is often used so as to build a theoretical framework to interpret the findings. Symbolic interactionism, that is, a sociological theory according to which individual identity is formed in the context of social interactions with others, occupies a central role in this thesis as a methodology that helps define the creation and disavowal of identities in which deviance featured as the main characteristic in late medieval Siena.

The argument underlying this thesis is that religious people (Mendicants, penitents and other people following a lifestyle that separated them to different extents from the laity) were an effective 'pressure group' with regards to the topics analysed here. This group has not hitherto been put under the spotlight it deserves while analysing important phenomena of communal life, such as the tendency of communal governments to present themselves as 'super partes' institutions placed above factional solidarities, the emergence of harsher penalty systems, and of communal 'politics of mercy' (e.g. the implementation of regular amnesties of poor prisoners or the creation of exceptions in favour of poor and/or ignorant criminals). The discussions of the city councillors of Siena, preserved in the registers of the Consiglio Generale, shed light on the encounter and clash between different exigencies expressed by different actors (or sometimes the same, but in different circumstances): religious appeals to forgiveness blended with stances originating from the rules of the 'culture of revenge', the necessity of preserving public order in the city, the ideological motivations of the local government, and the sense of 'righteous indignation', common to both Christian and secular logic before a breach of the socially accepted norms, which called for 'retributive compensation'. When the councillors discussed whether to call for an amnesty or not, when they vetted which prisoners could be considered worthy of release, when they deliberated whether to allow the citizens to play popular violent games in the Piazza del Campo, they were indeed tackling wider questions (i.e. what is the relation between mercy and justice in a just government, how to preserve harmony in the social body, what virtues the good citizen

should possess) that were in the same period central to the reflections of theologians and religious thinkers, too. The dichotomy, as it has been described so far, between theories and practices of 'private justice' (e.g. revenge) and of 'public justice' (trials) should be substituted by a framework in which three models, or discourses, of approaching criminal justice are recognised as present in the Italian communes: in addition to the 'culture of revenge' and to the ideology of public order, a specific penitential approach to criminal justice should also be recognised as an influence on the policies of the commune of Siena, as well as on other Italian communes and European political bodies. This case study shows that, although the systems were competing, they also influenced each other; and none of them managed, in the period taken into account here, to eliminate the others, but they kept coexisting.

Previous studies of 13th-century preachers and religious thinkers have postulated that the main contribution of these personalities to the transformations in the ideologies of communal governments and in the system of civic values was the introduction of Aristotelian political theory, with its emphasis on the concept of *bonum commune*. This thesis argues on the contrary that the main paradigm through which religious people reflected on violence and justice was the sacrament of penance. Because the latter had been shaped through judicial metaphors (the 'internal forum'), and because dyads such as private-public, justice-mercy, guilt-shame were central both in the discipline of penance and in lay reflections on punishment, this was the most apt instrument to influence society with regards to the themes of violence and criminal justice and propose solutions to the problem of interpersonal conflict.

The thesis includes an **Introduction,** devoted to a literature review of works on conflict, criminal justice and penitential spirituality in late medieval Italy, followed by a description and discussion of the sources. In a **first chapter**, the three models of approaching crime and violence are described, and differences and similarities between them are analysed. The commonality of the language used by different social actors to talk about violence, criminal justice and social harmony is identified as something that promoted exchanges between models. However, the chapter also highlights that, although models overlapped and the lay government tended to borrow concepts and ideas from penitential elaborations in order to promote ideas of peace and public order, the ultimate goals and visions that different social actors had were and remained different. **Chapter Two** builds on this by investigating how these different visions of society translated into the representation and promotion in the sources of different virtues, behaviours and emotions as the appropriate reactions to offences and violence. Attention is paid to the way religious people presented emotions and Christian virtues (in particular *humilitas, patientia* and *misericordia*) as strategic and 'manly' tools to ensure the positive conclusion of a conflict, and it is argued that such a 'practical' model of behaviour presented by religious actors was at least in part appropriated by the Sienese government in political decisions such as that of banning violent games, which were very popular in medieval Italy. In this chapter, the methodology of the relatively new field of the 'history of emotions' is applied to the central themes of the thesis, and it is argued that this constitutes a particularly fruitful avenue of research neglected so far by scholars of communal Italy. **Chapter Three** focuses on a comparison between religious and lay ideas of mercy, revenge and justice in 'programmatic' texts (mostly sermons and statutes). It aims to challenge the idea, expressed by some scholars of the Italian city-states, that communal justice was essentially vengeful in nature, by showing that, like in religious conceptions of justice, lay justice was also a polysemic concept that encompassed both ideas of revenge and mercy. The comparison also shows how communal elites made use

of religious ideas about divine justice in ways that were totally different from the original aims of the Mendicants, that is, to legitimise a higher degree of judicial violence by establishing parallels between divine and communal revenge, something about which the friars seem to have expressed concerns, albeit veiled. This highlights how religious elaborations on crime and violence were not just passively received by lay elites, but transformed to serve their own purposes. A final **fourth chapter** aims to check the practical influence of these theoretical elaborations in sources such as petitions, minutes of assemblies and court records. It suggests that, even though the values of the 'culture of revenge' were indeed still central in the education of late medieval Sienese, as suggested by previous scholars, 'private' revenge between individuals or families was not legalised, even though 'public' revenge could be legitimised by making reference to religious concepts, as seen in Chapter 3. It also provides examples of how the Mendicants directly influenced the Sienese to create spaces for mercy in the judicial system of the city, especially for the benefit of poorer citizens: such examples show, the thesis argues, that references to religious principles by communal governments in the Late Middle Ages were not entirely instrumental, but the result of an effective dissemination of ideas by the Mendicant orders. The chapter also shows the high level of 'legal consciousness' of the Sienese, including those who did not participate in the government of the city for reasons of gender or social class: in petitions for amnesties they were indeed able to manipulate effectively the three discourses of criminal justice described in this thesis to their own benefit, instead of limiting themselves to absorbing them passively.

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Note on Dates and Translations

In Siena the year began on the 25th of March, the Feast of the Annunciation, rather than on the 1st of January. In both the main body of the text and the footnotes, all dates have been adjusted to the modern calendar: hence, 17 January 1272 *more senensi* is rendered as 17 January 1273.

All translations from primary and secondary sources are mine, unless otherwise indicated. Place names are given in their modern Italian form, but when available, standard English translations have been adopted (e.g. Florence, not Firenze). Similarly, Latin personal names are transposed into modern Italian, except in the case of famous personalities for whom Anglicised translations or Latin denominations exist (e.g. Anselm of Canterbury, Thomas Aquinas).

List of Abbreviations

AASS	*Acta Sanctorum quotquot toto orbe coluntur,* Societé des Bollandistes, 68 vols., 1643-1925.
AFH	*Archivum Franciscanum Historicum*, Roma, 1908-.
AFP	*Archivum Fratrum Praedicatorum*, Roma, 1931-.
ASS	Siena, Archivio di Stato
BCI	Siena, Biblioteca Comunale degli Intronati
BS	*Bibliotheca Sanctorum,* Pontificia Università lateranense. Istituto Giovanni XXIII, 12 vols. + 3 appendixes, Roma, 1961-2013.
BSSP	*Bullettino senese di storia patria,* Siena, 1894-.
DBI	*Dizionario Biografico degli Italiani*, Istituto dell'Enciclopedia Italiana, Roma, 1960-.
PL	*Patrologia Latina*, ed. J.-P. Migne, 221 vols., 1844-1855.

Introduction

My thesis aims to provide an in-depth analysis of the themes of physical and verbal violence, conflict and its possible means of contrast and resolution (both infrajudicial and judicial) in religious texts composed in Siena in the period 1260-1330, and to compare them to the other available Sienese archival and printed sources dealing with these themes from the same period. The *status quaestionis* in which this research is situated is the revision of the paradigm about the role of conflict and violence in the Italian communes that has been proposed in the last twenty years. Thanks to these studies, the culture of feuding and revenge, no longer considered a residual aristocratic practice, has been recognised as a fundamental component of the political education of the members of different social classes, and proposed as a phenomenon legitimised by communal legislation itself. At the same time, research on late medieval criminal justice has highlighted how this period can be considered as a turning point in the passage from an accusatorial model of justice, and one in which crime was considered a 'private matter' between the criminal and the victim (and the groups they belonged to: kin, neighbourhood, friendship circle and political faction), to an inquisitorial model centred on the principle that the common good depended on the punishment of all criminal actions by the government and its agents. These two aspects of communal society appear as at least partially contradictory; and the debate as to the extent to which these models reflect the reality of communal justice is still open, especially as far as the legality of vendetta in the late Middle Ages is concerned. My project aims to shed light on this open historiographical question through the contribution of religious sources: recent studies of late medieval spirituality have highlighted the need, which historians have started to fulfil only in the last few years, of associating the study of political and judicial practices of

conflict and peace-making with that of religious elaborations on the same themes. This methodological proposal allows me to open out the investigation to a new set of questions, stemming from the observation that there was an apparent deep contradiction between the duties imposed on an individual as a member of lay society and those springing from their membership in the *societas christiana*. By carefully comparing different types of sources, I therefore aim to identify which lay and religious discourses on conflict, crime and their remedies (such as peace, justice and mercy) coexisted in the city of Siena between the 13th and the 14th century, and to assess to what extent they were conflicting or complementary. For this purpose I turn both to sources that have traditionally been used in the study of these themes, such as chronicles and statutes, and to documents that have not often been considered in studies about late medieval criminal justice, such as hagiographies and petitions for amnesty. Moreover, following the suggestions of Anglo-American scholarship on violence, I also adopt an approach that focuses more carefully on the role of emotions in disputes, and on the interaction between spheres of public and privacy in conflict practices, two aspects that have not yet been analysed in depth in the study of 13th-century communal Italy. The argument underlying this research is that religious people were an effective pressure group with regards to criminal justice, and their contributions have not received the attention they deserve. The dichotomy described so far between theories and practices of 'private justice' (e.g. revenge) and of 'public justice' (trials) should be substituted by a framework in which three models of approaching crime and conflict are recognised as present in the Italian city-states: in addition to the trends described above, a specifically religious approach to criminal justice, based on penitential spirituality (that is, the redefinition of the sacrament of penance after the Fourth Lateran Council, 1215), should also be recognised as an influence on the policies of the communes. My case study shows that, although these

models were competing, they also influenced each other; and none of them managed, in this period, to eliminate the others, but they coexisted.

In this Introduction, I will describe the historiographical context in which my thesis is situated, that is, the historiography on conflict and criminal justice in late medieval Italy and Europe on one hand, and that on late medieval spirituality on the other. I will highlight what the open debates in these fields are and how I hope to contribute to their clarification with my research. I will then explain the rationale of choosing Siena as a case study, by detailing the nature of the sources available for this city in the period 1260-1330 and explaining what sort of contribution they can offer to research on criminal justice in communal Italy. The documentation will be situated in the context of the political, social and religious history of Siena in this period. Finally, at the end of this Introduction, a chapter plan will detail the contents of the various sections of this thesis.

1. Historiographical Approaches

a. Studies on Conflict in Medieval Italy and Europe

Research on conflict, and in particular its sub-category of revenge, has been central in the last century in the fields both of history and of the social sciences. The picture presented by the different disciplines is however far from being uniform. If on the one hand social scientists (particularly anthropologists) have presented the practice of revenge and the centrality of honour in systems of male values of the communities where vendetta is a common custom as typical of Mediterranean societies and of the lower classes, on the other hand historians have, until recent times, connected revenge to

'Germanic' practices and aristocratic values.[1] Revenge and conflict seem to have become, in scholarly constructions, topics of choice to reflect on broader questions about identity and modernity. Scholars have analysed for instance whether we should see, as many do, vengefulness as a residue of a pre-modern and barbaric mindset to be eliminated, or rather as an ineradicable aspect of human nature that derives from the way our species evolved; and also whether conflict and violence are always synonymous with disorder and disruption, or constructive forces within society, too. Given the high cultural significance of such issues, it is understandable how, despite the quantity of new syntheses produced on the topics of revenge, violence and conflict, research in this field seems to be inexhaustible.[2]

From the 1970s, thanks also to the influence of legal anthropology, research on conflict in medieval societies abandoned an approach based on the idea that institutions had a fundamental role in the control of individuals' behaviour in disputes, and centred on the study of legislation and institutional regulation of violence. The focus became the interpersonal relationships, behaviours and values of the parties involved, and the variety of formal and informal practices of conflict and its resolution.[3] These studies have suggested that in medieval times conflict and revenge were used strategically and rationally to achieve a variety of goals and create or strengthen social bonds, and that extrajudicial or infrajudicial practices of conflict and peace-making were never

[1] Peristiany (ed.), *Honor and Shame* and Davis, "Honour and Politics in Pisticci", are the classics on 'Mediterranean honour' (I use short titles throughout for reasons of space. Full citations will be found in the bibliography); for revenge and social marginality see Miller, 'Lower Class Culture'; for vendetta as Germanic, Pertile, *Storia del diritto penale,* p. 14 and the works he cites; for the medievalists' interpretation of vendetta as part of an aristocratic ethos, see below, note 7.

[2] The bibliography is too vast to provide a complete list. Among the most recent and influential contributions to an overview of conflict and revenge in the Middle Ages see the collective volumes by Brown, Górecki (eds.), *Conflict in medieval Europe*; Barthélemy, Bougard, Le Jan (eds.), *La vengeance. 400-1200*; Throop, Hyams (eds.), *Vengeance in the Middle Ages*; and the collection of sources Smail, Gibson, *Vengeance in Medieval Europe*. For a more exhaustive bibliography see also Zorzi, 'I conflitti nell'Italia comunale'.

[3] The institution-based approach had its forerunner in Elias, *Über den Prozeß der Zivilisation*. Fundamental for the shift to a practice-based one was Comaroff, Roberts, *Rules and Processes.* The difference between the two will be further discussed in Chapter 1.

completely opposed to the action of courts, but rather engaged in a dialectical relationship with the official legal culture.[4] This shift seems to have encountered more resistance among scholars of the late medieval Italian communes, probably because, as suggested by Andrea Zorzi, the communes have been interpreted by many Italian and anglophone historians as forerunners of modern states, in which political life was strongly institutionalised.[5] Violence and factional conflict have been thus seen as residues of previous political cultures that the new elites (especially the *Popolo*, a heterogeneous political movement composed of sworn groups of artisans, merchants and other people who had managed to achieve economic success in the cities but were not included in the traditional governing classes, and who came to power in the second half of the 13th century) tried to curb by all possible means[6]. The cult of honour and the practice of feuding connected to it have therefore been associated by many with the military and aristocratic ethos of the *magnati*, the civic aristocracy that had traditionally ruled the communes until the accession of the *Popolo*, and whose exclusion from the principal institutional offices had been one of the main elements of the political programme of the latter.[7]

From the 1990s, however, a series of works by Andrea Zorzi and others has exposed the fact that a reliance on chronicles as the main sources in the study of revenge

[4] In this case, too, it is possible to offer only some examples of the copious production of historians focusing on a variety of historical and geographical contexts: for instance, Cheyette, 'Suum cuique tribuere'; White, 'Pactum... legem vincit et amor judicium'; Bossy (ed.), *Disputes and Settlements*; Geary, 'Vivre en conflit dans une France sans État'; Wickham, *Legge, pratiche e conflitti*. For additional bibliography refer to Zorzi, 'I conflitti nell'Italia comunale' and Brown, Górecki, 'What conflict means', in Brown, Górecki (eds.), *Conflict in Medieval Europe*.

[5] Zorzi, 'I conflitti nell'Italia comunale', pp. 7-8. For an example of this position see Ascheri, 'Beyond the Commune'.

[6] For a recent overview of studies on the *Popolo*, see Poloni, *Potere al Popolo*.

[7] On revenge as an attribute of the *magnati* see for instance Lansing, *The Florentine Magnates*, pp. 164-ff., pp. 184-ff. (Lansing later revised her position in the article 'Magnate Violence Revisited'); Maire-Vigueur, *Cavaliers et citoyens,* pp. 307-335. On the exclusionary politics of popular governments see Milani, *L'esclusione dal comune*. On the persisting influence of the *magnati* on communal politics, even after their exclusion, through the practice of judicial professions, see Menzinger, *Giuristi e politica nei comuni di popolo*.

is partially responsible for its association with the magnates, since this type of source was the typical repository of the popular legitimising rhetoric about the violence of civic aristocracy, and the consequent necessity of their exclusion from politics to protect peace and the 'common good'.[8] The analysis of a wider variety of archival sources has shown, on the contrary, that the resolution of conflicts through the use of private violence was an ordinary phenomenon, diffused among every social class.[9] In addition, Zorzi has shown that the idea that revenge was the appropriate response to violence or other forms of offence enacted by *inimici* (enemies) against oneself or one's circle of *amici*, that is, those to which one was connected by solidarity or family ties, was a fundamental part of the civic pedagogy of the Italian commune, as shown by an analysis of the works of some of the most important civic intellectuals of the period, such as Brunetto Latini.[10] Alberto Maria Onori's analysis of the insults found in private documents narrating episodes of conflict in the 14th-century Valdinievole, moreover, has shown that publicly insulting those who renounced the right to exert their revenge on enemies was a defamatory practice common among members of all social classes.[11] Scholars belonging to this historiographical school have stressed how this 'culture of revenge' was not disruptive of the social order. In their opinion the practice of feuding, as suggested by anthropologist Max Gluckmann, actually had an ordering function on human relations, since it prompted the parties involved to create alliance networks.[12] Revenge could therefore be at the origin of processes of social inclusion that ultimately limited violence within society.[13] Another

[8] Zorzi, 'Politica e giustizia a Firenze al tempo degli Ordinamenti antimagnatizi'; Faini, 'Il convito fiorentino del 1216'.
[9] Waley, 'A Blood Feud with a Happy Ending'; Zorzi, 'Ius erat in armis'; *Id.*, 'Politica e giustizia a Firenze'; *Id.*, 'Conflits et pratiques infrajudiciaires'; *Id., La trasformazione di un quadro politico*; most of the essays included in the collection *Conflitti, paci e vendette nell'Italia comunale* present examples of feuds that involved members of the *Popolo* and analyse the dynamics of conflicts within the popular milieu.
[10] Zorzi, 'La cultura della vendetta'.
[11] Onori, 'Pace privata e regolamentazione della vendetta in Valdinievole'.
[12] Gluckmann, 'The Peace in the Feud'.
[13] Zorzi, 'Ius erat in armis', p. 615.

claim advanced by Zorzi and his school is the idea that revenge between families and individuals was legitimised by communal legislation, which did not ban this practice but limited itself to setting boundaries to the action of avengers (who for instance could not attack people other than those personally responsible for a previous offence against them), in order to avoid the escalation of conflicts in the city.[14]

Whilst some aspects of this reconstruction are now widely accepted by the scholarly community (for instance, the idea that vendetta was not an exclusively aristocratic practice), criticism was soon voiced. Trevor Dean has been one of the most vocal opponents of the possibility of extending this reconstruction, mostly based on Florentine sources (Florence has been the main case study in the historiography of conflict and revenge in medieval Italy, both prior to Zorzi and in Zorzi's research itself), to communal Italy as a whole.[15] According to Dean, the permissive nature of the Florentine legislation on revenge depended on the republican nature of the city's political regime; in the majority of the other Italian city-states signorial regimes arose in the second half of the 13th century, and the attempt by the *signori* to control more strictly the legitimate forms of violence within society led to a ban on revenge. Moreover, Dean has argued that vendetta narratives in late medieval and early modern chroniclers were highly formulaic and should be seen as 'purposeful means of remembering and explaining disputes, not objective descriptions' of a 'culture of revenge' in which actors perceived a real and unavoidable obligation to respond to each offence with retaliation.[16] The possibility of selectively remembering past wrongs, which in some cases happened to previous generations, as deserving a retaliatory reaction from living kinsmen is also

[14] A selection of recent works in which this position has been maintained include Guarisco, *Il conflitto attraverso le norme*; Zorzi, 'Pluralismo giudiziario e documentazione'; *Id.,* 'Legitimation and Legal Sanction of Vendetta'; *Id.*, 'The Notion and the Practices of Vindicta'.
[15] Dean, 'Marriage and Mutilation', pp. 6-7; *Id.,* 'Violence, Vendetta and Peacemaking'.
[16] Dean, 'Marriage and Mutilation', p. 31.

presented by Dean as an argument for reconsidering the idea of feud as a practice that kept the peace.[17] Another argument against the effectiveness of the feud's self-regulating mechanisms would be the existence of the norms that regulated revenge in communal statutes themselves, since they are an indication that the legislators feared an escalation of violence in the absence of external regulation of retaliatory practices. Doubts about the legality of revenge across North Italian cities have recently been reiterated by Glenn Kumhera, who has seen this feature as a Tuscan specificity.[18] Since Tuscany was characterised in the late Middle Ages by either the persistence of republican regimes or the rise of 'weaker' *signorie* than the rest of communal Italy, his theory could be seen as being in partial agreement with Dean's, even though political regimes are not mentioned by Kumhera as the reason for regional differences.[19] Despite the wealth of research on conflict and revenge in Europe and Italy, therefore, there are still open issues about the nature of these practices and their conceptualisation in the Italian communes. Studies on different polities have led to different results, something which calls for an expansion of the number of case-studies, in order to understand which variables played a role in determining local and regional differences.

b. Studies on Criminal justice in Medieval Italy and Europe

The debate on the legality of revenge is linked in current historiography to another open question, that of the evolution of criminal justice in Europe from the 13th century

[17] *Ibidem*, p. 35. Trevor Dean has not been the only historian who expressed doubts about applying Gluckmann's theory to the context of medieval Europe: other examples include Miller, 'Choosing the Avenger'; White, 'Feuding and Peace-Making in the Touraine' *Traditio* 42 (1986). For more information on this debate see Dean, *Crime in Medieval Europe*, p. 49.
[18] Kumhera, *The Benefits of Peace*, p. 12
[19] A recent reassessment of the signorial phenomenon in late medieval Tuscany, which however does not deny its peculiarities completely, can be found in Zorzi (ed.), *Le signorie cittadine in Toscana*.

onwards.[20] The main trends observed for this period include first of all the gradual and never totally achieved passage from an accusatorial procedural system (in which legal actions had to be initiated by the victim of a crime) to an inquisitorial one (in which the procedure could be started *ex officio* by a judge on the basis of the public knowledge that a crime had been committed; the judge thus proceeded to collect proofs through an investigation, the *inquisitio*).[21] Secondly, historians have noticed a process of 'publicization' of criminal justice in late 13th-century Europe, that is, the rise of the idea that crimes should not be seen anymore as private matters between the parties involved and their kin (as was often the case until this era for most crimes of interpersonal violence), but as actions that damaged the whole community.[22] The government therefore had a right (and a duty) to punish criminals that exceeded the parties' claims to find an agreement to their mutual satisfaction. The rallying cry for this expanding role of the government in the prosecution of crime was the phrase, which originated in canon law and was popularised in legal and political documents from the 13th century, 'publice interest ne maleficia remaneant impunita' (it is of public interest that crimes are not left unpunished).[23] Consequences of this process included a change in the attitudes towards the aims of criminal justice, which was now more focused on punishing offenders than on mediating between parties, the introduction of harsher physical punishments, the expansion of judicial torture as a means of collecting proofs, and the criminalization of a wider spectrum of behaviours.[24] Publicization of criminal justice and the passage to an inquisitorial model had in some cases similar effects, since the inquisitorial model

[20] For a recent overview of the studies on crime in late medieval Europe see Dean, *Crime in Medieval Europe.*
[21] On these two procedural models see Rousseaux, 'Initiative particulière et poursuite d'office'.
[22] Rubin Blanshei, 'Crime and Law Enforcement; Sbriccoli, ''Vidi communiter observari''.
[23] Fraher, 'The Theoretical Justification for the New Criminal Law'.
[24] Becker, 'Changing Patterns of Violence and Justice'; Sbriccoli, 'Tormentum id est torquere mentem'; *Id.*, ''Vidi communiter observari''; Zorzi, 'La pena di morte in Italia nel Tardo Medioevo', p. 52.

emphasised the role of the judge at the expense of that of the parties, but modern historiography has been careful not to conflate them into one. Mario Sbriccoli, for instance, has underlined that the effects of the publicization of criminal justice could be felt also in accusatorial trials.[25] Massimo Vallerani has warned against seeing the passage from accusatorial to inquisitorial procedure as a linear one and interpreting it in a teleological way as a reflection of the evolution of polities into modern states.[26]

Despite these important nuances, which highlight how different judicial practices continued to coexist, these transformations of the second half of the 13th century might still be interpreted as something that triggered a change in social perceptions of revenge, as Dean does.[27] The legitimacy of private vendetta was based, as seen above, on the idea that offences bestowed a right to retaliation principally, if not exclusively, upon the aggrieved party. Courts were only one of the possible fora in which they could seek their satisfaction. The new principle of 'public interest' in criminal actions, on the contrary, asserted the primacy of the community in dealing with offences - now seen as causing public damage- over considerations of personal or factional honour. Hence Sarah Rubin Blanshei described a passage from a 'personalized, modified-vendetta system of criminal justice' to a 'depersonalized' and 'public or community-oriented' one.[28] It is clear how, according to this more recent logic, revenge in the form of punishment of the offenders could be seen as reserved to the government, and prohibited to private citizens. Moreover, in the Italian communes these transformations in the system of criminal justice have been associated once more with the political ascent of the *Popolo*. A central idea in the rhetoric of this group, which has been the subject of careful analysis by Enrico Artifoni, was that

[25] Sbriccoli, ''Vidi communiter observari'', p. 233.
[26] Vallerani, *Il sistema giudiziario del Comune di Perugia*; *Id.*, *Medieval Public Justice*, pp. 1-2.
[27] Dean, 'Violence, Vendetta and Peacemaking in Late Medieval Bologna', p. 1.
[28] Rubin Blanshei, 'Crime and Law Enforcement in Medieval Bologna', p. 121. For an example of the same trend towards impersonality in the English criminal legislation from the 13th century see Beckerman, 'Adding Insult to Iniuria'.

of presenting itself not as yet another faction or sworn group among the many present in communal society, but as a stronghold of general interests.[29] A conception of crime as a public matter could thus clearly appeal to this composite group. Other scholars have argued that this attitude was not pure propaganda, since the medium and lower strata of the *Popolo* would be genuinely affected by the aggressive behaviour of more powerful members of society (be they *magnati* or not), and would not be able to defend themselves and their honour without the intervention of the government, which situated them among the main promoters of reforms of criminal justice.[30]

However, there is no consensus about the degree to which these ideological proclamations, and even the changes in the legislation of the Italian communes which they triggered, affected the day-to-day administration of criminal justice in the cities. Vallerani and Zorzi, for instance, have argued that the new judicial policies still did not have as their primary aim the punishment of offenders, as they claimed, but rather the legitimisation of new, still unstable political regimes and the negotiation of penalties to strengthen social consensus.[31] This is why, notwithstanding the systematic spread of harsher penalties in the statutes, capital punishment remained a rare occurrence in Italian towns, and according to many historians the system of criminal justice could be manipulated to be either more lenient or harsh depending on the relationship of the accused with the political elite.[32] These observations have helped historians realise how the development of criminal justice from the second half of the 13th century was a

[29] Artifoni, 'Preistorie del bene comune', p. 71.
[30] Vallerani, 'I processi accusatori a Bologna fra due e trecento', pp. 765-ff; Poloni, *Potere Al Popolo,* pp. 28-29.
[31] Vallerani, *Medieval Public Justice*, p. 72; among Zorzi's most recent works on the topic see Zorzi, 'Negoziazione penale, legittimazione giuridica e poteri urbani'; *Id.* 'La pena di morte in Italia nel Tardo Medioevo'.
[32] Blanshei, 'Crime and Law Enforcement'; Zorzi, 'La pena di morte', p. 53.

complex process that cannot be simplified as having just a single cause and trajectory. The role of the various components of communal theory and the practice of criminal justice is however still open to debate. Comparisons between cities have shown that, although the general trends described so far apply to communal Italy as a whole, local differences in the implementation of judicial policies are far from negligible. Whilst some cities (like Bologna) saw a precocious rise in the rates of inquisitorial trials and executions, and converted in their official documents to a language strongly influenced by concepts of criminal deterrence and an ideology centred on the peace and common good of the community, others (like Perugia, or even more markedly Savona) continued to allow greater space to accusations and compositions.[33] The reasons for these differences have not been investigated in depth, since historians of late medieval Italy tend to focus on a single case study rather than use a comparative approach; in the few cases in which scholars have attempted to take this second route the methodology of comparing only a few cities has led to conclusions that cannot always be extended to other realities.[34] To solve these complex issues, an expansion of the number of case-studies seems again of paramount importance. Additionally, the use of new methodological approaches would certainly help to see the sources in a new light.

Works on violence and crime in other areas of Europe, especially late Medieval France, have shown the fruitfulness of approaches in which the idea of finding univocal

[33] Rubin Blanshei, 'Criminal Justice in Medieval Perugia and Bologna', (comparing Bologna and Perugia); Dean, *Crime and Justice in Late Medieval Italy* (comparing Bologna and Savona).

[34] Rubin Blanshei, 'Criminal Justice in Medieval Perugia and Bologna', pp. 269-275, links the greater receptivity of Bologna to the *Popolo*-inspired reforms of criminal justice to the strong factionalism of the city's political life and to the greater inclusion of judges and notaries trained in Roman law in the ruling class. These two factors however do not seem to fully explain the characteristics of the system of criminal justice in other Italian cities. Florence, for instance, a city known for its exacerbated factionalism, did not follow the Bolognese model until much later, as shown by Zorzi in works such as *Giustizia e società a Firenze in età comunale*. This probably depends on the fact that Florence had a legal system based on Lombard, and not Roman, law (on the differences between urban legal systems see Wickham, *Legge, pratiche e conflitti,* pp. 196-226). However, as shown by Menzinger, *Giuristi e politica nei comuni di Popolo*, in popular regimes -including Bologna- jurists were normally identified as members of the *magnati* and therefore sometimes regarded as possible opponents of the *Popolo*'s judicial reforms.

meanings to practices and behaviours related to conflict and criminality is challenged in favour of a multi-layered reading.[35] Such readings suggested that within a society there were a variety of vocabularies and discourses on violence and crime, that originated from different sources but were generally used in combination with each other. Therefore, as proposed by Hannah Skoda, in the case of revenge people could understand the element of social negotiation involved, but still worry about its potential destructive effect on the community.[36] In the same way, I propose that the reforms of criminal justice undertaken by different political actors in an Italian commune do not have to be interpreted as seeking exclusively to promote negotiation or a higher degree of expiation, but can be seen as complex decisions designed to achieve a variety of aims. The relative importance of each of these aims, and its variation over time and in relation to historical change thus become central in my investigation, as does the analysis of which groups or individuals favoured certain discourses over others. In order to implement such a methodological proposal, therefore, it is necessary to develop a model in which the main characteristics of these discourses are outlined (bearing in mind that separating them completely from one another is an abstraction, however useful for reasons of clarity) and the sources are analysed to assess to what extent they are conflicting or complementary. Such a project requires an analysis of all the possible sources of different discourses on crime, violence and conflict, including in particular those whose importance has been downplayed in the past, or those which have generally not been integrated into studies of legal systems and practices because of too rigid a conception of the boundaries between disciplines. The religious significance of some of the central concepts of the new ideology of a 'publicised' criminal justice, such as peace, concord and common good, has been

[35] Cohen, *The Crossroads of Justice*, pp. 206-ff.; Skoda, *Medieval Violence: Physical Brutality in Northern France*, 'Conclusion'.
[36] Skoda, *Medieval Violence: Physical Brutality in Northern France*, p. 234.

recognised by many of the scholars mentioned so far. However, the religious aspect of this terminology has sometimes been seen as an essentially instrumental borrowing, and the main promoters of these ideas in communal society (such as religious orders, lay fraternities and pious individuals) have rarely been attributed an important role as a "pressure group" on public opinion.[37] The desire to fulfil the need, expressed by historians of socio-political and religious history alike,[38] of associating the study of religious and lay sources and constructions more closely, so as to advance research on conflict and criminal justice in late medieval Italy, has been one of the main motivations of my doctoral research. In the course of my doctorate, American scholars of the Italian communes have started publishing work moving in the same direction, producing results that seem to confirm the potential of such an approach. [39] Before describing these outcomes, however, I will illustrate the tradition of studies on late medieval spirituality, focusing in particular on the themes of peace and penance, upon which they rest.

c. Studies on Peace and Penance in the Spirituality of Late Medieval Italy and Europe

Historians of the medieval Church have described the period starting from the end of the 12th century, and in particular after the Fourth Lateran Council (1215) as characterised by a 'pastoral turn'.[40] The pastoral action of the clergy obtained for the first

[37] On the use of religious concepts in legal reforms as instrumental, see Zorzi, 'Bien commun et conflits politiques dans l'Italie communale'. Zorzi has recently revised his position in his research on the effective role of the Dominican Order in shaping the political imaginary of the Italian communes. His view of the role of theology also in shaping conceptions of justice in the Italian cities has become more positive: see for instance *Id,*. 'The Notion and the Practices of Vindicta', pp. 134-ff.
[38] Rossi, 'Polisemia di un concetto: la pace nel basso medioevo', p. 14.
[39] Kumhera, *The Benefits of Peace;* Jansen, *Penance and Peace in Late Medieval Italy*. These are not the absolute first attempts to combine religious and lay sources in the study of conflict and crime; for a description of previous works on the Italian communes that adopted a similar approach but had a more limited scope see next paragraph.
[40] Vauchez, 'Présentation'; Bériou, 'Autour du Latran IV'.

time primacy over contemplative activities within the Church. A series of initiatives were encouraged by the ecclesiastical hierarchies, despite initial distrust. Among them were the birth of the Mendicant Orders, whose pastoral activities were central to their charisma, the promotion of more frequent preaching to lay audiences, and the development of confraternities of laypeople devoted to living a more intense spiritual life without leaving the *saeculum.*[41] All these initiatives were meant to respond to and encourage the laity's desire for an increased participation in religious life, and for a spirituality more adapted to the needs of a more urbanised, economically vital and socially mobile society.

In this context, peace became a central theme in the spirituality of late medieval Europe, and in particular the Italian communes; something which, given the unstable nature of power structures in these socially mobile societies, and their consequently high level of conflict, is not surprising. For this reason, a number of collections of essays devoted to analysing religious ideas and practices of peace in late medieval Europe (with a specific focus on Italy) have appeared in this century to fill the gaps left by a historiography that until recently had been more focused on other themes.[42] These works have not limited themselves to examining the variety of ideas of peace expressed by medieval religious thinkers. They have highlighted instead how peace was a 'polysemic' and 'polycentric' concept in late medieval society, that is, a construct with a variety of meanings, which reflected the variegated influences that contributed to creating its different definitions. Attention has also been paid to the pressure exerted by local communities to see their dreams of peace and justice come true, which according to André

[41] On the Mendicant Orders and pastoral activity in urban contexts see Little, 'Religious Poverty and the Profit Economy in Medieval Europe', (although Little's views on the economic thought of the Church should be revised in the light of Todeschini, *Ricchezza francescana*); on sermons see Bériou, 'Les sermons latins après 1200'; on confraternities see Gazzini (ed.), *Studi confraternali*.

[42] These collections are *Pace e guerra nel basso medioevo*; Dessì (ed.), *Prêcher la paix et discipliner la société*; *La pace tra realtà e utopia.* For a more detailed description of the shortcomings of previous historiography see Rossi, 'Polisemia di un concetto', pp. 9-34.

Vauchez is visible at least from the 11th century with the movement of the Peace of God.[43] The main popular religious movements of 13th- and 14th-century Italy, starting from the *magna devotio* of 1233, are now seen primarily as peace movements, in which the role of preachers was in particular that of propagandising ideas of an orderly civic society in which concord, charity and justice would reign forever.[44] The synergy between the pacifying effect of popular movements and the legislative action of the *Popolo,* which aimed to strengthen its position by issuing laws to contain conflict and violence and by proposing a new model of society in which peace triumphed over factionalism, has been analysed by Vallerani in the context of the Flagellant movement of Perugia in 1260.[45] In Perugia the *Popolo*, which had just gained power, actively promoted this religious movement and echoed its theologically charged language in its new legislation against violent crimes. A comparison between the statutes and the hagiography of the founder of the Flagellant movement, Ranieri Fasani, has shown similarities in the vocabulary used to express ideas of peace, which reflect a conscious intention of the *Popolo* to take inspiration from Flagellant ideas. Historians have therefore stressed the 'ordering function' of religious conceptions of peace with respect to urban societies, even though the role of the different components of religious movements (friars, confraternities etc.) in this process has been interpreted differently.[46] At the same time, however, a few voices have stressed how religious preaching of peace should not be interpreted simply as an attempt to legitimise shaky power structures. Sometimes religious peace could be destabilising, as was the case for the first Franciscan brotherhood, whose attitude towards

[43] A. Vauchez, 'La paix dans les mouvements religieux populaires (XIe-XVe siècle)', in *Pace e guerra*.
[44] A. Thompson, *Revival Preachers and Politics in Thirteenth-Century Italy: The Great Devotion of 1233*, Oxford 1992; Guarisco, *Il conflitto attraverso le norme*, pp. 151-197; Jansen, *Penance and Peace*, Chapter 2. For previous works on the Alleluja movement see Rossi, 'Polisemia di un concetto: la pace nel basso medioevo', p. 39, note 37.
[45] Vallerani, 'Mouvements de paix dans une commune de popolo'.
[46] Dessì, 'Pratiques de la parole de paix'.

pacification encountered mixed reactions. As stressed by Raimondo Michetti, the peace preached by the friars was not completely coincident with that promoted in peace agreements issued by communal notaries.[47] Another important contribution has been the connection between peace and penance in 13th-century spirituality, which appears very clearly in the link established by communal preachers (and explored in more detail in Chapter 1) between the 'internal peace' that springs from confession and the 'external peace' of harmonious social relationships.[48] Many works have highlighted how peace movements made use of penitential language and practices (for instance, flagellation) to try and create a new society in which enmities were forsaken.[49] As previously mentioned, in the past few years researchers have made another step forward by combining this type of study and sources with an analysis of peace-making vocabularies and practices in the criminal justice system of the Italian city-states, and showing the clear influence of penitential spirituality on the latter, and more generally on the legal culture of the communes. By adopting this perspective scholars have started to bridge the gap between religious history and socio-political and legal history, thus contributing to the solution of some of the debates still open in the study of late medieval crime and conflict.

Katherine Ludwig Jansen's analysis of Florentine peace contracts from the period 1257-1343, in particular, has shown that the kiss of peace, a ritual gesture crucial in the structure of the medieval mass, was featured in the overwhelming majority of the documents. This is a clear example of how visions of civic peace derived from a coalescence of interconnected discourses, promoted by a variety of religious and lay actors. However, Jansen does not completely clarify what the relationship between the centuries-old practice of the *osculum pacis* and the new penitential spirituality was. The

[47] Dessì, 'Pratiques de la parole de paix', p. 248; Michetti, 'François d'Assise et la paix revelée'.
[48] Bériou, 'Le sermon de Federico Visconti'.
[49] E.g. the works of Vallerani, Michetti, Bériou, Thompson and Jansen mentioned in this paragraph.

seminal nature of works such as Jansen's paves the way for more research in this area, since scholars have not been able yet to cover all the questions emerging from this new approach. For instance, historians have not properly analysed the extent to which churchmen were aware of the contrast between the pervasiveness of Christian education about peace and penance, and the equally pervasive nature of the 'culture of revenge', despite some occasional remarks about the importance of this question.[50]

In my thesis, I aim to contribute to the development of this new approach by engaging in particular with two open issues concerning the relationship between criminal justice and spirituality. The first one concerns the nature of late medieval penance, which is still subject to debate.[51] The Fourth Lateran Council, with its canon *Omnis utriusque sexus* that made annual auricular confession mandatory for all Christians, has long been considered the turning point of a process of interiorization and privatization of penance linked to 12th-century theological developments.[52] A sector of the historiography has called for a revision of this paradigm by highlighting the importance that practices of public humiliation and satisfaction of one's neighbours continued to have until the end of the Middle Ages.[53] However, recent work on inquisitorial depositions has convincingly suggested that a shift in laypeople's proneness to reflect publicly on their own subjectivity actually occurred in the 13th century. This has been interpreted as a consequence of the development by the Church of a pastoral programme centred around preaching the importance of auricular confession and of introspective reflection on one's sins.[54] Works

[50] Gonthier, 'Faire la paix: un devoir ou un delit?'; Rossi, 'Polisemia di un concetto', p. 12.
[51] For a summary see Biller, 'Introduction'.
[52] Tentler, *Sin and Confession on the Eve of the Reformation*; Bériou, 'Autour du Latran IV (1215): la naissance de la confession moderne'.
[53] Bossy, 'Moral Arithmetics: Seven Sins into Ten Commandments'; Mansfield, *The Humiliation of Sinners*; a middle ground is represented by Campbell, 'Theologies of Reconciliation in 13th Century England', who argues for a coexistence of various theologies of reconciliation in the 13th century.
[54] Arnold, *Inquisition and Power*.

on conflict and peace-making in the Italian communes have highlighted the importance of penitential spirituality, but have not generally engaged with the issue of what penance meant. Such an analysis is potentially very useful, since it would entail a clarification of late medieval concepts of public and privacy that would also be beneficial, as seen above, for the study of the evolution of criminal justice.

The second issue I intend to tackle is the fact that penance and peace were also inextricably linked to the concept of justice. It is not by chance that confession was described by churchmen as the 'internal forum' or 'tribunal of penance' that worked alongside the 'external forum' represented by ecclesiastical courts as a means to dispense justice.[55] In this period metaphors used by the clergy to describe confession saw a shift from the traditional semantic field of medicine (confession as 'medicine for the soul') to that of justice (confession as the 'tribunal of the soul'), at the same moment as judicial confession became more important in the law of proof.[56] This connection has been suggested by several scholars, but the focus of studies combining lay and religious sources on conflict and peace-making has been generally limited to practices of dispute settlement.[57]

I would like to expand the scope of my comparison by exploring how penitential ideals could inform not only the peace-making activity of lay and religious actors, but also a broader reflection on the aims of justice and punishment, the legitimacy of the use of violence by governments or individuals, and the duties incumbent on both as part of a

[55] Goering, 'The Internal Forum and the Literature of Penance'.
[56] Bériou, 'La confession dans les écrits théologiques et pastoraux du XIIIe siècle', contra Chiffoleau, 'Sur la pratique et la conjoncture de l'aveu judiciaire', who argued that Inquisition brought about a commingling of sacramental and judicial confession only from the 1320s. On the late medieval law of proof see Fraher, 'Conviction According to Conscience'.
[57] Cardini, 'La pace come tregua di una guerra continua', pp.1-2; Niccoli, 'Postfazione', pp. 288-289; Jansen *Penance and Peace in Late Medieval Italy*, p. 4.

civic community that defined itself as Christian. My general argument is that a third paradigm concerning crime and conflict, in addition to the 'culture of revenge' and the ideology of public order, existed in the Italian communes, and that the bearers of this conception based on penitential spirituality were an effective "pressure group" whose importance has often been underestimated so far.

2. Siena, 1260-1330: An Outline of its Political, Social and Religious Context

The choice of Siena as a case-study stemmed from a desire to expand the set of cities that have been investigated in studies of crime and conflict in communal Italy, in which Florence and Bologna have so far had the central role. As argued by Carol Lansing for Orvieto, this can contribute to redefining what constituted 'typicality' in late medieval communes, for which paradigms are often created on the basis of heavily studied, 'famous' cities.[58] Siena offers a wealth of sources for the period analysed here, which studies have singled out as a turning point in the history of both spirituality and criminal justice. Before describing these sources, it is worth offering a brief outline of the context in which they were produced. There are no recent books reconstructing the chronology of Sienese medieval history, despite its rich sources.[59] Modern works on various aspects of its society, however, have contributed to updating our global vision of late medieval Siena.[60]

1260 is still considered by contemporary Sienese as the apex of their political influence: in that year the commune, which was Ghibelline and had been governed since the 1230s by a combination of *populares* and the great bankers who had made Siena 'the

[58] Lansing, *Passion and Order*, p. 9.
[59] For a discussion of early 20th-century histories of Siena see Redon, *L'espace d'une cité*, p. 14.
[60] Bowsky, *A Medieval Italian Commune*; Waley, *Siena and the Sienese*; Piccinni (ed.), *Fedeltà ghibellina, affari guelfi*.

southernmost capital of the commercial revolution of the Middle Ages', defeated Guelf Florence, its rival, in the battle of Montaperti.[61] The road to hegemony over all Tuscany seemed to be paved, but soon the consequences of the economic costs of this military victory (achieved through an alliance with the King of Sicily, Manfred, son of Emperor Frederick II) and the reaction of the Pope shifted the balance.[62] In 1262 Urban IV excommunicated the city and forbade the repayment of debts to its bankers. For this reason, many leading banking families decided to leave Siena and withdraw to Radicofani, where the Sienese Guelf faction was created in 1263. These bankers actively supported the military campaign of Charles of Anjou, the papal candidate for the Sicilian kingdom, against Manfred, who was defeated in 1266. Urban IV tried to negotiate the passage of Siena to Guelfism by sending an envoy and lifting its excommunication. The government of the Twenty-Four (so called because of the number of its main officials, as was typical of Sienese regimes), despite a new excommunication (1267), stayed loyal to Ghibellinism. Its new champion, Conradin of Hohenstaufen, Manfred's nephew, was however eventually defeated by Charles of Anjou in 1268. The final defeat of Ghibelline Siena happened in 1269 in Colle Val d'Elsa against Angevin and Florentine forces. It was only in 1270, though, that Siena formally submitted to Charles, readmitted the Guelf families and banned the most active Ghibellines.

The new regime, the Thirty-Six, was Guelf and mercantile, and excluded from the main offices both artisans and magnates, a list of whose families was drawn in 1277 to facilitate their exclusion. Historians still debate whether this change in the political regime also entailed a replacement of the elite. Recent works seem to suggest that many

[61] Jones, *Economia e società nell'Italia medievale*, p. 27: 'la capitale più meridionale della rivoluzione commerciale'; for the context of the battle of Montaperti see Sestan, 'Siena avanti Montaperti'; Balestracci, *La battaglia di Montaperti*.
[62] For a brief reconstruction of the whole period considered in this thesis see Martini, 'Siena da Montaperti alla Caduta dei Nove'.

powerful Ghibelline families indeed declined in the second half of the 13th century, but the great merchant-bankers who had constituted the nucleus of the Sienese Guelf party managed to maintain a central role in political decisions, notwithstanding their exclusion as magnates from the Thirty-Six and the following regimes.[63] Additionally, numerous attempts at pacification with the Ghibelline exiles were pursued by the government, the most famous being the peace agreement concluded in 1280 under the mediation of Cardinal Latino Malabranca, in which many Ghibellines were readmitted and the Guelf and Ghibelline *partes* were abolished. This pacification did not achieve a long-lasting elimination of factions in Siena, but it is a sign of a more general conciliatory attitude displayed by its governments, which seem to have taken very seriously the ideas of civic concord and threats posed to it by factionalism.[64] This is evident by the fact that Guelfism never became as central in the definition of civic identity in Siena as it did in Florence, and no conflicts originating from further subdivisions into Black and White took place.[65]

The exclusion of the magnates from the main political offices was also not accompanied by legislation that limited their judicial rights, as happened in cities like Bologna. Members of the civic aristocracy could still access positions of power through the diocesan chapter, financial and military offices, and the General Council.[66] Mediation between parties and an ideology of civic peace and common good characterised even more strongly the following regime of the Nine, in which an elite of merchants who defined themselves as 'mezzana gente' (middling class) controlled the government, again excluding magnates and artisans. This unusually long-lived regime (1289-1355) has been

[63] Giorgi, 'Il conflitto magnati/popolani nelle campagne', , p. 151; Raveggi, 'Siena nell'Italia dei guelfi e dei ghibellini', p. 47.
[64] Raveggi, 'Siena nell'Italia dei guelfi e dei ghibellini', p. 58, n. 88; Mucciarelli, 'Il traghettamento dei mercatores: dal fronte imperiale alla pars ecclesiae', p. 85; Zorzi, Moscadelli, 'Fedeltà ghibellina, affari guelfi', pp. 270-271.
[65] *Ibidem*.
[66] On the role of the magnate Malavolti family as an 'episcopal dynasty' see Nardi 'Istituzioni ecclesiastiche e governo della chiesa locale', Firenze 2016; Bowsky, *A Medieval Italian Commune,* p. 79.

seen as a 'golden age' for Siena, because its stability allowed the flourishing of art and architecture.[67] Historians nowadays tend to have a more nuanced view of the regime, which certainly granted a prolonged period of stability to the city, but whose capacity to innovate to overcome social struggles declined from the 1330s, when the government decided to support the interests of the last great banking companies, which were failing, to the detriment of other segments of society.[68] Revolts, among which the most dangerous was that of 1318 (with the joint participation of *magnati* families guided by the Tolomei, the butchers' guild and the lower classes), had taken place already in the first decades of the regime of the Nine. Only in the late 1330s, however, did serious rebellions pave the way to the creation of a new regime in which different factions, called *monti*, governed in coalition, with the participation even of the lower classes.[69] The period of the Nine has also been reassessed from an economic point of view, this time in a more positive light: following the first great failures of banking companies such as that of the Bonsignori (1298), who had been the bankers of the papacy, Siena did not immediately abandon financial activities, which remained important until the 1330s, although at a more local level.[70] New companies however did not replace bankrupted ones, and the elite of Siena slowly transitioned from trade to landed property as its main source of income.[71]

From the religious point of view, a recent collective volume has confirmed the exceptional liveliness of Sienese spiritual experiences in the landscape of late medieval Europe, in terms of new cults, confraternities, hospitals and other religious experiences.[72]

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[67] This was the view of Bowsky, *A Medieval Italian Commune,* in contrast with the previous idea of a decadence of Siena between the 13th and the 14th century expressed by Zdekauer, *Il mercante senese del Dugento,* p. 69.
[68] Piccinni, 'Il sistema senese del credito nella fase di smobilitazione dei suoi banchi internazionali'.
[69] Wainwright, 'Conflict and Popular Government in 14th Century Siena'.
[70] Piccinni, 'Il sistema senese del credito'.
[71] Pinto, 'Honour and Profit: Landed Property and Trade in Medieval Siena'.
[72] A. Bartolomei Romagnoli, P. Piatti (eds.), *Beata civitas.*

For the period starting from the 1250s, nevertheless, there are still many areas that require a more in-depth investigation, for instance the relationship between religious institutions and the government in the passage from a Ghibelline to a Guelf regime.[73] Nevertheless, Brigitte Szabò-Bechstein has effectively set out the framework of relations between the Mendicant orders, the penitents and the commune.[74] According to her findings, the government offered support of various types to religious institutions, in exchange for which the Mendicants provided spiritual assistance and even administrative services, although the latter tended to be reserved to lay penitents, who offered a 'contributo (...) numericamente importantissimo e non ancora esaminato con chiarezza'.[75] The influence of the Mendicant Orders on the government of Siena was also highlighted by Vauchez, who studied how the friars managed to reverse the decision, taken in 1328 because of the turmoil caused by the Italian expedition of Emperor Louis IV, to suspend the subsidies for the feasts of the local saints associated with these orders.[76] The influence of the Mendicants was linked, according to Vauchez, to the great impact of some of these personalities on the spiritual and socio-political life of Siena. It should also be noted that the public cults and private devotions studied in these works seem to correspond to the religious framework of the overwhelming majority of the Sienese: although the study of heresy in Siena has never been systematic, previous analyses have indicated that heretics were not frequent in the city; the sermons of the Sienese collections I have analysed support this, by focusing only sporadically on heresy.[77]

[73] A first attempt was made by Pellegrini, 'La Chiesa di Siena nella transizione dal ghibellinismo al guelfismo'. On the Sienese church before 1250 see *Id*., *Chiesa e città: uomini, comunità e istituzioni*.
[74] Szabò-Bechstein, 'Sul carattere dei legami tra gli Ordini mendicanti, la confraternita laica dei penitenti e il comune di Siena'.
[75] *Ibidem*, p. 746.
[76] Vauchez, 'La commune de Sienne, les ordres mendiants et le culte des saints'.
[77] Severino, 'Note sull'eresia a Siena fra i secoli XIII e XIV'; Benedetti, 'La documentazione inquisitoriale a Siena nel Medioevo'.

3. The Sources

a. Religious Sources: Hagiographies

Between the 13th and the 14th century Siena saw a flourishing of new cults, most of them connected to the Mendicant Orders, to a degree possibly unparalleled in any other city in Western Europe. The quality of their hagiographical materials is however very variable, ranging from a complete dossier prepared to support a canonization, as is the case for Ambrogio Sansedoni, to unreliable early-modern information that constitutes our sole source of knowledge about female sanctity in Siena before St Catherine (1347-1380).[78] The themes of conflict and peace-making are prominent in most of the hagiographies preserved for this period, which fits with more general studies suggesting that in the 13th century a new type of 'peace-maker saint' was presented as a model to Christian audiences.[79] Hagiographies have been indicated as promising sources by various scholars of conflict, but so far they have not featured prominently in any extensive study devoted to communal Italy.[80]

The exclusion of these sources could be due to a persistent negative attitude toward hagiographical discourse, which is often seen as a vector of unreliable information and trite commonplaces, notwithstanding the existence of numerous works that have challenged this 'positivist' view.[81] These latter authors have highlighted the multiplicity

[78] To draw up a list of the nineteen new Sienese cults from this period I have consulted Goodich, *Vita perfecta : the ideal of sainthood in the thirteenth century*, pp. 218-241, and BS. For an overview of Sienese sainthood in this period see Bartolomei Romagnoli, 'Pier Pettinaio e i modelli di santità', and *Ead.*, 'Lo spazio simbolico. Politica della santità e agiografia a Siena tra Duecento e Trecento'. For a complete list of venerated people from Siena in the 13th and 14th century, with references to BS, see Redon, *L'espace d'une cité*, p. 263 note 345. To study the textual tradition for these cults I have also used the online databases *Bibliotheca Hagiografica Latina Manuscripta* (http://bhlms.fltr.ucl.ac.be, 21 May 2018) and *Mirabile* (http://www.mirabileweb.it/p_agiografico.aspx, 21 May 2018).
[79] Dessì, 'Pratiques de la parole de paix', p. 254.
[80] Rossi, 'Polisemia di un concetto', p. 27; Zorzi, 'I conflitti nell'Italia comunale', pp. 18-19, advocates more generally an expansion of the use of narrative sources in the study of conflict.
[81] For instance Efthymiadis, 'New developments in hagiography'. Late antique historians, byzantinists and early medievalists have been at the forefront of hagiographical studies, on account of the importance of

of messages carried by saints' lives, which go beyond the mere promotion of a cult and tackle central issues of the societies in which they were composed, even when they do not provide historical data to be checked against more 'reliable' sources. In late medieval hagiography, moreover, an increasing emphasis was placed on the life of the saint, now placed more firmly in its social context, rather than on miraculous manifestations. These *vitae* therefore become valuable for both more traditional and innovative approaches to hagiographical material.[82] An innovative one has been the suggestion that hagiographical discourse also finds a place in other genres, in particular those that have normative aims. This is a function of the normative nature shared by hagiographies as well, since sainthood was often perceived as setting norms for individuals and communities: such a suggestion enhances even more the potential of including saints' lives in a study on different norms and models of regulation of conflict and crime.[83]

Here I will focus on three dossiers that offer the most extensive information about hagiographical representations of crime and conflict in Siena. In the rest of the thesis I will occasionally mention other saints' lives, at which point I will give more information on their background, cult and bibliography.

Andrea Gallerani, a lay saint, lived in the first half of the 13th century and belonged to a rich family of merchant-bankers later included in the *magnati*. In his youth he committed a homicide, the reasons for which are omitted by his earliest hagiography, a 14th-century *Vita* found in a Sienese manuscript.[84] He had to flee to a family estate in the

these sources for the societies they study. It is worth mentioning at least the forerunner of this trend, Peter Brown, and particularly his article 'The Rise and Function of the Holy Man in Late Antiquity'.
[82] Vauchez, *La sainteté en Occident aux derniers siècles du Moyen Age*, pp. 583-ff.
[83] Isaïa, Granier (eds.), *Normes et hagiographie dans l'Occident latin*.
[84] Siena, BCI, K.VII.2: *Legenda beati Andree Senensis*, c. 158v. The text is edited in AASS *Martii*, III, *Vita per supparis aevi scriptorem* (henceforth *Vita A.G.*). An English translation is available in Webb, *Saints and Cities in Medieval Italy*, pp. 141-159. Later authors, mentioned in *Vita A.G.*, col. 50, claimed that his homicide was a reaction to blasphemy, in order to justify his actions.

Maremma and when he came back to Siena he experienced a miracle that prompted his conversion to a Christian life. He spent the rest of his life taking care of the poor and sick in hospitals and practicing spiritual virtues, until he died in 1251. Andrea was credited with the foundation of the Sienese hospital known as the Misericordia, but the first documents testifying his link to the institution date only to the early 14th century, so some scholars have expressed doubts about his role as a founder.[85] Among the documents about his early veneration are pictorial sources and an epistle written by the bishop of Siena Bernardo in 1273 to grant an indulgence to those who visited his tomb on his feast day.[86]

Ambrogio Sansedoni was born in 1220 to a family of Sienese *milites*, and his father, Bonatacca, held important positions in the government of Ghibelline Siena and was described as a *fidelis* of the Emperor in a letter sent by Frederick II to the commune in 1243.[87] In his youth he joined the Dominican Order and studied theology in Paris under the guidance of Albertus Magnus, having Thomas Aquinas as one of his classmates. After a period spent preaching in Germany he moved back to Siena, where he became involved in all of the main historical events of the second half of the 13th century. His preaching skills and reputation for sanctity were the reasons why he was often chosen to act as a mediator between the city and the papacy, as he did in 1266 and 1273, when he convinced Gregory X to withdraw the interdict that had oppressed Siena since the war against the Guelfs.

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[85] Zarrilli, 'Gallerani, Andrea'.
[86] *Ibidem*.
[87] The surname Sansedoni, however, was not used to designate the saint before the 16th century: earlier chronicles use the surname Codennacci or simply call him Ambrose of Siena. Ambrogio was not a direct descendent of the Sansedonio after whom the family was named, but was related to him through his father Bonatacca, a circumstance which allowed the Sansedoni to appropriate the saint's memory in the 16th century: Redon, 'Costruire una famiglia nel Medioevo'; Ead., 'Un culte civique ou familial du XIIIe au XVIIIe siècle', pp. 202-205. In this thesis he will nevertheless be designated as Sansedoni, to maintain consistency with previous scholarship. On Bonatacca, Ambrogio's father, see Ead., 'Le père du bienheureux, Bonatacca Tacche'. All these essays are now collected in Ead., *Una famiglia, un santo, una città. Ambrogio Sansedoni e Siena*,. See also Pellegrini, 'Sansedoni, Ambrogio, beato'.

After Sansedoni's death in 1286, Pope Honorius IV, interested in canonising the peacemaker saint, entrusted four of his brethren with the task of collecting material on his life and miracles. The result of their work is the *Vita* by Gisberto of Alessandria, Recuperato da Petramala, Ildebrandino de' Paparoni and Oldrado Visdomini, which was supposedly written only a couple of years after Ambrogio's death.[88] The *Vita* contains problematic information, for instance when it attributes to Ambrogio's mother the surname Stribellini, which is not attested in Siena. It is clear that not all the material used to write it was first hand. Moreover, the version of the *Vita* that is available nowadays (based on a 16th-century transcription by the erudite Ambrogio Tegio) can date at the earliest only to the period after the death of Boniface VIII (1303), since the hostility of this Pope to promoting a saint coming from a Ghibelline background is alleged in the text as the reason why his canonisation was not achieved.[89] On the other hand, the life also uses notarial documents certifying the miracles performed by Ambrogio in the months immediately after his demise. These *Miracula* still survive in the State Archive of Siena.[90] The correspondence of the *Vita* with these documents, and also with other archival sources in which Ambrogio Sansedoni is mentioned, is a sign that this hagiography must be considered at least partially reliable as a historical document, notwithstanding its problematic textual tradition. Another text relating the life and miracles of Ambrogio is the *Summarium Virtutum,* generally attributed to friar Recupero of Arezzo (whose identification with Recuperato da Petramala from Arezzo is uncertain), and preserved in a 14th-century manuscript from the Dominican convent of Siena.[91] A Bolognese

[88] The life is edited in AASS *Martii*, III, *Vita quam conscripserunt Fr. Gisbertus, Alexandrinus; Recuperatus de Petramala, Aretinus; Aldobrandinus Paparonus, Oldradus Bis-dominus, Senenses, Ordinis Prædicatorum, de mandato D. Honorij IV Pontificis Maximi* (henceforth *Vita A. S.*).
[89] *Vita A.S.,* col. 201. On chronological contraditions in this text see also De Fraja, 'L'insegnamento della teologia a Roma prima della fondazione dello Studium Romanae curiae', pp. 185-187.
[90] ASS, Patrimonio Resti, San Domenico in Camporegio.
[91] AASS *Martii*, III, *Summarium virtutum et miracula edita a Fr. Ricupero Aretino* (henceforth *Summarium*). The manuscript is Siena, BCI, Ms. T.IV.6.

manuscript from the beginning of the 15th century contains a version of this text, which comprises a prologue that was not available in the codex the Bollandists used for their edition in *Acta Sanctorum*, and which shows that the first and longest part of the text, a sermon on the eight virtues of Ambrogio, was actually composed by the same Ildebrandino de' Paparoni who co-authored the *Vita,* and who presents himself as Sansedoni's disciple.[92] It is still unclear whether the *Summarium* was intended to serve as a collection of *exempla* for the use of preachers, or was a commemorative speech given in the years immediately after the saint's death. In any case, the *Summarium* is consistent with the information provided by the *Vita* (another sign of the reliability of the latter), to which however it adds details and episodes. In addition to the hagiographical texts, other sources on Ambrogio's cult are a *lauda* in his honour,[93] the existence from the mid-14th century of a fraternity dedicated to him,[94] paintings (including some in the Palace of the Commune),[95] and minutes of the General Council that show that his cult was promoted by the government as soon as he died.[96]

Pietro Pettinaio, another lay saint, differed from Andrea and Ambrogio by not being a magnate but a comb maker and Franciscan tertiary. After a relatively turbulent youth, he got married and started living a saintly life, volunteering in local hospitals in company with a group of other lay penitents, paying particular attention to matters of economic ethics in his comb-making business and becoming a spiritual authority

[92] Laurent, 'Un legendier dominicain peu connu', which also contains an edition of the prologue. Ildebrandino says about himself: 'a primeva etate eius doctrina ac conversationi discipulus indignus interfui', p. 40. The minutes of the General Council corroborate this by showing that Ambrogio and Ildebrandino carried out the 1273 embassy to the Pope together: ASS, CG 16, f. 66r, 22/05/1273.
[93] Edited in Del Popolo, 'Dittico domenicano. Ambrogio Sansedoni e Giordano da Pisa'.
[94] Redon, 'Una famiglia, un santo', p. 38, nota 78.
[95] Ceppari Ridolfi, 'Esperienze confratemali nella chiesa senese del '300', p. 125.
[96] Just over a year after Ambrogio Sansedoni's death the *signoria* decided to build a tomb for him 'ad laudem et reverentiam divini nominis et corporis Beati Ambrosii': ASS, CG 33, f. 64r, 21/05/1287. Later in the same year the government allocated 500 l. to the construction of a chapel dedicated to him in the Dominican church of Camporegio: ASS, CG 34, f. 8v, 19/07/1287.

consulted both by friends and by the communal government. At some point in his life, he abandoned his works of mercy in favour of a more contemplative life and, after the death of his beloved wife, moved to the Sienese Franciscan convent, where he died in 1289.[97] It is not clear when this transition happened, for 13th-century hagiographical texts tend not to follow chronology, but to order episodes according to the virtue they are an example of, thus mirroring the format which canonisation documents acquired from the second half of the 13th century.[98] The principal source on his life is a *Vita* originally written in Latin by the Franciscan Pietro da Monterone in 1333, and lost in a fire in the 16th century. There are two extant Italian translations of this text: the first was made by the Augustinian Serafino Ferri in 1508 and is the basis of the only available printed version of this text; the other one was produced by the Franciscan Dionisio Pulinari in 1541 and is still unpublished.[99] The complex transmission of this text suggests the possibility of later revisions and additions, but the *Vita* does not seem to include elements that would be implausible for a late 13th-century hagiography.[100] The fact that even the original Latin version was composed forty years after the death of Pietro has however prompted Augustine Thompson to argue that 'the adoption of Pietro into the Franciscan family was post-mortem wishful thinking' after the issuing of the papal bull *Supra montem* (1289), which placed all lay penitential groups under their aegis.[101] However, there are elements external to the *Vita* that suggest a strong link between Pietro and the Franciscans. First of all, a sermon by the Franciscan Bindo Scremi pronounced in 1289

[97] Pellegrini, 'Pietro Pettinaio, beato'.
[98] Goodich, *Vita Perfecta*, p. 30.
[99] P. da Montarone, *Vita del B. Pietro Pettinajo sanese del terz'ordine di San Francesco volgarizzata da una leggenda latina del 1333 per F. Serafino Ferri Agostiniano da Lecceto l'anno 1508, corretta e riordinata con annotazioni ed aggiunte dal Padre Maestro de Angelis Minor Conventuale,* Siena 1802 (henceforth *Vita P.P.*). An English translation can again be found in Webb, *Saints and Cities*, pp. 191-241. On Dionisio Pulinari's translation see Cenci, 'S. Pietro Pettinaio presentato da fr. Bindo da Siena', pp. 202-203. I have not consulted this manuscript, kept in Giaccherino, Biblioteca Comunale Forteguerriana.
[100] Webb, *Saints and cities*, p. 191.
[101] Thompson, *Cities of God*, pp. 82-83.

in front of the saint's corpse, for the benefit of his inner circle of devotees and companions, presents information on Pietro which agrees with the *Vita* and situates him in a Franciscan milieu.[102] Moreover, the 1284 will of the clothier Bartolomeo di Ildebrandino Vincenzi, companion of the saint according to his life, and rector of the Ospedale di Santa Maria della Scala where Pietro assisted the sick, features the holy man in the role of spiritual advisor together with two other characters openly qualified as tertiaries.[103] In the case of Pietro, too, *laude* and public documents show that the cult spread quickly and was supported by the Sienese government.[104] Moreover, mentions of Pietro in Dante's *Purgatory* and the Franciscan Spiritual Ubertino da Casale's *Arbor Vitae* indicate that his reputation was spread across Tuscany.[105]

b. Religious Sources: Sermons

Thanks to the 'pastoral offensive', homiletic sources abound from the 13th century on; but they present specific methodological issues, such as the tendency of medieval preaching to being 'intentionally anonymous and repetitive'.[106] This is particularly true of the *sermones de Tempore*, closely linked to the liturgy of each day, so that every year the preacher was bound to talk about the same readings from the Bible on the same Sundays.[107] However, it could be argued that regular Sunday preaching, compared to speeches delivered for special occasions, was more effective in shaping the mind-set of

[102] Cenci, 'S. Pietro Pettinaio presentato da un predicatore senese contemporaneo', n. 1.2; *Id*., 'S. Pietro Pettinaio presentato da fr. Bindo da Siena'.
[103] ASS, Diplomatico, Archivio Generale dei Contratti, 23/04/1284.
[104] The *laude* are edited in Lazzeri, 'Due laudi francescane inedite del secolo XIV'; Cherubelli, 'Florilegio francescano', p. 270. The commune decided not even two week after the death of Pietro (4th of December) to allocate 200 l. to the Franciscans 'pro faciendo construi supra tumulum Sancti Petri Pectenarii, venerabilis civis Senarum, unum sepulcrum nobile cum ciborio': ASS, CG 38, f. 64r, 18/12/1289.
[105] Pellegrini, 'Pietro Pettinaio'; Dante Alighieri, *La Divina Commedia*, Purgatorio XIII, vv. 125-129.
[106] Delcorno, 'Medieval Preaching in Italy (1200-1500)', p. 487.
[107] As described by O'Carrol, 'Lectionary for the Proper of the Year in the Dominican and Franciscan Rites'.

the community, exactly because of its repetitive character. Despite the constraints imposed by liturgy, moreover, preachers had a certain degree of freedom in the choice of topics for their weekly homily, as demonstrated by Jussi Hanska.[108] Sermons rarely mention current events openly, because the regulations issued by religious orders prevented preachers from discussing political matters too directly, and the focus of the friars was not on politics but on ethics.[109] This is however not a good reason to dismiss a collection as useless for studying the society in which it was produced, since it was a commonplace of late medieval preaching that the choice of topics by preachers had to resonate with the specific conditions of the audience they were addressing.[110] Siena offers for this period two unpublished collections of *sermones de Tempore* attributed to local preachers, a unique circumstance for a 13th-century Italian city.

The first of those is a collection contained in a manuscript originally owned by the convent of San Domenico in Camporegio and attributed to the same Ambrogio Sansedoni whose hagiographical dossier has been analysed above.[111] It consists of 67 sermons, but a gap between f.48 and f.49 has resulted in the loss of the majority of the Lenten ones. The format of the manuscript and its contents suggest that it should be interpreted as a collection of notes organized by Ambrogio to provide his confreres with inspiration for their own sermons. This is clear when he suggests for a certain topic the use of *exempla* taken from his other works (something which also implies that there were once other collections by Ambrogio).[112] A reference to Thomas Aquinas' exposition of

[108] Hanska, 'Reconstructing the Mental Calendar of Medieval Preaching'.
[109] Iannella, *Giordano da Pisa*, p. 17.
[110] This concept is vividly represented in a 14th-century novella by Sacchetti, *Il Trecentonovelle,* Novella C, in which a preacher is reminded of the uselessness of preaching against usury in front of an audience of poor people, who surely would not have money to lend.
[111] Siena, BCI, Ms. T.IV.7, *Sermones fratris Ambrosii Senensis ordinis Fratrum Predicatorum* (henceforth *Sermones A*).
[112] Kaeppeli, 'Le prediche del b. Ambrogio Sansedoni da Siena', p. 11.

the Credo, written by the theologian after a preaching campaign in Naples during Lent 1273, represents a *terminus post quem* for the composition of Ambrogio's work, which therefore reflects his pastoral activity in the last phase of his life (1273-1286), a period in which he resided almost exclusively in Siena.[113] The manuscript is not an autograph, and the hand of the writer indicates a 14th-century composition, but the only scholarly contribution written about it, by Thomas Kaeppeli, concludes that Ambrogio Sansedoni is in all likelihood the author of these sermons.[114] As for the audience, Louis-Jacques Bataillon remarks that it was probably a cultivated one.[115] Although no detailed study has been published on the community that attended the liturgy at San Domenico, it is true that the cultural references in the sermons are of a very high level. Ambrogio displays a particular interest in medicine and astronomy (e.g. when he describes Christ's Ascension as a passage through the incorruptible matter of the seven skies).[116] His Parisian education and exposure to Aristotelian physics and philosophy are evident. However, political concepts related to the idea of 'bonum commune', which played an important role in the pastoral activity of 14th-century Florentine preachers, are not given any space in the collection.[117]

The second compilation is attributed with reasonable certainty to a Sienese Franciscan who was also connected to the hagiographical landscape of the city: the previously mentioned Bindo Scremi who wrote a sermon to commemorate the death of Pietro Pettinaio, and who was active in the 1280s-1300s.[118] This is only a partial collection, consisting of 27 sermons, and its manuscript source is a miscellany of Tuscan

[113] Kaeppeli, 'Le prediche', pp. 10-11.
[114] *Ibidem*.
[115] Bataillon, 'La predicazione dei religiosi mendicanti del secolo XIII nell'Italia centrale', p. 694.
[116] *Sermones A,* ff. 74v-75r.
[117] Gagliardi, 'Coscienze e città: la predicazione a Firenze'.
[118] Cenci, 'San Pietro Pettinaio', pp. 189-191.

preachers surviving in the Vatican, dating to the early 14th century.[119] Even though previous claims to a diversity of tone between learned Dominican preaching and Franciscan *sermo humilis* have been successfully challenged, Bindo's audience seems to have been slightly different from Ambrogio's.[120] The former often uses metaphors related to trading, whereas the latter privileges references to political activity. This could be a reflection of the preachers' own social backgrounds, but it also suggests that Ambrogio addressed himself principally to magnates like himself and the rich merchants who governed the commune, whereas Bindo principally targeted artisans and lower ranking tradesmen. Besides this difference, however, the two deal with similar themes, among which penitential ones are central, as is typical of 13th-century homilies.

c. Secular Sources

Sources produced by Sienese communal institutions are rich for the period 1260-1330, too, even though they differ from the ones that have been used in studies on Bologna and Florence. Very few *instrumenta pacis* (peace agreements) or court records survive in Siena for this period.[121] The methodological problems posed by the collections *Podestà* and *Capitano del Popolo*, which contain the scarce records from judicial offices preserved for this period, will be discussed in Chapter 4, in which the day-to-day reality of the Sienese administration of criminal justice will be analysed. In the same chapter I will describe some interesting alternative sources that Siena can offer to scholars of

[119] Città del Vaticano, Ms. Vat. Lat. 7697, ff.1r-63r (henceforth *Sermones B*). For a preliminary study of this collection see Bataillon, 'Les sermons du Franciscain Bindo da Siena pour les dimanches'. Bindo wrote also *sermones quadragesimales* and *de festis sanctorum*: for more information on existing and lost sources see *Ibidem*, and Cenci, 'San Pietro Pettinaio presentato da fr. Bindo da Siena', pp. 191-ff.
[120] On this historiographical debate see Hanska, *'And the Rich Man Also Died; And He was Buried in Hell'*, pp. 118, 138-141.
[121] The former are analysed in the unpublished doctoral thesis by Kumhera, *Making Peace in Medieval Siena: Instruments of Peace, 1280-1400*, University of Chicago, 2005.

conflict and crime, such as lists of condemnations, spread throughout this period, and two extremely rich collections of early 14th-century amnesties (1,439 documents in total). Another important source for this thesis has been the *Consiglio Generale*, consisting of volumes of minutes of the main political assembly of the city, extant with some gaps from 1249 onwards.[122] The preservation of public order and matters of criminal justice were regularly discussed in this assembly. The volumes have the important characteristic of not limiting themselves to presenting the items of the daily agenda and the final resolution taken by the councillors (as similar collections, such as the Bolognese *Riformagioni*, do), but of reporting debates and disagreements between the speakers as well, something which allows us to gauge the variety of attitudes towards crime and violence present among the political elite at any given time.[123] Additionally, Siena, like many other Italian communes, offers a variety of late medieval chronicles, which however date to the 14th century at the earliest and are generally preserved in later, early modern manuscripts.[124] Sienese chronicles are generally considered to be reliable, but they possibly contain interpolations added by later scribes, and for this reason have to be used with caution and in conjunction with archival sources.[125]

Finally, it is necessary to discuss the legislative sources produced by the commune of Siena, whose wealth constitutes one of the key features of the documentary landscape of the city. A set of more than twenty volumes of statutes survive for this period, with a peak in the 1280s and 1290s.[126] This legislative fecundity reflects, according to Ugo Mondolfo, the dynamic and vital character of the communal institution in the course of

[122] For a description of how these meetings operated see Redon, 'Le conseil général de la commune de Sienne'.
[123] Bowsky, *A Medieval Italian Commune*, p. 74, maintains however that these sources hide internal disagreements among the ruling class.
[124] The only one quoted in this thesis is Anonymous, 'Cronaca senese'.
[125] For more details and bibliography see Redon, *L'espace d'une cité*, pp. 56-59.
[126] For fragments of statutes preceding the period analysed here (dealing exclusively with civil legislation) see Mecacci, 'Un frammento palinsesto del più antico costituto del comune di Siena'; and Banchi, 'Il Breve degli Officiali del Comune di Siena'.

this period.[127] Given this wealth of sources, many of which are unpublished and some incomplete, I was not able to consult all the volumes for my research. The ones I have chosen to analyse, as the most complete specimens from the main political phases experienced by the city, are:

- The statutes of 1262, issued by the Ghibelline Twenty-Four, the first large legislative collection preserved for Siena. The last quires of the volume are written in a different hand, a characteristic that led Lodovico Zdekauer, their editor, to think they belong to a different redaction, datable to 1263-1269.[128] A gap at the end of the manuscript affects part of the fifth *distinctio* (thematic section), devoted to criminal justice.
- The statutes of 1274-1279, issued by the Guelf Thirty-Six.[129]
- The statutes of 1287, the first collection issued by the regime of the Nine, to which a sixth *distinctio* on their prerogatives and duties was added.[130]
- The *Costituto volgare* of 1309-1310, a vernacular translation of the statutes of 1300-1302.[131] The decision to make this text available to those citizens who did not know Latin had great significance in terms of the *Popolo*-centred political ideology expressed by the Nine in the later phase of their rule.[132]

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[127] Mondolfo, 'La legislazione statutaria senese dal 1262 al 1310', p. 255. On the high output of the Sienese legislators, see also Ascheri, 'Gli statuti delle città italiane e il caso di Siena', pp. 82-83. In Siena minor revisions to the statutes, as opposed to the redaction of completely new ones, happened moreover every year: Redon, 'Le conseil general de la commune de Sienne', p. 182.

[128] Zdekauer, 'Il frammento degli ultimi due libri' (based on ASS, *Statuti della città di Siena* 2, henceforth *Statuti 2*). In disagreement with this opinion is Mondolfo, 'La legislazione statutaria senese dal 1262 al 1310', p. 236.

[129] ASS, *Statuti della città di Siena* 3 (henceforth *Statuti 3*). Mondolfo ('L'ultima parte del constituto senese del 1262 ricostruita dalla riforma successiva') has edited the last part of their fifth *distinctio* arguing that the similarities between *Statuti* 2 and 3 would allow a reconstruction of the missing parts of the older codex. However, differences between the surviving parts of *Statuti* 2 and the corresponding norms of *Statuti* 3 (for instance, in the case of the punishment for homicide, which will be examined in Chapter 3), weaken his claim greatly.

[130] ASS, *Statuti della città di Siena* 5 (henceforth *Statuti* 5).

[131] The text of these statutes, that correspond to the manuscripts ASS, Statuti della città di Siena 19-20 (the fifth distinction is in the second volume), is edited in Lisini, *Il Costituto del comune di Siena, volgarizzato nel MCCCIX-MCCCX* (henceforth *Costituto volgare*).

[132] Neri, 'Culture et politique à Sienne au début du XIVe siècle: le statut en langue vulgaire de 1309-1310'.

4. Chapter Plan

In order to actually bring together these different types of sources, which are so often analyzed separately and rarely combined, I have decided to organize the contents of this thesis thematically and not by source type. Every chapter will focus on an important facet of the development of criminal justice in late medieval Italy and the influence of religion on it by making use of various types of sources at the same time. Therefore, this thesis will consist of a **first chapter**, in which I describe the three models for approaching crime and violence ('culture of revenge', ideology of public order and penitential spirituality) that I have posited as coexisting in Siena, and analyse differences and similarities between them. The commonality of the language used by different social actors to talk about violence, criminal justice and social harmony will be pointed out as something that promotes intercommunication between models. However, I will also underline that, although models overlapped, and the lay government tended to borrow concepts and ideas from Mendicant elaborations in order to promote peace and public order, the ultimate goals and visions of different social actors were and remained partially different. **Chapter 2** will build on this by investigating how these different visions of society translated themselves into the representation and promotion of different virtues, behaviours and emotions as the appropriate reactions to offences and violence. Attention will be paid to the way religious people presented emotions and Christian virtues as strategic tools to ensure the positive conclusion of a conflict, and I will argue that such a 'practical' model of behaviour presented by the Mendicants was at least in part appropriated by the Sienese government in political decisions such as that of banning violent games, which were very popular in medieval Italy. **Chapter 3** will focus on a comparison between religious and

lay ideas of mercy, revenge and justice in normative texts (hagiographies, sermons and statutes). It will challenge the idea, expressed by some scholars, that communal justice was essentially vengeful in nature, by showing that, just like religious conceptions of justice, lay justice was also a polysemic concept that encompassed ideas both of revenge and mercy. The comparison also shows how communal elites made use of religious ideas on divine justice in ways that were different from the original intents of the Mendicants, that is, to legitimise a higher degree of judicial violence by establishing parallels between divine and communal revenge, something about which the friars seemed to express concerns. This highlights how religious elaborations on crime and violence were not just passively received by laypeople, but transformed to serve their own purposes. A final **fourth chapter** aims to check the practical influence of these theoretical elaborations in sources such as petitions, minutes of assemblies and court records. It will suggest that, even though the values of the 'culture of revenge' were still central in the education of late medieval Sienese, as suggested by previous scholars, 'private' revenge between individuals or families was not legalised, even though 'public' revenge could be legitimised by making reference to religious concepts. It will also provide examples of how religious people directly influenced the Sienese to make space for mercy in the judicial system of the city, especially for the benefit of poorer citizens: such examples show, I will argue, that references to religious principles by communal governments were not entirely instrumental, but the result of an effective dissemination of ideas by friars and pious laymen.

Chapter 1: Competing Models for Approaching Violence and Conflict and their Points of Contact

Reflection on violence and violent conflict has been central in Christian thought since its very beginning, but the positions expressed by theologians and ecclesiastical hierarchies have varied considerably throughout the centuries. The integral pacifism of some of the early Fathers of the Church, who forbade the use of violence even in the case of self-defence, was for instance soon abandoned in favour of more nuanced attitudes.[1] Moreover, it has been argued that, at the beginning of the period considered in this thesis, canon lawyers and theologians were expanding the range of violent acts deemed morally justifiable, partly as a consequence of crusading rhetoric.[2] Specific Christian attitudes towards revenge might at first sight appear more straightforward, since the Pauline precept expressed in Romans 12,19 ('Vengeance is mine, I will repay, says the Lord') explicitly establishes it as an attribute reserved to God only. This led to a tradition in Christian theology of considering revenge carried out by humans mostly as a manifestation of the sin of pride. However, things were always more complicated than that, since definitions of the modalities through which God would perform His revenge, in particular whether He would carry it out only in person or also through His creatures, has been subject to considerable variations. Thanks to their narrative nature, saints' lives provide a vantage point on these shifts. Early Irish hagiography, for instance, offers numerous examples of effective cursing performed by saints against offenders guilty of defying divine authority: scholars have spoken of a 'vindictive cast of mind of the Celtic saints', a vengeful attitude clearly justified by the hagiographers by presenting the holy

[1] Cacitti, 'Il cristianesimo primitivo di fronte al problema della guerra'.
[2] Throop, 'Zeal, Anger and Vengeance'.

men as vehicles of God's own revenge.[3] Punitive miracles of this type are common in the hagiography of some centuries and areas of Western and Eastern Christianity, whereas they tend to be rare in others.[4]

The tolerance of the ecclesiastical milieu to the vengefulness of lay elites did not remain unvaried in the Middle Ages, either. Dominique Barthélémy argued that 11th-century French *vitae* allowed their lay aristocratic characters to express their vengefulness and pugnacity, seen as positive values by the members of their social class, before having them eventually capitulate to the higher claims of the saintly protagonists they were opposing or disrespecting with their violent behaviour.[5] This form of respect for elite conceptions of violence does not, however, seem to have been always present in the agenda of later hagiographers, as will be seen.

It will already appear obvious from this cursory review that attitudes expressed by churchmen, in hagiographies and other types of sources, towards violence and revenge have always been deeply influenced by the cultural and socio-political context in which they were produced, and must therefore be analysed by taking this broader setting into account. It is also evident that Christian intellectuals did not simply aim to mirror social perceptions of violence in their works. They strove also to influence them in turn, in order to offer solutions to the problems that conflict posed for their communities, and convince their members to live according to the virtues and values they supported. It will therefore not be surprising that the theme of conflict, and in particular of factional revenge, had a fundamental role in the lives of 13th-century Sienese saints and in contemporary sermons, suggesting that the problem of interpersonal violence was one of the main concerns of

[3] The expression comes from Little, 'Anger in Monastic Curses', p. 28; on this topic see Davies, 'Anger and the Celtic saint'.
[4] Sigal, 'Un aspect du culte des saints: Le châtiment divin aux XIe et XIIe siècles'; Bozóky, 'Les miracles de châtiment au haut Moyen Âge et à l'époque féodale'; Klaniczay, 'Miracoli di punizione e malefizia'.
[5] Barthélémy, *Chevaliers et miracles: La violence et le sacré dans la société féodale*, in particular p. 5.

religious people in the city. Intraurban factional war, as seen in the Introduction, was both a central worry of popular governments and one of the main points of action of the Mendicant orders in the Italian communes. In order to analyse what these sources can tell us about the specific way 13th-century Sienese friars and pious laymen (the main providers of reflections specifically based on Christian doctrine on these topics) addressed problems related to interpersonal violence, one has to go beyond the observation that these texts openly condemned revenge, once again on the basis of Romans 12,19.[6] It is necessary to explore the situations the authors imagined their characters finding themselves in when they were involved in violent conflict, the reactions they found appropriate and tried to elicit in their audience, and what language and metaphors they used to create a coherent framework for the interpretation of violence, crime and revenge in their society. Here I argue that the redefinition of the sacrament of penance occurring after the Fourth Lateran Council was central in the creation of a model, or a discourse, for construing violent conflict and crimes linked to interpersonal violence by Sienese exponents of the Mendicant orders and of the lay fraternities often connected to them. In this model, hagiography, preaching and the pastoral activities carried out by such actors (including the administration of the sacrament of penance itself) were a means to promote a set of moral duties arising from membership of the Christian community, which included a complete rejection of the idea that single individuals or associations based on kin, faction etc. could be legitimate vehicles of divine revenge. This idea, persistently promoted by religious people, clashed with the opinion, equally pervasive in communal society, that male citizens had a duty to avenge affronts made against them. This tension between radically different obligations was present in the minds of both Mendicant friars and laymen, who were thus confronted with moral dilemmas as to

[6] A few examples can be found in *Vita A.S.*, col. 191; *Summarium*, col. 211; *Vita P.P.*, p. 69; *Sermones A*, f. 20r.

whether to make their behaviour in a dispute conform to one or to the other. In hagiographies, saints performed the important function of providing through their miracles a way of solving conflicts while avoiding permanent loss of reputation, as well as eliminating the sense of anxiety deriving from the dilemma. The role of these episodes was not limited to presenting exceptional supernatural interventions, though: the action of religious people in Siena seems to have been directed at promoting a greater space for concepts such as mercy, repentance and guilt in the ordinary citizenry's responses to violence and crime. This penitential approach to the issues discussed in the thesis is distinctive enough from the other main paradigms through which criminal justice was perceived in late medieval Italy, that is, what I previously termed the 'culture of revenge' and the 'ideology of public order', to be considered as a proper third model that coexisted alongside them. A selection of excerpts taken from Sienese religious sources will show the importance of penitential spirituality in the treatment of situations of violent conflict, and bring out the main implications of this model. It will then be possible to examine the extent to which this third discourse had an influence on lay society, and in particular its political elites, in what ways, and why.

1. A Penitential Conception of Criminal Justice

In the life of Pietro Pettinaio, the section devoted to the effectiveness of the saint's prayers and prophetic spirit includes a miracle that offers an excellent starting point to explore religious views of conflict in late medieval Siena. It is the story of a certain Mino, who, having been injured by an enemy and feeling greatly offended 'at the prompting of the devil' ('per diabolica suggestione'), decides to kill the enemy, but before doing so he

goes to church 'to see the Elevation of the Host and commend himself to it'.[7] The saint, however, is praying there too and, thanks to a divine revelation, discovers Mino's plan. Pietro then confronts him, threatening him with terrible punishments and telling him that God's advice, which he had requested by commending himself to the Corpus Domini, was to forgive the offence:

'Know that this morning, as you commended yourself to Christ the Saviour while seeing his body, he is giving you this counsel'.[8]

The man recognises in Pietro's admonition a miracle and an aid from God linked to his commendation, therefore he repents and goes home 'con molta pace e quiete di animo' (with much peace and tranquillity of the soul).[9] Mino's behaviour allows us an interpretation that reads his act of devotion not as a request for sanction for his vengeful intent, but for advice: this is strongly implied by the expressions used in the Italian text, *consiglio* (advice) and -as Mino says later when commenting on the miracle- *soccorrere* (to help),[10] which remind us of the technical socio-legal expression 'consilium et auxilium'. In 13th-century Italy this formulation referred, in contexts of conflict, to the practice of resorting to friends' and relatives' advice in order to decide how to deal with offences, as well as to the help they would offer in such dealings.[11] The fact that the hagiographer decides to present Mino in this manner is already an aspect which is worth dwelling on: Mino's decision to ask for God's advice immediately hints at a certain

[7] *Vita P. P.*, pp. 61-62: 'per vedere levare il Corpus Domini e a quello raccomandarsi'. The episode is translated in Webb, *Saints and Cities*, pp. 216-217. My translations are based on Webb's, whose text however, for the sake of brevity, skips parts of the Italian version that in some cases are crucial for my arguments, and which therefore I integrate with my own translations.
[8] *Vita P.P.*, p. 63: 'Sappi, che questa mattina raccomandandoti tu al Salvatore Cristo, vedendo il corpo suo: egli ti da questo consiglio', compare with Webb, *Saints and Cities*, p. 217.
[9] *Vita P. P.*, p. 64.
[10] *Ibidem*: 'per li meriti suoi così presto soccorrendomi' ('helping me so promptly through his merits').
[11] Zorzi, 'La cultura della vendetta', p. 141 e 145; Id., *La trasformazione*, p. 134.

degree of uncertainty in his opinion that revenge would be the best solution to adopt in response to an affront. Enrico Artifoni highlights how, in Italian moralistic treatises from the 13th century, the practice of requiring a *consilium*, central in the communal model of society, is indeed always associated to a *res dubia*, a situation of uncertainty.[12] The most famous case is Albertanus of Brescia's *Liber consolationis et consilii* (1246), a work centred on the importance of advice, which will be analysed in more detail in the next chapter with reference to its treatment of emotionality. This work centres, too, on the problem of the appropriate reaction to affronts, an issue that appears to have been widely discussed in late medieval Italy. Pietro's hagiographer seems to present it as a deeply felt moral dilemma between social expectations prompting to revenge, and knowledge of God's injunction to forgiveness. On one hand the loss of individual and group reputation was at stake, on the other hand there was the risk of damnation and potentially of a divine punishment already in this life. As other examples will confirm, this is not a single example, but a precise narrative strategy employed by the Sienese Mendicants.

The hagiographer therefore describes the conflict taking place in this excerpt as a dual issue: it is both external, that is a conflict between Mino and his enemy, and internal, between different inclinations deeply embedded in Mino's mindset. The solution proposed by Pietro, repentance, settles both types of dispute and has peace as its outcome. Peace was of course the desired conclusion of a conflict according to both secular and religious intellectuals. *Pax* or *concordia* was the technical term for the document, written by a notary at the demand of the parties implicated in a feud, which was deemed to put permanent end to it, to the point that the transgressor of the terms of such a document would be severely prosecuted by communal authorities, including those of Siena, as will

[12] Artifoni, 'Tra etica e professionalità. La riflessione sulle forme di vita', p. 413.

be seen later.[13] In late 13th-century Italian preaching (examples include the works of Federico Visconti, archbishop of Pisa, and Giordano of Pisa, active in Florence), the term *pax* often had a more complex, threefold definition: internal peace was the state of tranquillity of the conscience that derives from penance, whereas external peace was the social and political outcome of the decision to end conflicts; eternal peace, finally, was the desired condition of the soul in the afterlife.[14] These different facets were seen as intertwined, not only by religious thinkers, but also by the parties involved in disputes of various kinds, who could ask notaries to include references to penitential spirituality in peace agreements.[15] As the hagiographer clearly highlights by using the expression 'with much peace and tranquillity of the soul', the internal conflict must be resolved by creating internal peace through repentance in order also to end the external one. The effect of this miracle and the subsequent penitential conversion on Mino is in this case so powerful that he asks Pietro if he can join him in his charitable activities as one of his companions. This suggests that Mino should be identified as the carpenter Mino Luglioli, indicated earlier in the Life as a member of Pietro's circle of religious laymen (which also means this is another case of non-elite revenge in communal sources).[16] In this episode, repentance is therefore indicated by the hagiographer as the appropriate response to affronts; but how applicable is this conception to Sienese spirituality more broadly? And what does the author mean by repentance or penance, exactly? The analysis of a few other excerpts will help clarify these aspects.

[13] The literature on the topic is extensive: the most recent works are Kumhera, *The benefits of Peace*, and Jansen, *Peace and Penance.*
[14] Bériou, 'Le sermon de Federico Visconti', p. 361; Iannella, 'La paix dans la prédication du dominicain Giordano de Pise', pp. 367-382. This classification of peace seems to be present also in the sermons of Ambrogio Sansedoni: see *Sermones A*, f. 4r, 'quia nihil est pax exterior nisi sit pax interior'.
[15] Sensi, 'Le paci private nella predicazione'; V. Rovigo, 'Le paci private: motivazioni religiose nelle fonti veronesi'.
[16] *Vita P.P.*, p. 18.

One of these excerpts is an episode of the Life of Ambrogio Sansedoni, featuring a duel between the *inimici* Cherubino de Francheriis from Gaeta and Salimbergo de Rosellis from Arezzo, and set in all likelihood in Siena shortly after the saint's death.[17] This is a clearer example of the socialised nature of conflict in the 13th century, and therefore of the importance of considering the constraints deriving from social 'obligations, expectations and reciprocations' and the 'exigencies of interaction' in analysing the behavioural choices of individuals in this period.[18] Before the duel Cherubino, who is devoted to the recently dead Dominican preacher (and thus must have heard Ambrogio's sermons against revenge, described at various points of the Life)[19] has a mass celebrated in the church of San Domenico in Siena to commend himself, just like Mino, to God and to the Blessed Ambrogio. That this *commendatio* probably has the same meaning as that described in the last episode becomes clear from the behaviour of Cherubino during the duel. The religious inclination of the man, in fact, becomes evident also from his frequent invocation of divine help during the duel, which he manages to win. When his adversary is already lying on the ground at his mercy, however, instead of finishing him off,

'He started to cry with much humility: I forgive you, Salimbergo, and declare myself defeated.'[20]

Salimbergo, astonished, rises to kiss him with the kiss of peace and they are both cured of their wounds thanks to the supernatural intervention of Ambrogio. Cherubino's act of

[17] *Vita A.S.*, col. 199.
[18] As suggested by Comaroff, Roberts, *Rules and Processes*, p. 12. On the value of revenge as a 'pratica socializzata e pubblica', see Zorzi, 'I conflitti nell'Italia comunale', p. 35.
[19] See above, n. 6.
[20] *Vita A.S.*, col. 199: 'magna cum humilitate clamare cœpit: Veniam tibi concedo, Salimberge, victum me fateor'.

repentance can be described as a gesture of voluntary humiliation that inverts the sense of the duel, whose aim was the opposite: that of humiliating the *inimicus* through his physical annihilation. This would annul in turn the humiliation derived from the offence that has to be postulated as the starting point of the conflict, and on the nature of which no information is unfortunately given. Scholars such as John Bossy and Mary Mansfield have underlined the face-saving value of rituals of voluntary humiliation.[21] In the light of the principle of 'retributive compensation', according to which 'human relations (...) were regulated by a calculus of debt and satisfactions' in every sphere of medieval life, voluntary humiliation as a form of religious penance was a means of inverting the involuntary one to which the loser of a conflict would be exposed, thus escaping its most unpleasant consequences, such as death, physical harm or permanent loss of reputation.[22] However, in this case Cherubino seems to be doing something rather different than trying to save his face. The hagiographer insists on the fact that this behaviour is displayed by Cherubino when he could be already considered the winner of the duel ('cum iam victor existeret').[23] Moreover his actions, instead of granting him material or immaterial benefits, attract criticism from the audience because his choice of forgiveness over revenge does not allow him to recover his honour. Indeed his *amici*, who witness the scene, ask him for explanations of his conduct, which they are ready to qualify as a display of *pusillanimitas*, cowardice. It is only when he explains his behaviour as being the result of a command from the blessed Ambrogio, who had appeared to him during the duel and had made reference to the 'great honour' that Cherubino could expect from his actions, that his circle recognises the exceptionality of the circumstance and hails the miracle.[24] His pious inclinations are however already present before the saint's apparition, which

[21] Bossy, *Christianity in the West*, pp. 5-ff.; Mansfield, *The humiliation of sinners*, pp. 265, 290.
[22] Bossy, *Christianity in the West*, p. 5.
[23] *Vita A.S.*, col. 199.
[24] *Ibidem*: 'Parce inimico tuo, & te victum appella; quia ad magnum tibi cedet honorem'.

only seems to act as a justification for his switching from the 'secular' logic to the 'religious', albeit a necessary one to obtain social approval: in this case it is not Cherubino's gesture of humiliation, but the miracle, which acquires a face-saving value. The hagiographer even comments that 'this entire episode was regarded as a great miracle': convincing someone to put aside obligations and expectations interiorised since childhood such as those related to revenge, the text seems to suggest, is a great achievement even for the standard of miracles.[25]

What is however more important is that once again the hagiographers present a situation of violent conflict as one characterised at the same time by a moral dilemma, in which the protagonist has to take into account that his actions happen in a public space and need to be justified to the audience, but also need to appease the internal anxiety caused by the conflict between different obligations. It is evident that the Mendicant hagiographers who wrote these dossiers did not limit themselves to describing the presence of this moral dilemma in 13th-century Siena, but were also trying to instil it in their audience as a means of influencing people's behaviour. An example of partial success in raising awareness of this contrast between duties is represented by the moral treatise of the Florentine judge Bono Giamboni, *Il libro de' vizî e delle virtudi*, written in the second half of the 13th century.[26] Giamboni acknowledged the existence of different kinds of natural obligations, which included both religious duties and revenge, and noted the contrast between obligations to revenge and God's commandment to 'offer the other cheek' to the enemy (Matthew 5:39).[27] However, he minimised the impact of this dilemma by arguing that obedience to the commandment of 'offering the other cheek' applies only to those who 'want to be perfect', implying that average Christians were not expected to

[25] *Ibidem*: 'hoc totum pro magno reputatum est miraculum'.
[26] Bono Giamboni, *Il libro de' vizî e delle virtudi e il trattato di virtù e di vizi*.
[27] *Ibidem*, ch. XXXVI and LXXI, quoted in Zorzi, 'La cultura della vendetta', pp. 141-142.

meet such a high standard.[28] The Mendicants must have been aware, too, that despite their efforts the contradiction was not felt by everyone with the same intensity. Insistence on the necessity of a miracle - a supernatural intervention which reminds people that conflict does not only involve its human participants, but also affects the individual's relationship with God-[29] to overcome the lure of an ingrained culture of revenge is telling.

A third example from hagiography allows us to expand these considerations not only to situations of actual violent conflict as the ones seen before, but also to the broader context of criminal justice. By this I mean the set of circumstances in which actions considered as a breach of the norms of the community, and which generally involved cases of interpersonal violence, were dealt with by society and/or the urban government. This excerpt is also preserved in the Life of Pietro Pettinaio:

' A young layman in Siena was instructed to appear before the *podestà* to give testimony which would damage certain people whose friendship (*amicizia*) he was afraid to lose. On the other hand it seemed to him that he could not lie without damage to his own conscience, and so he was greatly agitated (*penosamente agitato*) and did not know what to do. However, he was inspired by God to seek Pietro's advice; he explained his dilemma to him and Pietro replied in this manner: 'Dearest son, it would be better for you to live away from Siena with the friendship of God (*amicizia*) and the peace of your conscience than to live in it with the friendship of men, or with your conscience corrupted by false witness.' The young man thanked Pietro and left him with the intention of following his

[28] *Ibidem.*
[29] Rossi, 'Polisemia di un concetto', p. 21.

advice. But Pietro the servant of Christ prayed for him, and the dispute was resolved satisfactorily and the young man did not have to give evidence at all'.[30]

Although in this case the moral dilemma does not involve the choice between revenge and forgiveness, the duty of offering solidarity to one's *amici* and *familia* in situations of conflict (even with the authorities) was still seen as a part of the same culture of revenge diffused throughout communal Italy. Here, too, this type of obligation clashed with a Christian commandment, that of not bearing false witness.[31] The situation seems to imply that the young man had to testify in a criminal case which was probably linked to an episode of interpersonal violence (since the *podestà* was in charge of administering criminal justice in the city, and, as will be seen in Chapter 4, assault was the most common crime committed in late medieval Siena). The stress on the young age of the layman seems to allude to the commonplace, present both in narrative and archival sources from 13th-century Italy, as well as from other periods, that young men were the main people responsible for brawls and other forms of violent confrontation within cities.[32] Once more, the source suggests that external conflict also brings about an internal conflict. It is the latter which produces anxiety and other unpleasant feelings, the antidote to which is again the sense of internal peace ('pace della coscienza') that derives from picking God's side in the struggle and which, as seen before, is defined in 13th-century elaborations as deriving from penance. Pietro and his hagiographer are aware in this case, too, of the possible social consequences of such a radical choice in favour of a 'religious logic' versus a 'lay one' (that is, violent retaliation against the betrayer of group solidarity), and

[30] *Vita P. P.*, pp. 98-99. Webb, *Saints and cities*, p. 231, omits the expression 'e pace della coscienza tua'.
[31] Guarisco, *Il conflitto attraverso le norme*, p. 133. On the importance of the dyad *amicitia/inimicitia* in Western history, see Moreno (ed.), *Amicus (inimicus) hostis.*
[32] Crouzet-Pavan, 'Un fiore del male: i giovani nelle società urbane italiane'; M. Goodich, *Violence and Miracle in the Fourteenth Century*, p. 35.

the conclusion of the episode offers a compromise between expectations thanks to the divine intervention provoked by Pietro's intercession. By consistently presenting situations of conflict and crime as harbingers of moral dilemma, and penance as the solution capable of bringing internal and external peace, Sienese Mendicant authors were however in all likelihood presenting a model meant to inspire laypeople in the absence of miraculous interventions as well.

The clearest formulation of this attempt at reorienting their fellow citizens' behavioural and emotional responses can be found in a different type of Sienese religious source, Ambrogio Sansedoni's sermon for the *dominica tertia de evangelio*.[33] Commenting on Matthew 8, 25 (Jesus saves the disciples from a shipwreck), the preacher compares the rough sea to the soul of the sinner involved in a lasting enmity, wavering between conflicting duties and reflecting:

'If I abandon my resentment and hate towards this person I will be shamed, but if I don't, I will lose my soul'.[34]

The consequence of leaving affronts unavenged is thus outlined by Sansedoni as shame deriving from social disapproval, since not redeeming one's honour from the state of humiliation into which a perceived offence had plunged it was considered a manifestation of cowardice: the accusations made by Cherubino's friends are a case in point of a mechanism already studied by historians and anthropologists, which I described in the Introduction (pp. 15-18). On the other hand, consideration of hatred of one's enemy as a

[33] *Sermones A*, ff. 26r-28v: 'Si dimitto rancorem et odium quod habeo contra talem sum vituperatus, et si non dimicto perdo animam'.
[34] *Ibidem*, f. 28r.

sin that disrupts man's relationship with God raises different types of feelings, which the preacher seems to consider the most appropriate to excite in the sinner the desired reaction of repentance through access to the sacrament of confession. The remedy presented by the preacher to restore peace and *tranquillitas maris* (the tranquillity of the sea) is precisely 'true confession, satisfaction and devout prayer'.[35] Describing the attitude that these sources intend to promote as the appropriate reaction to interpersonal violence will require a more detailed analysis of medieval concepts of shame and guilt, which I will attempt later in this chapter. Nevertheless, it is important to highlight here that the pre-eminence given by our authors to these feelings, which entail an introspective mindset and a careful analysis of the intentionality of one's actions, is definitely in line with the doctrine of confession as elaborated in the 12th-13th centuries, and as described by the scholars who argue for a privatization and interiorization of penance in this period.[36] Moreover, the importance of these feelings, associated with access to confession, is not the only reference to this sacrament that Sienese sources make when describing situations of conflict or crime. The reference to the relationship between man and God as one of *amicitia*, which appears in the episode of the young man summoned as a witness, and is common in Sienese sermons as well,[37] is another link to a commonplace of the discipline of confession. In that context, the trust required for disclosing one's sins in front of a priest was interpreted as a sign of friendship between man and God.[38] Mino's and Cherubino's request for *consilium et auxilium* -the main attributes of friendship in late medieval Italy- from the divine thus sounds like a consequence of this definition of the relationship between the individual and the Almighty. All these characteristics lead one to conclude that the hagiographical and homiletic treatment of the theme of violence in

[35] *Sermones*, f. 28v: 'vera confessio, satisfactio et devota oratio'.
[36] See for instance Tentler, *Sin and Confession,* pp. 161-162; Arnold, *Inquisition and Power*, pp. 19-48.
[37] For instance, *Sermones B*, f. 33v; *Sermones A*, f. 35r.
[38] Mansfield, *The Humiliation of Sinners*, p. 36.

13th-century Siena is deeply influenced by language and concepts relating to confession. More broadly, I would argue that Sienese hagiographies and sermons, together with other archival evidence in which the voice of Mendicant friars and lay penitents affiliated to confraternities can be heard, and which will be analysed throughout this thesis, present a conception of violence and crime that differed from the others coexisting in Siena, but which was nevertheless influential on the praxis of criminal justice.

2. What is a Model, or a Discourse, of Criminal Justice?

As recently argued by the historian of Anglo-Saxon legislation Thomas Lambert, traditions of law generally establish 'a broadly coherent framework of rules and categories' that define what constitutes rightful or wrongful behaviour in a given society, and which create in this way a model of good order.[39] This model must in his opinion be reconstructed not on the basis of modern anachronistic assumptions, but through an analysis of the sources left by past societies to uncover the concepts (or 'local categories', as Lambert defines them in an anthropologically-minded way) that were actually used by their members to outline ideas of order and lawfulness.[40] My thesis aims to do something similar by arguing, as I have just noted, that, alongside models of conceiving criminal justice already described by previous scholarship, it is necessary to consider a third one, based on penitential spirituality and deeply influenced by the recently refined doctrine of the sacrament of confession. Here I use a simple working definition of criminal justice, that is the set of collectively-sanctioned initiatives and tools existing in a particular society to control and repress deviance, defined in turn as non-conformity with the rules

[39] Lambert, *Law and Order in Anglo-Saxon England*, p. 1.
[40] *Ibidem*, p. 11.

that establish certain behaviours as wrongful, offensive or indeed criminal.[41] In late medieval Italy there clearly was, as shown also by the examples in the previous section, much discussion and disagreement about the range of acts of interpersonal violence that should be considered either deviant or legitimate, and therefore either criminal or legal. For this reason, focusing on violent behaviour and the episodes of conflict in which it was embedded seems a promising way to improve our understanding of the general principles underlying communal criminal justice. This could also help approach questions ranging from what the aims of punishment or the strategies to solve disputes were, to the reasons why certain behaviours and attitudes considered legitimate at the beginning of this period were seen as deviant towards its end.

This is a methodology that clearly owes much to the recent revival of the 'rule-based approach' to the study of conflict advanced by historians and anthropologists.[42] Criticism of this type of approach by supporters of the rival 'processual' account was generally based on its prominent focus on the study of institutions as opposed to that of the strategies put in place by the variety of social actors actually involved in a conflict, and on the inadequacy of rules, with particular reference to codified laws, to describe 'what really happened' in practical contexts.[43] The advocates of this renewed 'rule-based' approach define rules not as predictive of human behaviour in the way a scientific rule would predict a physical phenomenon, but as generalizing and organizing concepts that inform the actions of those involved in a conflict even when they contravene them. In my case-study, moreover, a multiplicity of sets of rules can be recognised, something which reflects the legalistic tendency, typical of the 13th century, to come up with exact

[41] This definition is inspired by Orlandi, 'La giustizia penale'. A more in-depth discussion of the category of deviance and of its pertinence to the study of medieval history will appear in Chapter 4.
[42] Suffice it to mention Dresch, Skoda (eds.), *Legalism: Anthropology and History*; Taylor, 'Lex Scripta and the Problem of Enforcement'; Lambert, *Law and Order*.
[43] For a brief summary of the debate see Wickham, *Legge, pratiche e conflitti*, pp. 484-487; P. Dresch, 'Introduction. Legalism, Anthropology and History'.

definitions and general concepts to describe all human relationships.[44] Therefore, in addition to the legislation of the city, the set of religious obligations described by Mendicant authors also shared the characteristics of a set of rules. The legalistic inclination of the late Middle Ages partially transformed even the norms regulating feuding, hitherto based more on local common sense than on explicit generalisations, into a codification, as it can be seen in treatises like Bono Giamboni's or the other examples analysed by Zorzi.[45] The importance of rules, in this sense, has also been accepted by scholars who use a processual approach to their sources: Chris Wickham for instance highlighted the dialectic between norms and social practices in his study of disputes in 12th-century Tuscany.[46] The perspective that I adopt in this thesis owes much to this more nuanced view, since the definition and analysis of models, or paradigms, of criminal justice in late medieval Siena is carried out here on the basis not only of programmatic sources in which the generalizing concepts that structure them are outlined, but also of more pragmatic ones. The documentary landscape of late medieval Italy offers many narratives of legal practice that allow us to verify how people belonging to different segments of society (on account of gender, social class, membership of factions or religious associations etc.) actually made use, favoured or criticised the models that were available to them. Not looking at the sources through the double lens of the normative and the processual would clearly mean not taking advantage of a privileged documentary situation in the context of medieval Europe, and would also limit the scope of the conclusions of this work. As shown by anthropology, for instance, models of good order can have an 'aspirational role' in certain societies, as is the case for Islamic law in the Algerian Touat according to Judith Scheele's research (one could argue that a simple

[44] Dresch, 'Introduction. Legalism, Anthropology and History', p. 17.
[45] Zorzi, 'La cultura della vendetta'; on the indeterminate nature of the so-called 'law of feud' in the majority of societies see Dresch, 'Introduction. Legalism, Anthropology and History', p. 35.
[46] Wickham, *Legge, pratiche e conflitti*, pp. 487-489.

reading of the New Testament produces a similar situation in Western Europe, now as in the Middle Ages).[47] Rules might matter, that is, not because they are actually enforced, but because they connect local life and ideas of moral rightness seen as universal by the community members. An analysis of these 'aspirational' rules is still conducive to a deeper understanding of the society that produces them, but the way they matter within it is of course very different from that of general principles in favour of which pressure groups campaign in order to ensure they are actually enforced (an example are current protest movements against the death penalty, or for a more humane treatment of convicted criminals).

As mentioned in the Introduction, the Sienese sources are however scant for this period when it comes to legal documents presenting complete court cases, so that this study cannot claim to offer a complete picture of all aspects of criminal justice in the commune. It will not be possible to explore important topics such as the role of guarantors in trials and the strategies put in place by defendants in choosing them, since the sources do not allow a systematic collection of data on these practices; another example would be the involvement of women in revenge crimes, which I will touch upon on the basis of desultory documentation and the general inferences that can be made from it, but will not discuss in detail. However, what the Sienese sources are rich enough to offer is a detailed picture of the different narratives that surrounded criminal justice in the late medieval commune, and of how they were used not only by the lawmakers but also by various other segments of the population. Because the models that I theorise provided all these social actors with a variety of commonplaces and rhetorical rules to utilize in their narrations, in the course of the thesis I will also use the term discourse to define them. In

[47] Scheele, 'Rightful Measures: Irrigation, Land, and the Shari'ah in the Algerian Touat'.

sociolinguistics and literary theory this term is broadly defined as a way of thinking that establishes what statements can be said about a topic.

The three models, or discourses, of criminal justice coexisting in Siena between the 13th and the 14th century can be briefly described as follows. The studies of Zorzi and his followers have shown without doubt that late medieval Italy, like other societies, was characterised by a 'culture of revenge'. In this context reputation, or honour, was an immaterial commodity of fundamental importance for the social standing of an individual and the group he belonged to, and one whose loss was considered to be irreparable.[48] Revenge was seen as the only way to restore it once it was damaged by an affront, with the implication that only those whose honour was tarnished by an act of violence, be it verbal or physical, had the right and the duty to retaliate against the offender. Retaliation had to be public enough, as seen already in the case of Cherubino, that the restoration of the avenger's honour could be recognised by the whole community and accusations of cowardice avoided.

The use of violence, according to this model, had little to do with the necessity of deterrence or the willingness to punish acts seen as morally wrong and setting a good example for the community, even though this type of consideration might also be present in societies in which the 'culture of revenge' was influential, including Siena itself.[49] The primacy of the restoration of one's honour in the use of violence, or at least in the resort to threats and intimidation against one's enemy, was such that examples from 12th-century England show that sometimes avengers would not keep the gifts offered by their defeated opponents as a compensation, but would give them back and content themselves with

[48] See Introduction, notes 9-11, for bibliography.
[49] For examples of similar concerns also in earlier periods, in which 13th-century ideas of public order were not yet salient, see Wickham, *Legge, pratiche e conflitti*, pp. 352-360; Lambert, *Law and Order,* Conclusions.

being considered *metuendi*, fearsome, by them and the rest of the community.[50] The centrality of the emotional satisfaction, coming from the restoration of one's honour, in the use of violence by exponents of the culture of revenge will be further analysed in Chapter 2. It is worth noting already that according to this view violence could be seen as a positive element in social life, the mark of the free, strong men (which is why, in some cases, it might have been associated with the aristocracy).[51] However, distinctions were obviously made between this type of restorative violence and that which only disrupted the wellbeing of the community, or which did not respect the rules of 'fair play' by which honourable men were supposed to abide (for instance, treacherous acts of violence such as those committed in secret, at night, or through the use of hired killers).[52]

The second model, which I have defined in the Introduction as the 'ideology of public order', can be fruitfully summarised in the sentence, already quoted, that constituted its theoretical justification: 'Publice (or *rei publicae*) interest (or *necesse est*) ne maleficia remaneant impunita'.[53] This formulation, which appears in various Sienese sources for the period analysed here, focuses on two main aspects that characterise this model.[54] Firstly, the involvement of the public power, identified as the subject responsible for fighting against crime. The controversial medieval category of 'public' and its

[50] Beckerman, 'Adding Insult to Iniuria', p. 170. Miller, *Eye for an Eye*, pp. 145-150 also concludes that feuding cultures as diverse as the 19th-century American West and contemporary Montenegro see revenge as essentially concerned with the personal satisfaction of the avenger.
[51] The classic account for late medieval Italy is Martines (ed.), *Violence and Civil Disorder in Italian Cities*. For Italian magnates and violence see also Introduction, n. 7. For examples of how violence could still be seen as situated 'au sommet de la hiérarchie des valeurs de la société' in other 14th- and 15th-century contexts, see Maddern, *Violence and Social Order: East Anglia, 1422-1442*, pp. 76-ff.; Gauvard, 'Le roi de France et le gouvernement par la grâce', p. 373.
[52] On the distinction between ordering and disordering violence see Skoda, *Medieval Violence,* Conclusions. On the rules of 'fair-play' in revenge see Miller, *Eye for an Eye*, p. 168. For examples of the influence of this conception on the statutes of Siena and other Italian communes see Chapters 3 and 4.
[53] Fraher, 'The Theoretical Justification for the New Criminal Law'.
[54] ASS, CG 12, f. 11r, February 1266: 'necesse occurrat ut ne remaneant impunita [maleficia]'; CG 13, f. 24v, 21/09/1270: 'si quis malefecerit quod puniatur graviter et crudeliter in personis et in rebus pro bono statu communis'; CG 15, f. 35r, 17/01/1272: 'ut maleficia non transeant impunita'; CG 26, f. 1r, 22/07/1282: 'necessitas et evidens utilitas ut condempnationes fiant'.

opposition to that of 'private', equally subject to debate within the scholarly community, will be analysed later in a specific section, in which I will argue that they were influenced by the redefinition of ideas of community brought about by penitential attitudes towards violence.[55] Notwithstanding the debates surrounding this terminology, the terms 'public' and 'private' are often used in medieval sources concerning criminal justice and the settlement of disputes, and in particular in the aforementioned *publice interest* formulation, so central to 13th-century developments in this field. This should prompt researchers not to dismiss them entirely but to analyse them in context, without juxtaposing contemporary ideas of public as linked to modern states and thus taking a teleological perspective.

The other prominent aspect featured in the foundational principle of the ideology of public order is the centrality of punishment, as previously mentioned. This aspect seems immediately to differentiate this second model from the culture of revenge, in which it is the satisfaction of the offended that really matters, and not the necessity to make sure that the offender receives a formalised punishment by a public organisation. According to this model in its purest, abstract form, violence is therefore legitimate only when it is used by the public power to punish criminals.

The third model that I postulate is, as has been seen, based on penitential spirituality. In this perspective, too, violence is considered unacceptable, with a few exceptions (which for individuals in the context of intraurban crime amount almost exclusively to self-defence). Revenge carried out by private individuals or groups is not condoned, but on the contrary seen as a major social problem that local religious leaders, such as Pietro Pettinaio and Ambrogio Sansedoni in the examples above, must deal with.

[55] Chittolini, 'Il privato, il pubblico, lo Stato'; Zorzi, 'Pluralismo giudiziario', p. 154.

The rejection of revenge is here so thorough that punitive miracles in which the holy men retaliate against sinners on behalf of God, so common in other hagiographical traditions, are almost entirely absent in Sienese *vitae.*[56] Current hagiology has shown how the disappearance, revival and variations of *topoi* are not the result of chance and, generally, not even of the author's idiosyncrasy, but are a conscious choice that the religious milieu which produced the hagiographical text makes so as to reflect their views of the sociocultural context in which they lived.[57]

The solution to the problem of violence and revenge is, according to the proponents of this model, never identified with the tightening of the laws against crime, which entailed an increase in the fines and an expansion in the use of corporal punishment, which is what the governments of the Italian communes, including Siena, generally proposed on the basis of the ideology of public order.[58] On the contrary, the examples presented above show clearly how contrition springing from a penitent attitude, and prompting enemies to make peace with each other, was proposed by the Mendicant hagiographers as a remedy for interpersonal violence, without any involvement of the local government. The solution proposed therefore involved promoting self-control within society, in other words, a change in individual attitudes towards conflict, not expanding social control, which is the role of institutional bonds in regulating violent behaviour.[59]

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[56] The only exception is the life of the Augustinian Antonio of Monticiano (BHL 586), transcribed in AASS *Aprilis* III, apparently from a scroll kept in Monticiano, in the Sienese *contado*. In his life (col. 834) the Franciscan Angelo of Siena, a detractor of the saint, is punished with fevers until he repents and publicly preaches the virtues of the saint.

[57] Montanari, 'Uomini e orsi nelle fonti agiografiche dell'alto Medioevo'; Powell, 'Once Upon a Time There Was a Saint …'; Zanetti Domingues, 'Giustizia divina e invasioni saracene'.

[58] There are numerous examples of discussions in the General Council of Siena focused on the issue of reforming criminal legislation to make it harsher. From the 1290s the reform of the *ordinamenta* concerning public order is regularly discussed by the councilors at the beginning of each semester (see Chapters 3 and 4). For a sample from the previous period, see note 49.

[59] For theories of self-control and social control in criminology see Hirshi, 'Self-control and crime'. The concept of self-control is however used in a slightly different sense here, since according to Hirshi's theory self-control, once acquired during childhood, remains relatively stable throughout a person's life. On the contrary, it is clear that, according to 13th-century religious thinkers, it was an aspect of human behavior

In this respect the penitential model of criminal justice differed from both other paradigms, since even the culture of revenge saw in the eye of the public, which evaluated which actions were honourable and which were not, one of the most important regulating factors of disputes. The sense of dilemma presented by the Mendicants in relation to episodes of conflict seems to spring exactly from their awareness of the structural difference between the models they tried to promote and the other conceptions existing in Siena.

3. Similarities and Differences Between Models

These three theoretical models, as they have just been described, are however abstractions which are only rarely seen in their pure form. This generally happens only in ideological statements or theoretical description of 'how things ought to be'; on the contrary in most types of sources, and in particular in documents of practice, the models continuously interact in collaborating or conflicting ways. Even if in particular circumstances in late medieval Siena it was possible for one to overcome the others, opposing tendencies continued to resurface and were never completely silenced. This was facilitated by the lexical similarities in the vocabularies used to express adhesion to the different models. In the case of the Mendicants, this is another example of the phenomenon, already known to the specialists, of their tendency to appropriate the modes of expression of lay culture to convey religious messages that could sometimes be in opposition to it.[60]

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that could be deeply modified thanks to penance and conversion to a more Christian lifestyle. Compare Blanshei, 'Crime and Law Enforcement', p. 125 on the 'dual system of social control' represented by what the author defined as personalized and depersonalized systems of criminal justice.

[60] Gagliardi, 'Coscienze e città: la predicazione a Firenze', p. 123.

The reuse of expressions such as *amicitia* or *consilium et auxilium* to identify not the bond between individuals who were part of the same support network, but the relationship between humans and God in the context of confession, is a case in point. The concepts of honour and peace are also subject to the same treatment in Sienese religious sources. As seen in the episode recounting the duel between Cherubino and Salimbergo, the apparition of Ambrogio Sansedoni exhorts Cherubino to forgive his enemy in order to obtain a 'great honour', which is clearly not the same that proponents of the revenge culture believed they could gain from retaliation, but is connected to an improved relationship with God, having salvation as its effect.[61]

Peace, as we have seen, was in this period a term of peculiar complexity, not surprisingly defined by scholars as polysemic.[62] Because of its density, it is not uncommon to find a superposition of meanings in the same occurrence of the word, but also the use of this same term in its different meanings at a short distance in the same text.[63] The similarities between the traditional vocabulary of conflict and the one based on penitential ideals should not however hide the fact that the different meanings of a concept were not always considered equally valid. Religious concepts of *honor* and *pax* were clearly presented by Mendicant authors as the authentic ones. The hagiographers of Ambrogio Sansedoni seem particularly keen on highlighting the distance between 'true' peace and notarial agreements that did not necessitate an internal conversion to be valid,

[61] For a similar concept in Sienese homilies, specifically referencing the practice of confession see *Sermones A*, f. 63r: 'modica verecundia quod facit tibi habere magnum honorem'.
[62] See Introduction, §1.c.
[63] The coalescence of different discourses in the term peace is the central argument of Jansen, *Penance and Peace* (but see the rest of this paragraph on the fact that it is not always possible to superpose the variety of ideas of peace and of other concepts linked to criminal justice within a society). A good Sienese example is a miracle narrated in the life of Ambrogio Sansedoni, in which a man who had broken into his enemy's house to kill him repents when the latter invokes the name of the saint. He offers to make peace (*pax*) with his enemy and the day after the two stipulate a peace charter (*pax*) in front of a notary: *Vita A. S.,* col. 198. In this case the term *pax* clearly stands both for the conclusion of a conflict due to repentance and as a technical term from jurisprudence.

by defining the peace-making activity of the saintly preacher as productive of 'vera pax et concordia' (true peace and concord) in expressions such as:

'He also brought many people, whose hate for each other had turned them into enemies a long time before, to *true peace and concord*.'[64]

'He also brought a great number of individuals and families from that region, who were enemies, to *true peace and concord*.'[65]

The same remark about the existence of 'true' types of peace (with the implication that other kinds were a mere formality) can be found in contemporary homiletics, including the sermons of Sansedoni and Giordano of Pisa, who openly stated that only peace agreements containing religious elements should be seen as proper ones.[66]

The conviction that not all types of peace were equal was also shared by the government of Siena, aware that the publicly recognised institute of *pax* differed from religious pacifications, which were by their own nature totally voluntaristic agreements freely concluded by the parties involved, without much concern for the preservation of public order. For instance, a pacification concluded 'in articulo mortis causa necessitatis', that is, one arranged on one's deathbed at the request of a confessor in order to be absolved and not to die in a state of mortal sin, was not considered judicially valid unless it was also confirmed by the father, the sons or the brothers of the deceased.[67] Here it is

[64] *Vita A. S.,* col. 184
[65] *Ibidem*, col. 187: 'Quamplures etiam particulares personas ac familias, in eisdem partibus inter se dissidentes, ad veram reduxit pacem & concordiam'. See also *Ibidem*, col. 188: 'Tanta autem civium & nobilium ac popularium ad ipsum fides fuit & devotio, tantæque efficaciæ fuerunt eius verba, quod familiæ omnes ciuitatis, quæ inter se dissidebant, ad veram pacem & concordiam sunt reductæ'
[66] For Ambrogio see for instance *Sermones A.S.*, f. 91v: 'vera pax'; f. 44r: 'vera quies'. For Giordano of Pisa see Jansen, *Penance and Peace*, p. 29.
[67] *Statuti 3*, f. 136v. A rare example of such a *charta pacis* in the Tuscan context for this period is a charter issued in 1287 at request of a man from Santa Croce sull'Arno (province of Pisa) who, on his deathbed,

possible to see how the commune strove to make sure that the surviving relatives would not carry out an act of revenge, in accordance to its primary concern of preserving social peace. Moreover, the government could force people to conclude a peace charter against their will, in this case giving clear priority to the political aim of maintaining the public order over other considerations. In *Statuti 3* and *5* the *podestà* (together with the *capitano del popolo* in the first case) was given the task of exerting all sorts of pressure on factions and enemies in order to make them conclude a peace or, in case they refused to do so 'fallente diabolo' (being deceived by the Devil), at least a five-years truce.[68]

Famous examples illustrate however how late medieval communal governments could consciously appropriate religious ideas of 'true peace' based on a renewed internal attitude and which were therefore meant to be long-lasting, especially in cases where the *Popolo* was willing to make a strong ideological statement on the pacificatory nature of their regimes. This is the case for the already mentioned *Ordinamenta* issued in Perugia in 1260,[69] and for the anti-magnate *Ordinamenti di giustizia* imposed in Florence in 1293 'ad veram et perpetuam concordiam'.[70] It seems therefore that polysemy allowed the social actors to either merge different meanings of the term 'peace' or to openly draw attention to their divergence, depending on the circumstances and their specific aims.

The language used to describe the repressive action carried out by the government of Siena against crime also has many points of contact with the central concepts of the

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asked his confessor to call his enemy to be reconciled with him, edited in Masi, *Collectio chartarum pacis privatae*, doc. LII. Jansen convincingly argues that in the vast majority of cases mediators (like the confessor in this case) were not mentioned in the documents because they were not meant to be noticed: *Penance and Peace*, p. 128.

[68] *Statuti 3*, f. 117v, *Statuti 5*, cc. 231r-v.

[69] See Introduction, note 45.

[70] Lansing, *The Florentine Magnates*, p. 207, quoting 'Ordinanze di Giustizia', in Salvemini, *Magnati e popolani in Firenze*, pp. 324-325. A Sienese example of the same phenomenon can be ASS, CG 16, f. 79v, June 1273, in which the commune asks the aristocratic brigand Ghino di Ugolino della Fratta (uncle of the Ghino di Tacco mentioned in the *Decameron*, on whom see Chapter 4) for 'pacem et securitatem pacis vere et firme' (peace and insurance of true and stable peace).

culture of revenge. First of all, the term revenge (*vindicta*) is frequently used to describe the enforcement of communal criminal justice, an aspect that will be discussed in more detail in Chapter 3, which focuses on the analysis of concepts of justice, revenge and mercy. The aim of communal vendetta was once again the restoration or the augmentation of honour, except that in this case this was not the reputation of an individual within a group, but that of the whole community. Therefore Sienese sources talk of crimes committed 'contra honorem communis et populi Senesis' (against the honour of the commune and the people of Siena)[71] or 'in vituperium et dedecus communis' (to shame and dishonour the commune), an expression that highlights how shame was a consequence of the commune's loss of honour, too.[72] In the same spirit, Sienese sources often speak of *amici* and *inimici* of the commune and the people of Siena. The former were identified with the allied communes, institutions and lords (and less frequently, also with the law-abiding citizens), the second with external rivals to Sienese authorities (in particular, the powerful lords of the Maremma region, with whom Siena engaged in frequent wars until the 1330s)[73] but also with local criminals, since, as seen, their misdeeds were perceived as a threat to the honour of the commune.[74]

It would be tempting to argue that the extensive reuse of the vocabulary of the culture of revenge makes this model a mere communalisation of the vendetta-based system described above, that is a paradigm in which the same expressions are simply

[71] ASS, CG 8, f. 16v, undated.
[72] ASS, CG 65, 21/12/1304.
[73] Redon, *L'espace d'une cité,* ch. 4. On the strategic importance of the control of Maremma for Siena see Imberciadori, *Studi su Amiata e Maremma*.
[74] A few examples: ASS, CG 38, f. 40r, 28/09/1289: 'ut amici ubicumque exaltentur et inimici finalem ut expedit mortem recipiant' (so that our friends be glorified everywhere and our enemies meet their final death as it is desirable), talking about a campaign to strengthen the Sienese jurisdiction in Maremma; ASS, CG 20, f. 106r, 07/09/1275: 'non sumus nec fuimus homines qui deficiamus amicis' (we are and never were people who let their friends down), a document in which Siena discusses whether to participate to a campaign organized by Guelf Florence, Lucca and Pistoia against Ghibelline Pisa despite the disapproval of the papacy. On the closer links between political rebellion and ordinary crime established in the late Middle Ages see Ricciardelli, 'The Emotional Language of Justice'.

transferred from individuals and sworn group to the commune. Similar points have been made by medievalists focusing on other areas of Europe, for instance the French and the English monarchies.[75] In late Anglo-Saxon England, for instance, it has been argued that the role of the king as the highest-ranking free male helped him shape the idea that all affronts were committed against his honour, and that he could act as the representative of the whole community when he repressed crime.[76] The commune tried to acquire a similar role as the avenger of the community in this period, as will be seen in Chapter 3 (although its abstract nature required the use of a different strategy to achieve this aim, compared to kings as individuals in flesh and bone).

In both the French and the Sienese case, however, this is the result not only of the making public of the language of private revenge, but also of the extensive borrowing of concepts of divine justice elaborated in the religious milieu, which in the case of Siena were the fruit of an intense reflection on the role of God as a judge in the sacrament of penance, as I will argue later in the thesis.[77] This feature already makes the argument that the ideology of public order was a simple transposition of the culture of revenge into a public sphere potentially reductionist. Other characteristics of the ideology of public order and its language support the idea that this model had unique features that distinguished it from the other two. The idea of the necessity and suitability of punishment for criminals, expressed in the statements analysed above and in phrases that highlight how it should be seen as a deserved moral retribution, set this paradigm apart from the others.[78] A distinctive conception of permissible violence animated this model: according to this, violence was allowed almost exclusively (i.e., except in cases of self-defence)

[75] Gauvard, *De grace especial,* pp. 351-352.
[76] Lambert, 'Law and Order', pp. 350-360.
[77] Gauvard, 'Le roi de France et le gouvernement par la grâce'.
[78] See Chapter 3, section 5 for examples of this language.

when performed by the commune, and even in that case its use should be in accordance with the principles expressed in the Sienese legislation.

This is at least what seems to emerge from cases such as the dispute arising in 1279 between Siena and *dominus* Buonconte of Montorgiali over the possession of rights over the village of Colle Sabatino.[79] The general council decided in this case not to resolve the dispute through the use of violence, because 'communi sit honorabilius (...) omnis [sic] ad ius stare quam fortiam vel violentiam inferre' (it is more honourable for the commune to stay within the boundaries of legality than to use force or violence). The commune's honour was perceived as originating not only from its prompt reaction to hostile provocations, but also from its compliance with a set of general principles. These were not entirely coincident with the laws written in the statutes of the city; on the contrary, the latter were reviewed every year to make sure that they translated into practice the former, which constituted the broader framework of the government's ideology. Among them, besides the already mentioned necessity of punishment, one can list the preservation of the 'bonus et pacificus status' (good and peaceful state) of the commune, or the implementation of the common good.[80]

According to Tanzini, in Florence the commune mentioned idealised motivations such as necessity and the peaceful state in their decrees, in those cases in which their content needed added legitimation on account of its exceptionality.[81] Something similar could be argued for Siena, but it must be underlined that this was a way of creating a hierarchy in which the norms connected to the ideology of public order were established as superior to any others. Eventually, the mature regime of the Nine made this hierarchy

[79] ASS, CG 23, f. 9v, 22/07/1279. On Buonconte see Mordini, *Le forme del potere in Grosseto*, p. 100.
[80] On common good the classic work is now Kempshall, *The common good in late medieval political thought*; see also Zorzi, 'Bien commun'; Artifoni, 'Preistorie del bene commune' for a communal focus.
[81] Tanzini, *Il governo delle leggi*, pp. 52-66. See also Milani, 'Legge ed eccezione nei comuni di Popolo'.

explicit in the statutes of 1337-1339, in which it was stated that the rubrics speaking of the good and pacific state of the commune were to prevail over all the others.[82]

The differences between this model and the culture of revenge could, here too, create conflicts between duties or expectations: an example is the fear reported by the Sienese *berrovieri* (police force) of acquiring enemies if they performed their task of arresting criminals, which however clashed with the possibility of being fired by the commune if they damaged its honour by not carrying out their duties.[83] More generally, a different conception of individual and community seems to underlie the ideology of public order in contrast with the culture of revenge. This distinctive view of society and its members will be the subject of the next section of this chapter, in which I will highlight how the penitential discourse expressed in hagiographies and sermons was an important influence on the construction of such a worldview, which in turn could help political elites consolidate the new regimes which rose to power in the second half of the 13th century. In this way I hope to shed light on different levels of influence of the Mendicants on politics and legislation, and to challenge the idea that the use of notions such as those of peace, justice and common good by political actors in the commune was essentially instrumental and ideological, as is sometimes claimed.[84]

4. Individuals and Community: Shame, Guilt and 'Shame-Guilt'

It has already been pointed out how the Sienese Mendicant authors tried to promote an attitude towards interpersonal violence that made reference to feelings which were distinct from those of shame as the social consequence of leaving affronts

[82] Bowsky, *A Medieval Italian Commune*, p. 126.
[83] ASS, CG 52, f. 73r, 06/09/1297.
[84] Zorzi, 'Bien commun', p. 290.

unavenged. A long tradition of anthropological and historical works opposing shame to guilt would suggest that the category of guilt would be the fitting way to define this alternative attitude.[85] Shame and its contrary state, honour, imply the definition of the self and its worth in relation to an external judgement. Although shame and honour can be conceived as individual, 'social groups possess a collective honour in which their members participate; the dishonourable conduct of one reflects upon the honour of all'.[86]

Guilt, on the contrary, has been generally described as a feeling deriving from the internal authority of conscience, which prompts subjects to see themselves not anymore as victims of injustice (as is the case for shame), but as perpetrators.[87] An emphasis on guilt would indeed align with the importance of personal intent for evaluating the moral content of an action, as argued by the 12th- and 13th-century theologians who refined the doctrine of penance. They introduced a distinction between *culpa* (guilt deserving damnation and to be remitted through contrition and confession) and *poena* (the due penalty redeemed by satisfaction, that is, the reparation offered to those damaged by the sin committed, which could also be expiated in the afterlife): pre-eminence was given to feelings of individual guilt as a condition to obtain divine grace and make a satisfactory confession.[88] In addition to this, Anne McTaggart has pointed out how guilt before God and shame before humans were sometimes seen as mutually exclusive by late antique and medieval Christian theologians (including St Augustine and Raymond of Penyafort), in cases in which avoiding the incurring of a sin would expose the individual to ostracism

[85] The reflection on the shame-guilt dichotomy started with the seminal study by Benedict, *The Chrysanthemum and the Sword*.
[86] Pitt-Rivers, 'Honour and Social Status', p. 35.
[87] Gilligan, 'Shame, Guilt and Violence', p. 1168; Heller, 'Five Approaches to the Phenomenon of Shame', p. 1021.
[88] Tentler, *Sin and Confession*, pp. 161-162; Mansfield, *The Humiliation of Sinners*, pp. 34-35.

from his social group, exactly as highlighted by the examples from Sienese sources analysed earlier.[89]

However, the dichotomy of shame *vs.* guilt is far from unproblematic, both in contemporary and medieval contexts: in particular, recent scholarship has tended to reject the classic, neat distinction between 'shame societies' and 'guilt societies', by arguing that societies tend to display characteristics of both models, even though in different proportions.[90] Trying to present the late 13th century as a turning point in Western Europe's passage from the latter to the former would therefore be misleading, since feelings of guilt were not at all a late medieval novelty.[91] Moreover, the relationship between shame and guilt itself has been questioned by social scientists and medievalists. The former have highlighted how guilt can be seen not just as the opposite of shame but as a form of self-shaming, or internalised shame.[92]

Building on these findings, the criminologist John Braithwaite, inspired by the sociological theory known as symbolic interactionism, according to which individual identity is formed in the context of social interactions with others, distinguishes between different forms of shame that have opposite effects on the promotion or prevention of violent crimes.[93] Braithwaite talks of 'disintegrative shaming', in which the offender is stigmatized as an outcast and thus prompted to keep committing crimes; and of 'reintegrative shaming', which on the contrary has the effect of preventing crime, since social disapproval is in this case followed by gestures of forgiveness that act as a

[89] McTaggart, *Shame and Guilt in Chaucer*, p. 6.
[90] Strange, 'Honour, Violence and Emotion', p. 204.
[91] For instance, Dodds, *The Greeks and the Irrational*, identified the first traces of the emergence of a 'guilt society' already in Greek lyrical poems from the 7th century B. C.
[92] Gilligan, 'Shame, Guilt and Violence', p. 1164; Heller, 'Five Approaches to the Phenomenon of Shame', p. 1022.
[93] Symbolic interactionism will feature prominently in Chapter 4, where its central tenets will be exposed in more detail.

'rebiographing' of the identity of the offender and decertify their deviance.[94] According to this theory, known as restorative justice, there is therefore a 'good shame', which Braithwaite and others have described as 'shame-guilt' because of the mixture of emotions that characterize it, and a 'bad shame', also defined as 'embarrassment-exposure'.[95]

The concept of 'shame-guilt' as the attitude towards violent conflict proposed as alternative to plain shame seems to work particularly well for Sienese and other Western European sources featuring a penitential approach to violence and crime. It fulfils the methodological quest, expressed earlier in this chapter, for a study based on the use of 'local concepts' derived from the sources and not superimposed on them. The most recent scholarship on medieval notions of shame indeed espouses the idea that the dynamic between shame and guilt was central in the reflection on the sacrament of penance of the 12th-13th century: theologians such as Thomas Aquinas and William Perault tended to describe the emotions associated to confession as a mixture between contrition and guilt, belonging to a totally internal dimension, on one side, and shame, with its characteristic interpersonal nature, on the other side.[96]

The type of shame that accompanied access to the sacrament of penance, sometimes defined as *bona erubescentia* or *verecundia* (good shame), was seen as a virtue springing from the awareness of one's sinfulness before the omniscience of God and the priest to whom one would confess, so that the interpersonal dimension was still present but limited by the seal of confession.[97] However, there was also a *mala erubescentia*, a

[94] Braithwaite, *Restorative Justice and Responsive Regulation*; Braithwaite, Ahmed, Braithwaite, 'Shame, Restorative Justice and Crime'.
[95] *Ibidem*.
[96] Casagrande, Vecchio, *Passioni dell'anima,* pp. 263-ff. For a Sienese example see *Sermones B*, f. 9r, in which Bindo Scremi describes the effects of repentance for one's sin as 'compunctio intima' (internal contrition) and 'obsecratio que procedit ex affectu humili et verecundo' (prayer that springs from a humble and ashamed attitude). For another example see note 60 of this chapter. On penitential sorrow and the other emotions associated with penance, see Chapter 2.
[97] On *erubescentia* see also Bériou, 'La confession dans les écrits théologiques', p. 265, n. 12.

vice that prompted the sinner to subordinate concerns about God's judgement to the fear of human infamy, and therefore to avoid confession, as per the words of Ambrogio Sansedoni:

'(...) sin makes man ashamed (or 'shameful') because people are ashamed to tell the vicar of Christ what is manifest, and many spend thirty years without confessing on account of shame.'[98]

Such affirmations have prompted Virginia Burrus to argue that Christianity innovated in the emotional landscape of antiquity by 'embracing shame shamelessly' more than by replacing it with guilt; that is, by encouraging its adherents to reject the secular logic of shame and honour in favour of a different one, in which shame was more personal and based on self-awareness.[99] Modifying slightly Arnold's paradigm on the creation of a 'confessing subject' in sacramental and judicial contexts, Burrus maintained that the continuity of guilt with shame in the interaction between confessing individuals and their audience (be it a priest, a judge or God alone) creates indeed not one, but two narratives of the self.[100] When one confesses, one creates an identity, that of sinner/criminal, which that person immediately renounces to assume a new purified and penitent identity.[101] The examples from hagiography discussed above (for instance, Mino Luglioli's decision to join Pietro's group of companions) show how some late medieval Sienese imagined that this process of 'rebiographing', as Braithwaite put it, could happen in practice. The documents concerning amnesties, which will be analysed in Chapter 4,

[98] *Sermones A*, f. 97r: 'peccatum facit hominem verecundum, quod illud quod est manifestum homines verecundantur dicere vicario Christi, et muti stant triginta annis quod non confitentur verecundia ducti'.
[99] Burrus, *Saving Shame: Martyrs, Saints, and Other Abject Subjects*.
[100] On Arnold see Introduction, section 1.c.
[101] Burrus, *Saving Shame: Martyrs, Saints, and Other Abject Subjects*, p. 111.

will confirm that similar conceptions were diffused and recognised as valid by the local government and at least segments of the population of Siena.

This attitude to conflict based on 'shame-guilt' seems to have entailed a different view of society from that based on shame alone, a difference that could carry important ethical and political consequences. The firm solidarities upon which traditional views of shame rested were based on relationships of kinship and affection, as emerges from a vast range of medieval sources, including those analysed above.[102] On the other hand, this new attitude to shame and guilt can be linked to a conception of the supernatural as a domain in which intensely personal feelings, occasionally explicitly pitted against group values, were expressed in one's relationship with God, the Virgin or the saints. This view emerged around the 12th century and was strengthened by the increased popularity of penitential discourse in the 13th century.[103] A higher level of introspection, as suggested by Arnold, became an expectation for laypeople approaching the sacrament of penance. In a sermon on peace, for instance, Federico Visconti explicitly invites his audience to spend time on their own to reflect on the state of their soul and find inner peace.[104]

This focus on the individuals and their personal intentions does not mean, to reference a debate still lively in current historiography, that the late Middle Ages witnessed the birth of the concept of individual: as indicated by biology and social anthropology, human self-consciousness has remained essentially the same across centuries.[105] The novelty of this approach lies rather in the expectation that people of all social strata would from now on be more prone to talk openly about their subjectivity in

[102] Smail, *The Consumption of Justice*, pp. 90-91.
[103] Brown, 'Society and the Supernatural: A Medieval Change'.
[104] Jansen, *Penance and Peace*, p. 42, quoting Bériou, La Masne de Chermont et al. (eds.) *Les sermons et la visite pastorale de Federico Visconti*, pp. 450-458.
[105] Clanchy, 'Documenting the Self: Abelard and the Individual in History', pp. 295-296.

a variety of venues, and to privilege the obligations they had contracted as individuals over those derived from their membership of a family or other associations. However, this vision never confined the individual to a private sphere, isolating them from the rest of the community. The concept of 'shame-guilt' is useful exactly because it highlights that confession was perceived as a ritual suspended between private and public, since it would happen in the presence of God and a priest (not to mention other people who could overhear it) and be relevant for the whole community of the faithful, given the link between internal and external peace.[106]

The main relationships involved in the penitential model were nevertheless different from those connected to the culture of revenge: the triad God-individual-*corpus Christianorum,* which it pinpointed, reflected the duties codified by the writers of the *Summae confessorum* towards God, neighbour and Church, excluding factional, familial or affective solidarity.[107] As underlined by Skoda, the 13th century was characterised by an intense reflection on whether illicit acts of violence affected the whole community or retained an interpersonal character. It is therefore not surprising that different discourses on criminal justice could promote different conceptions of society and ideas of privacy and public.[108] The penitential spirituality so prominent in this period after all encouraged preachers, in Siena and in the rest of Tuscany, to examine the relationship between individual and group responsibility, and its corollary of intentionality.[109]

[106] Burrus, *Saving Shame: Martyrs, Saints, and Other Abject Subjects*, pp. 112-114.
[107] Mansfield, *The Humiliation of Sinners*, pp. 41-49.
[108] H. Skoda, *Medieval violence*, p. 44.
[109] For the opposite views of Remigio de' Girolami and Giordano of Pisa on this question see Iannella, 'Predicazione domenicana ed etica urbana', p. 177. Bindo Scremi is particularly vocal about the necessity for people to strive for their individual salvation even to the cost of reneging one's duties as member of a kin or a neighbourhood and thus maintaining a 'false peace' with them: *Sermones B,* f. 52v.

Even though in some ways the ideology of public order did not coincide with the penitential model promoted by religious groups, there are indications that in some respects there was a consonance between the two, so that concepts expressed in sermons and hagiographies could influence or be consciously appropriated by local governments to promote their own goals. In particular, I would argue that a conception of society derived from penitential attitudes to violent conflict could be a useful complement to the new ideology of the popular regimes of the second half of the 13th century. This construction aimed to present the *Popolo* not as a faction, but as the stronghold of general interests,[110] and defined society as a sum of individuals constituting a community more than as the result of the interaction of different groups of solidarity. Other historians have already highlighted that political figures animated by religious ideals were particularly active in the promotion of this construction, as is the case for the legislative action of Loderingo degli Andalò and Catalano di Guido d'Ostia. These two, both members of the religious confraternity of the *Frati Gaudenti* (the 'joyful friars') and *podestà* of Bologna together in 1265, reformed the Statutes of that city with the intent, according to Marina Gazzini, of

'delegitimizing consolidated family and patronage solidarities and (...) in this way remodelling the local power dynamics.'[111]

Loderingo and Catalano tried to achieve these aims by enlisting local religious confraternities in the maintenance of public order, and allowing some of them to use

[110] Artifoni, 'Preistorie del bene comune', p. 71.

[111] Gazzini, 'I Disciplinati, la milizia dei frati Gaudenti, il comune di Bologna', p. 432: 'delegittimare consolidate solidarietà familiari e clientelari e (...) rimodellare così il quadro dei giochi di potere'.

weapons to intervene in local uprisings.[112] Members of these associations were however forbidden from going to the houses of magnate families or craft associations in case of turmoil, precisely in order to avoid supporting group solidarities.

At the beginning of the 14th century similar catchphrases and initiatives were adopted in Siena by the regime of the Nine, which however elaborated a more complex and long-term strategy to promote this ideology in which civic loyalty prevailed over private, in opposition to what -according at least to Carol Lansing- had happened so far, especially among the *milites*.[113] The clearest example is represented by the statutes of 1300-1302 and their translation in the *Costituto volgare* of 1309-1310. In these texts, the role of the commune as a merciful protector of the whole community is highlighted in the prologue, which features the use of religiously charged expressions mentioning 'perpetual peace' and 'justice among all citizens of every condition'.[114] In the same statutes the norm assigning the task of convincing enemies to conclude peace accords to the *podestà* was modified. Victims of violent crimes were offered the possibility to request him to force the relatives of their offenders (excluding fathers, sons and brothers) to conclude a peace with them or to pay a 500 l. fine if they refused, 'per rifrenare l'ardire di coloro che commettono li malefici per fidanza della potentia de li parenti sui' (to curb the audacity of those who commit crimes relying on the power of their relatives).[115] The norm was meant to protect victims from possible retaliations from the extended family of a criminal

[112] Gazzini, 'I Disciplinati, la milizia dei frati Gaudenti, il comune di Bologna', p. 427; *Ead.*, 'Reti confraternali nell'Italia dei comuni'.
[113] Lansing, *The Florentine Magnates*, p. 165.
[114] Ascheri, 'Gli statuti delle città italiane', p. 104: 'pace perpetua'; 'pura giustizia tra tutti gli uomini, di qualunque condizione sieno'.
[115] *Costituto volgare*, V, c. 52. The chapter is dated 1306, but it must be older, since ASS, Statuti della città di Siena 17, the Latin collection that served as a basis for the translation into the Sienese vernacular of the *Costituto volgare* and can be dated around 1302-1304, already presents the same norm at f. 363v. For a similar norm promoting individual responsibility, the institution of the *forjur* in late 13th century Hainault (also possibly promulgated with reference to religious principles) see Platelle, 'Vengeance privée et reconciliation dans l'oeuvre de Thomas de Cantimpré'.

in case they decided to go to court, and therefore tackled precisely the group solidarities that underpinned the culture of revenge, even if the exclusion of the closest male relatives weakened the spirit of this law.

In the same years the new statutes of the recently re-established armed societies of the *Popolo* followed this spirit by attributing to the *capitano del Popolo*, the head of this militia, the duty to defend 'each and every individual, and especially the weak against the powerful', and by banning, just as in Bologna, the members of these societies and people from the countryside from going to the house of any *particularis* (private citizen) to avoid strengthening factionalism.[116] At the same time the necessity of punishment for criminals was asserted in this document in a curious norm that limited the effectiveness of *instrumenta pacis* in case of crimes committed by magnates against *populares* (which could be interpreted as a normal anti-magnate measure) but also by members of the *Popolo* against aristocrats (which was highly unusual).[117]

This seems like a typical example of the attempt of the Nine to present themselves as a regime that protected the interests of all social groups by keeping an equidistant position from them, and by clearly distinguishing public and private interests. This ideal led the government to place the Nine in quasi-isolation for the duration of their mandate, and to even consider separating them from their families in 1296.[118] A similar attempt at impartiality seems to lie behind the religious policy of the Nine, who actively supported the cult of saints belonging to the social strata excluded from the highest offices, that is the civic aristocracy (Ambrogio Sansedoni, Andrea Gallerani and many others) and the craftsmen (Pietro Pettinaio). The oath that they imposed on the *podestà* and the other

[116] ASS, *Capitano del Popolo* 1, 1300, ff. 21v-22r: 'omnes et singulos, et maxime debiles contra potentes'.
[117] *Idem*, f. 47r: 'cum occasione remissionis penarum que propter paces extitit huc usque concessa delinquendi materia concedatur…' (since the cancellation of punishments that has been granted until now because of peace instruments offers excuses to commit crimes...).
[118] Bowsky, *A Medieval Italian Commune*, p. 58.

foreign officials at the beginning of their mandate, surviving in the minutes of the General Council for the year 1321, also linked the cornerstone of Sienese spirituality, that is the Marian cult, to an idea of community centred around individuals and commune, to the exclusion of other groups (including the Guelf faction, which in other communes was closely associated with local religiosity):[119]

'For the honour, praise and reverence of the highest and omnipotent God and His mother, the blessed and glorious Mary, ever virgin, who is the head, commander, protector and defender of the commune and the individual citizens of Siena (...)'[120]

The regime also manifested an interest in the theme of intentionality in its legislation against violent crime, which will be analysed in Chapters 2 and 3.

As a final comment on this issue it is worth discussing the appropriateness of using the categories of 'public' and 'private' for the period discussed in this thesis. The study of late medieval concepts of peace itself can offer arguments in their favour since, as highlighted by Kumhera, 13th-century jurists called private peace any peace made between individuals or groups who were not representing kingdoms or cities, in which case they would talk of public peace-making.[121] According to the same jurists, moreover, civic peace resulted from the sum of the individual accords of the *cives*, a vision that seems to correspond quite well to the picture of society painted by the Sienese

[119] Vauchez, 'Sainteté laïque au XIIIe siècle : la vie du bienheureux Facio', pp. 26-28.
[120] ASS, CG 95, f. 1r, 1321: 'Ad honorem, laudem et reverentiam summi et omnipotentis Dei et beate ac gloriose Marie semper virginis matris Sue, que est caput, dux, protectrix et defensatrix communis et singularium personarum civitatis Senarum (…)'.
[121] Kumhera, *The Benefits of Peace*, p. 1, note 1. For this reason, moreover, according to Alberto da Gandino private forms of dispute settlement could be considered in trials, but did not eliminate the *iniuria rei publice*, which had also to be repaid: Vallerani, *Medieval Public Justice*, p. 65

Mendicants.[122] The boundaries between the two categories were permeable -as they are, after all, also nowadays- and the two concepts did not entirely correspond to their present equivalents. God's omniscience, for instance, made medieval privacy different from ours, and the idea of public, as with the concept of *publica fama*, did not make reference to a state dimension). However, the variety and dynamism of conceptions of what a community was in late medieval Italy make the use of these two categories a valuable heuristic tool to uncover reciprocal influences between different models, as is the case here for penitential spirituality and the action of popular governments such as those of Siena or Bologna.

5. Who were the Bearers of these Different Models in Late Medieval Siena?

Mendicant orders, especially the Franciscans and the Dominicans, had a great influence on the elites of the Italian communes, as is well known, thanks also to the fact that the friars often came from the same social strata as the members of the local governments.[123] The examples from hagiographies and sermons presented in this chapter clearly show that Sienese friars were an active pressure group in favour of the model of criminal justice based on penitential spirituality, and in Chapter 4 it will be seen how they sometimes directly intervened in the sessions of the General Council to push the councillors to enforce its principles.

However, talking of a Mendicant model of criminal justice would be reductionist. Lay penitents, also known as *mantellati* because of their characteristic dark cloak or as *homines et mulieres de penitentia*, were not only highly influential in the life of the commune by providing crucial administrative services (on account of their perceived

[122] *Ibidem*, p. 27.
[123] Lesnick, *Preaching in Medieval Florence*, ch. 3-4.

honesty and incorruptible nature),[124] but may well have had a crucial role in the elaboration and promotion of the penitential discourse on criminal justice. The life of Pietro Pettinaio mentions his role as a consultant for the commune and the *podestà*, something which the archival documents confirm, as will be seen later in this thesis.[125] The same holds true for some of his companions, in particular the notary Compagno del Vescovo and the clothier Bartolomeo di Ildebrandino Vincenzi.

Studies on the innovative reflections on culpability elaborated by the regular clergy (the Dominicans in particular) in the 13th century have suggested that the idea of obligations 'non ad culpam, sed ad penam', that is, those whose violation constituted a breach of human law but not a sin against divine law, was actually formulated for the first time by Italian lay confraternities.[126] This principle of 'purely penal law' revolved around the centrality of intentionality (penance was needed for mere breaches of the law in case they were carried out in an open spirit of contempt) and a debate about the hierarchy of obligations to which individuals were subject in their double identity as Christians and as citizens: themes that were central to the penitential discourse on criminal justice. Curiously, the example that Humbert of Romans chose to illustrate this concept in his exposition of the constitutions of the Dominican order (written after 1263) was the case of a citizen walking around town after the curfew established by the statute: in this situation, he argued, the commune would justly apply a fine to the offender, but he would not have to do penance because the act would not be sinful.[127] The same situation is

[124] In ASS, CG 15, f. 28r, 08/01/1272 they are for instance assigned the collection of a *gabella* (indirect tax) on account of being 'persone de quibus suspitio haberi non possit' (persons that cannot be suspected [of dishonesty]).
[125] *Vita P. P.,* p. 13; p. 84.
[126] Meersseman, 'La loi purement pénale d'après le statut des confréries médiévales'; Cygler, 'Une nouvelle conception de la culpabilité chez les reguliers'.
[127] Cygler, 'Une nouvelle conception de la culpabilité chez les reguliers', p. 395. Cygler is here quoting Humbert of Romans, *Expositio Magistri Humberti super constitutiones fratrum Praedicatorum,* in J. J. Berthier (ed.), *B. Humberti de Romanis quinti Praedicatorum magistri generalis opera de vita regulari,* vol. 2, Rome 1889, pp. 1-178.

discussed in the life of the lay penitent Pietro Pettinaio, in an episode in which the saint is found going to the church to pray at midnight by the civic guards.[128] They refuse to arrest Pietro on account of his fame of sanctity, but the day after the holy man goes to the palace of the *podestà* to pay the fine of his own accord, asserting his willingness to partake in his obligations as a member of the community, although neither he nor the *podestà* see his action as morally reproachable.

It is important to acknowledge the constant dialogue between Mendicant orders and pious laypeople in the definition of communal spirituality, and therefore also in the establishment of a religious discourse about criminal justice: in the case of Siena, in particular, almost all the saints whose cult was promoted by the Mendicants were associated with one or more lay confraternities, so that the role of the latter in creating a civic environment permeable to penitential spirituality cannot be underestimated.[129]

Friars and lay penitents had made a once and for all choice in favour of following the logic of God, and therefore consistently displayed signs of adherence to a penitential model of criminal justice. More secular-minded laypeople presented a more variable approach to conflict and violent crime. The analysis of the Sienese sources confirms that, as argued by previous scholarship, the culture of revenge and the idea that interpersonal violence was a private matter between the parties directly involved were diffused among members of all social classes, including the *Popolo* and the citizens of the rural communes. Numerous petitions from the collections *Biccherna* 731 and 732 offer examples of this attitude, which will be analysed in more detail later in the thesis. An

[128] *Vita P. P.,* pp. 81-82.
[129] The Sienese *laudesi*, a confraternity dedicated to devotional singing in honour of the Virgin and St Dominic, was among the lay fraternities that presented the 'non ad culpam...' principle in their statutes: Licciardello, 'La religiosità nei testi statutari senesi', p. 207. The rule might have been inserted in their constitutions under the influence of Ambrogio Sansedoni, the likely founder of the group, as argued in Varanini, 'Ambrogio Sansedoni fondatore dei laudesi'.

example of open dissatisfaction about the reforms in criminal justice put in place by the Nine from the 1280s on, which tended towards a greater public involvement in the prosecution of violent conflict, will suffice to illustrate the point.

When the Cacciaconti, lords of Trequanda in the Sienese *contado*, allowed the commune of Siena to send its *birri* there to help maintain public order, a group of inhabitants of the village went to the castle and enacted a public demonstration, involving the utterance of insults and attempted assault, against the decision, which was seen as a Sienese interference in local affairs (unsurprisingly, they were arrested by the *birri* and fined by the commune).[130] The ideology of public order could clearly be seen by members of the lower social strata not so much as a protection from the violence of more powerful classes, but also as a way the political elite could exert an unwelcome, stricter level of control on them.

A more surprising finding is the fact that in Siena some of the most vocal advocates of the ideology of the public order were not *populares* but members of the magnate families that, in other communes, were seen as the principal cause of urban violence. A quick example of the conduct of two of the most active of them, *dominus* Arrigolo Accarigi and *dominus* Ciampolo Albizzi, will shed light on this phenomenon, and also underline the different positions that Sienese politicians could present on crime by combining different models among the three described in this chapter. Both Arrigolo and Ciampolo held the role of councillors in the Consiglio della Campana on many occasions in the 1270s, a circumstance that allows us to gather enough data on their positions with respect to issues of public order.[131] The 1270s in Siena were a period in

[130] ASS, Biccherna 731, ff. 236, 618.
[131] See Redon, 'Le conseil general de la commune de Sienne au milieu du XIIIe siècle', p. 179, on the difficulties presented by the archival materials for conducting this type of prosopographic study.

which, as will be demonstrated in the following chapters, the full revolution in the direction of an intensive application of the ideology of public order to criminal justice carried out by the Nine was yet to come. However, the theme of crime was already prominent in the discussions of the main assembly. This is possibly on account of the social tensions present because of Charles of Anjou's request that the commune pay a huge fine because of its previous support of the imperial cause. Additionally, the struggle between Guelfs and Ghibellines was still ongoing. Some Ghibellines had switched allegiance and stayed in the city, but probably resented the leaders of the new regime. In particular, the fear that criminals would escape punishment by appealing to the court on the basis of legal loopholes seems to have been a central matter of discussion.[132] Arrigolo and Ciampolo intervened on different occasions to express their concern for the problem of criminality and rebellions, and to support motions in favour of assigning extraordinary inquisitorial and coercive powers (*arbitrium inquirendi et torquendi*) to the *podestà*.[133]

Ciampolo seems to have been a forerunner of this approach, since he already suggested a similar measure against those who were accused of having deserted the communal army or committed crimes during the military expedition against the Florentines in a 1260 meeting of the General Council (some months before the decisive battle of Montaperti). However, the proposal was rejected by the majority of the councillors, which is possibly the sign of a lesser degree of influence of the ideology of public order, compared to the other models, in this period.[134] This enthusiasm for crime fighting was evidently not shared by all the members of the Albizzi family.

In a list of condemnations passed during the regime of the *podestà* Jacopino da Rodiglia (1271-1272) Petruccio, Ciampolo's son, was condemned to a 1000 l. fine for the

[132] See also below, Chapter 4, section 2.
[133] ASS, CG 13, f. 1r, 14/08/1270 (Arrigolo); *Ibidem*, f. 24v, 21/09/1270 (Ciampolo); *Ibidem*, Allegato A (Arrigolo); CG 15, f. 99r, 29/11/1272 (Ciampolo); CG 22, f. 15v, 01/08/1278 (Arrigolo).
[134] ASS, CG 9, f. 132r, 21/05/1260.

homicide of Castellanuccio of Francesco Castellani and, together with some accomplices, to another 1000 l. fine for the abduction of Vina Lamberti.[135] Petruccio's behaviour constitutes a textbook case of the entitled, violent behaviour that was often associated with the civic aristocracy. But, despite the criminal record of his son, Ciampolo expressed the most radical opinions of the decade, and possibly of 13th-century Siena, on the necessity of reorganising criminal justice, suggesting, for instance, reforms to lower the rate of contumacy, which was very high everywhere in communal Italy (his proposals will be detailed in Chapter 4).[136] Ciampolo was at the same time a very religious man, as appears from his readiness to vote in favour of subsidies for religious orders and other pious institutions, and also to accept their requests to introduce more space for mercy in the communal system of criminal justice, for instance in the form of amnesties of poor prisoners, a custom that will be examined in Chapter 4.[137]

Arrigolo Accarigi displayed a strong and precocious concern for public order, too. In 1270, when the new *podestà* Palmerio di Martino of Fano asked for information from the General Council on how the feast of the Assumption of the Virgin Mary was celebrated in Siena, Arrigolo was very vocal in his explanation that the celebrations should be terminated before dusk, since allowing people to walk around at night and break the curfew was not acceptable.[138] Moreover, his concern that fights could be caused by the significant influx of people from the countryside on the occasion of the feast prompted him to insist that guards should be hired to patrol the *terzieri* both during the celebrations and during the whole night of the 15th of August. These preoccupations led to him often being on Ciampolo's side in discussions concerning the bestowal of

[135] ASS, Biccherna 725, ff. 62v, 63v.
[136] ASS, CG 13, f. 24v, 21/09/1270.
[137] For instance ASS, CG 14, f. 47r, 31/06/1271, when Ciampolo emphatically approves ('ad honorem Dei et beate Virginis Marie') the liberation of a deserving prisoner suggested by the bishop of Siena.
[138] ASS, CG 13, f. 1r, 14/08/1270. More on this document in Chapter 4.

extraordinary coercive powers on the *podestà*, as mentioned above, although he does not seem to have displayed the same originality of thought as his fellow councillor.

Moreover, Arrigolo Accarigi's attachment to the penitential model seems to have been less great, as indicated by his refusal to approve one of the first instances in which a liberation of poor prisoners for religious reasons was proposed. In this case, too, he argued that such a display of mercy, involving the release of criminals, could be detrimental for the public order of the city.[139] This difference highlights that there was no default position on crime and violence among members of the Sienese political elite; and, apparently, adherence to a model or a combination of models did not even depend on family politics. Besides the case of Ciampolo Albizzi and his son, an instance of this variety of opinions among members of the same patrilineal group is the different votes expressed by two members of the aristocratic Tolomei family, Deo di Lotterengo and Scozia di Rinaldo, respectively against and in favour of an act of mercy towards a deserving prisoner requested by the bishop of Siena.[140]

In addition to this, other members of the general council do not seem to have adhered at all to the ideology of public order, but to more traditional views in which family solidarities outdid civic ones. This seems to be the case for the judge *dominus* Meo Tederighi, a member of the *militia* whose family originated from the rural aristocracy, and who expressed solidarity for a relative still based in a castle in the *contado*, Fredi Tederighi lord of Roccatederighi, whom the commune of Siena wanted to punish for having raided the village of Chiusdino.[141] Some prominent members of the assembly had a remarkable criminal record themselves, as was the case of Notto Salimbeni, a member

[139] ASS, CG 15, f. 67r, 19/04/1272. This document will be treated more in detail in Chapter 4, too.
[140] ASS, CG 14, f. 47r, 31/06/1271. They were not close relatives, but for proof that on other occasions they had acted together as representatives of the family see Mucciarelli, *I Tolomei banchieri di Siena*, p. 52.
[141] ASS, CG 34, f. 38r, 04/10/1287.

of one of the most powerful Sienese families of merchant-bankers.[142] In the years 1270-1271 he was the leader of a violent revolt against the commune, which he accused of having unjustly extorted a sum of money from him and his brothers, and which ended after long negotiations when the government agreed to assign the castle of Montorsaio to his family as a security for the restitution of the money.[143] It is not surprising therefore that in the same period, during a break in the hostilities in which he was readmitted to the assembly, he did not support the proposal to increase the severity of the legislation against crime.[144] Sienese archival documents and chronicles offer many other examples of aristocrats, generally coming from the handful of the most powerful families of the city (Salimbeni, Tolomei, Piccolomini etc.) waging war against the communal regime of the 'mezzana gente'.[145] This group, which could be defined by using a Florentine term as 'supermagnati', seems to have been the most impermeable to the attempts of the government and religious authorities to promote new conceptions of society and violence, for the obvious reasons that these models would limit their power, and that unlike any other group they could afford to reject them without suffering great consequences.[146]

On the other hand, the regime managed to convert other magnates to models that entailed a limitation of the legitimacy of the use of violence, and their success, as shown by the following chapters, seems to have increased over time. It is not possible, unfortunately, to offer a precise social breakdown of how the Sienese councillors voted according to their membership of the *magnati,* the *noveschi* (members of the Nine) or

[142] On this family see Carniani, *I Salimbeni: Quasi una signoria.* On Notto see Mucciarelli, 'Salimbeni'.
[143] ASS, CG 13, f. 3v, 16/08/1270; f. 6r, 19/08/1270; f. 7v, 20/08/1270; f. 44v, 8/10/1270; f. 90r, 02/01/1271; CG 14, f. 36r, Allegato B, May 1271; f. 74v, 29/08/1271; CG 15, f. 52v, 26/02/1272. The castle of Montorsaio became the basis of the land expansion of the Salimbeni in the *contado*: Mucciarelli, 'Salimbeni'.
[144] ASS, CG 13, f. 24v, 21/09/1270.
[145] The commune however tried to react as strongly as possible, as shown by Mucciarelli, 'Salimbeni', on the basis of ASS, Capitano del Popolo 3 (1290), where out of twelve lawsuits against the Salimbeni, eleven resulted in a condemnation.
[146] On the category of 'supermagnate' see Klapisch-Zuber, 'Vrais et faux magnats'.

other segments of the *Popolo*. The registers tell us only whether an act passed or not, and by the end of the 13th century they include the number of councillors who voted in favour or against a decision, but they never include a list of names. The only way to gain more insight into the adhesion of different typologies of councillors to models of criminal justice would be a more in-depth prosopographical study of those who tended to intervene more often in the discussions.

The sources ultimately indicate, however, that the three models of criminal justice were not the patrimony of specific social strata, and factors other than class must have been prominent in shaping people's attitudes to conflict and crime. Individual inclinations, for instance regarding Christian faith, which would be hard to account for in a scientific study, might have played an important role: the promotion of reflection on individual choices and obligations (although always in relation with their consequences for the wider community) was, after all, a central element of both the penitential model of criminal justice and the ideology of public order.

These examples have shown how, because of the plurality of models coexisting in society, people could mould their attitude to criminal justice to the specific circumstances they were presented with. The possibilities offered by the coexistence between different types of law have been already underlined by previous scholarship, who have argued that this was a resource that social actors could exploit to pursue individual or group interests in a variety of ways.[147] Self-interest played a role in Siena, too, as has emerged in the cases presented above; nevertheless, the innovative suggestion advanced by anthropologists of considering that the possibility of invoking different sets of rules, issued by different authorities, could lead to moral dilemmas, proves particularly

[147] Merry, 'Legal Pluralism'.

fitting for this case study.[148] The adhesion to any of the models described in this chapter or lack thereof, indeed, had important consequences for the definition of an individual's identity, since all of them, as will emerge even more clearly in the rest of the thesis, put at stake qualities and virtues seen as desirable in late medieval society, such as being an honourable man, a good Christian, or a lawful citizen of a polity. This is why, in this chapter and in the following, the sources presented issues related to the themes of conflict, violence and crime as dilemmatic situations that required careful decisions and possibly the consultation of friends, relatives or even divine mediators.

As a conclusion, this chapter has shown how including a third discourse on crime, violence and conflict in the study of late medieval Italy helps explain the variety of attitudes regarding these themes across the social spectrum in late medieval Italian communes. Mendicant friars and pious laymen managed to instil in the wider public moral dilemmas concerning the legitimacy of private violence, and to promote new ways of reacting to conflict based on feelings of 'shame-guilt'. The Sienese political elite, or at least part of it, was receptive to these suggestions which could also be helpful in achieving their aims of preserving public order in the city and legitimising their own authority. Concepts of shame and honour however maintained their vitality, even though they lost their absolute primacy among laypeople, so that when analysing the system of criminal justice of Siena or other Italian communes it is essential to keep in mind the interplay between all three models. In this chapter they have been described broadly in their similarities and differences; starting from Chapter 2, which focuses on the different emotional and behavioural patterns they promoted, I will analyse more specific aspects

[148] Bowen, *Islam, Law and Equality in Indonesia*; Dresch, 'Introduction. Legalism, Anthropology and History', p. 14, n. 28.

of how their interaction deeply modified the system of criminal justice in late 13th- and 14th-century Siena.

Chapter 2: Emotions, Virtues and Vices in the Sienese Reflection on Violence and its Remedies

1. The History of Emotions, Virtues and Vices

As pointed out by Barbara Rosenwein, the study of emotions in different historical contexts from a scientific point of view is a rather recent endeavour, in particular with regard to the Middle Ages.[1] This branch of historiography lies on a set of assumptions on the nature of emotions that spring from the combined research efforts of anthropologists, psychologists, philosophers and historians. The first one among them, based on the theory of 'social constructionism', is that emotions, despite being part of the life of every human being no matter when and where they are born, are culturally constructed in the way they are publicly performed and represented. Their representation, however, proves to be stable enough within a culture at a given time to allow us to speak of a limited, but often large, amount of 'scripts' or 'plots' provided by a culture to express one's feelings through actions in a certain situation.[2] A second principle, derived from cognitive theory, sees emotions as perceptions based on the appraisal of a given object or event: this implies that, far from being completely irrational and uncontrollable, they can be functional in expressing needs, self-perceptions and even political messages.[3]

Based on these assumptions, historians of disputes and legal systems in the Middle Ages have focused on the important role of emotions in moments of crisis and conflicts,

[1] Rosenwein, *Emotional Communities*, pp. 1-10. For a more recent summary on the development of this branch and basic bibliography, see Sère, "Histoire des émotions".
[2] Althoff, 'Demonstration und Inszenierung'; Cheyette, Chickering, 'Love, Anger and Peace', pp. 77-79.
[3] The forefather of this tradition is Jolliffe, *Angevin Kingship*, ch. 4, esp. pp. 95-97, with his analysis of the political role of royal anger in the English Middle Ages.

with seminal contributions by Miller,[4] White,[5] Hyams[6] and Smail.[7] These works have shown that the traditional narrative, proposed by Huizinga[8] and Elias[9] of a childish Middle Ages, in which people were inevitably prey to their own drives, until the civilizing process of modernity made its appearance, must be discarded. If the analysis of emotions is now a staple of medieval legal history in the English and French speaking world, Italian historiography on law and violence has not yet paid enough attention to this aspect, as pointed out by Zorzi.[10] A recent book by Casagrande and Vecchio, which analyses the theorisations of the most important medieval theologians on the topic of passions and emotions, has shown that an interest in this field has also started growing within part of the Italian scholarly community;[11] so far, however, the most important contribution to the analysis of how these theories influenced the behaviour of Italian laypeople in practice is Carol Lansing's work on grief in the communes.[12]

It is nevertheless important to remember that, throughout the medieval period, the literature concerning advice on emotional conventions (i.e. how to properly express one's emotions) and models of behaviour linked closely what we would now call emotions to the analysis of virtues and vices. Hagiographies, sermons, mirrors for princes and, from the thirteenth century, much of the literary production devoted to dispensing advice to magistrates and citizens rely on the schemas of virtues and vices constructed by Christian authors to promote or repress behavioural patterns. The connection between emotions, virtues and vices in the Western tradition has been shown to be important since classical

[4] Miller, *Humiliation and Other Essays*.
[5] White, 'The Politics of Anger'.
[6] Hyams, *Rancor and Reconciliation*.
[7] Smail, *The Consumption of Justice*; *Idem*, 'Hatred as a Social Institution'.
[8] Huizinga, *The Autumn of the Middle Ages*.
[9] Elias, *The Civilizing Process*.
[10] Zorzi, 'I conflitti nell'Italia comunale'.
[11] Casagrande, Vecchio, *Passioni dell'anima*.
[12] Lansing, *Passion and Order.*

times.[13] Like every other concept in the history of ideas, however, Christian sins and virtues have gone through transformations in their millenarian life, which reflect important changes in society, attitudes and habits, and are therefore worthy of consideration in the study of religion.[14] Thanks again to Casagrande and Vecchio, the analysis of virtues and vices has received adequate attention also with regard to the Italian context. However, the wealth of literary and visual sources on these concepts in the Western Middle Ages has prevented scholars from attempting to create a systematic and all-encompassing work on the subject, leaving researchers to focus on particular virtues or vices in particular contexts. The result is that, while detailed studies of some of them exist, in the case of others (including, as we will see, some that are very relevant to this chapter, such as humility) there is very little work to rely on.[15]

This chapter will analyse how the different visions of society present in 13th-century Siena translated themselves into the representation and promotion of different virtues, behaviours and emotions as the appropriate reactions to offences and violence, whereas at the same time they marked others as vicious or inappropriate. As suggested by Rosenwein through her concept of 'emotional communities', indeed, there is not only one emotional style present in a society, but on the contrary the presence of different 'groups in which people adhere to the same norm of emotional expression and value or devalue the same or related emotions' can often be observed.[16] In my analysis I will argue that, with regard to situations of conflict and violence, the competing conceptual systems represented by the 'culture of revenge', penitential spirituality, and the ideology of public

[13] Rosenwein, *Emotional Communities*, p. 26.
[14] On the history of vices in the Middle Ages see Casagrande, Vecchio, *I sette vizi capitali*; on virtues the most complete works are Newhauser, *The Treatise on Vices and Virtues*; and Bejczy, *The Cardinal Virtues* (which however focuses mainly on the cardinal virtues and neglects the theological ones).
[15] An example of a detailed study of a single sin is Wenzel, *The Sin of Sloth*.
[16] Rosenwein, *Emotional Communities*, p. 2.

order all exerted their influence on the emotional styles performed by Sienese citizens, although none of them gained enough influence to silence the others and their related 'plots' or 'scripts'; additionally, in the case of Siena the concept of 'emotional communities' might not be entirely appropriate.

2. 'Good' and 'Bad' Emotions in 13th-Century Religious Thought

In her study of the legislation that banned public display of grief in medieval Orvieto, Lansing argued that the second half of the 13th century witnessed a shift in the conventions about emotions in Italian cities: in particular, the display of strong emotions such as grief or rage, previously considered -as is the case for many societies- the mark of a free and honourable man, came to be considered a sign of womanly weakness.[17] According to her, this originated in a recovery of the Stoic ideal of *apatheia* by Italian male urban political elites, in an attempt to curb their own emotionality, seen as a potential danger to the public order, a cornerstone of the political ideology of the new popular regimes (and by contrast presenting women, in the laws, as the main performers of grief, as a way of feminizing it and therefore making it less acceptable). Lansing saw the influence of religious thought in the process as unimportant, because 13th-century preachers were not primarily concerned with the repression of excessive mourning practices and encouraged sorrow in moderate forms.

Lansing's arguments are very convincing when it comes to interpreting the meaning of the legislation against excessive grief. However, they fall short of understanding the complexity of religious thought about emotions. Stoic ideas on emotions (in particular through the mediation of Seneca) had influenced Christian

[17] Lansing, *Passion and Order*, in particular chapter 4.

reflections since antiquity, in competition with Aristotelian doctrines that considered feelings to be in some cases useful to attain virtue, and their importance cannot therefore be underplayed in any period.[18] The Western Church Fathers, however, with Augustine at the forefront, stated that there was a link between emotions and salvation, based on the figure of Christ and his sufferings, which marked a fundamental difference between Christian and Stoic views of emotions throughout the Middle Ages.[19] Moreover, it must be remembered that the sources from which 13th-century civic elites absorbed concepts derived from Stoicism often presented them through the mediation of this same version of Christianity. More importantly, hagiography, homiletic and other genres produced to fulfil the pastoral needs of the laity were in the Middle Ages among the main vehicles of an 'emotional education' meant to reach all social classes: the centrality of feelings and related behaviours in these genres offered an all-round teaching on these topics that, despite not focusing particularly on mourning practices, as rightly pointed out by Lansing, could also offer guidance in this respect.

In the corpus of pastoral texts analysed in this thesis, indeed, the strong association between vices, virtues and emotions as their internal and external (if they managed to influence one's behaviour as well) manifestations means that no feeling is perceived as neutral, but can always be interpreted as 'good' or 'bad' according to the circumstances. A case in point is the treatment of sorrow in the *Summarium virtutum*, one of the hagiographies of Ambrogio Sansedoni. An episode of this text narrates a delicate moment for the Dominican community of Siena, when one of the friars loses all his blood brothers in what looks like an ambush by their enemies. His confreres receive the news before him

[18] Rosenwein, *Emotional Communities*, p. 32; Casagrande, Vecchio, *I sette vizi capitali*, in particular pp. 54-55.
[19] Casagrande, Vecchio, *Passioni dell'anima,* pp. 19-41.

and are not sure how to deliver such a painful message. Eventually, Ambrogio is chosen because of his preaching abilities and his sweet disposition, and manages to disclose what happened to the friar in such a way that, having accepted the will of God,

'He did not shed tears, and barely produced a small sigh; and he kept such an unshaken expression that everyone marvelled at the friar's self-possession, but even more at the miraculous effectiveness of the Father's word'.[20]

The main aim of the episode is of course that of extolling the assuaging power of Ambrogio's eloquence, very important in a preacher.[21] However, it strongly implies that an excessive manifestation of sorrow in this case (which is an extreme case of bereavement, just as the ones analysed by Lansing) would have been detrimental for the soul of the friar. It would have shown a disproportionate attachment to one's family in opposition to God, a danger denounced also in Ambrogio's collection of sermons. Above all it could have transformed itself into feelings of anger strongly associated with the capital sin of wrath, whose relationship with sorrow was a tenet of the medieval reflection on vices.[22]

It is not the display of sorrow that is condemned per se, however, but the fact that, under these circumstances, it could have led to vice: this becomes clear if we compare this episode to another one taken from the same source, in which Ambrogio convinces a female relative, recently widowed, to join a religious community. The woman assents, moved by the examples of female saints mentioned by the preacher, and 'sheds abundant

[20] *Summarium*, col. 213: 'Nec lacrymam, sed vix suspirium parvum emisit; sicque immotam faciem tenuit ut omnes mirarentur Fratris constantiam, sed magis verbi Patris efficaciam et virtutem'.
[21] Thompson, *Revival Preachers*, pp. 120-123.
[22] Casagrande, Vecchio, *I sette vizi capitali*, p. 57; see also *Sermones B,* f.7r, for an *exemplum* that links sorrow directly to evil intentions.

tears'.[23] In this case the open display of sorrow is considered acceptable and even worthwhile, because it springs from the contrition for one's sins that is required to make an act of repentance authentically valid. Sorrow could therefore be a 'bad' or a 'good' emotion depending on whether it leads to vice or to virtue. If morally positive manifestations of this emotion were encouraged by religious authors, as Lansing recognises, negative ones were rebuked more or less openly.

In the sermons of Ambrogio Sansedoni, the ideal of a human being 'master of his own actions and emotions',[24] immune to internal turmoil, is often asserted, although the Stoics are not openly mentioned. Nevertheless, such a person is characterized, in the views of both Ambrogio and Bindo Scremi, not by an emotionless *apatheia* but by a constant feeling of joy, *laetitia spiritualis*, as we will see. To attain this condition, though, one has to reconcile oneself with God by going through the sacrament of confession, part of which (the *contritio cordis,* or *compunctio intima* as Bindo calls it)[25] entails, as seen, experiencing unpleasant feelings of sorrow and, as most of penitential literature points out, shame.[26] The course that a sinner undergoes to repent can be described as an emotional journey that takes him from 'bad' emotions to 'good', even if initially unpleasant, ones. Ambrogio's sermons have their central focus exactly in the description of this journey, which is probably the most recurring theme of the collection and which is also fundamental in Bindo's homilies. According to both Sienese preachers, sins and vices are associated with a state of internal turmoil, as is apparent in the frequent

[23] *Summarium*, col. 213: 'lacrymas abundanter fudit'.
[24] *Sermones Ai*, f. 117r: 'Dominus suorum actuum et passionum'.
[25] *Sermones B*, f.9r.
[26] McTaggart, *Shame and Guilt in Chaucer*, p. 15, quotes Raymond de Penyafort's opinion that shame was one of the chief impediments to confession. Another good medieval expression of this concept is the *exemplum* 'Les bons aspects des péchés capitaux', in Blangez (ed.), *Ci nous dit*, p. 598. The 'good sloth' (*bonne paresse*) is the one that prevents the Christian from sinning so he does not have to deal with the consequences of his actions, for instance repentance that involves shame (*honte*) and the loss of one's honour (*je perds mon honneur*). On shame see also Ch. 1.4.

definition of the mixture of negative feelings associated to sin (rage, sorrow, shame) as *ansietas* (anxiety), *angustia* (anguish) or *inquietudo* (apprehension).[27] To escape this tumult, however, one has to go through a voluntary process that involves experiencing other negative emotions such as sorrow and shame, the most dreaded one, as seen in Chapter 1, feared to the point that, according to Sansedoni, 'many people avoid confessing for as long as thirty years because they feel ashamed'.[28]

However, these 'good' emotions, although identical in their names to the 'bad' ones, do not lead to further turmoil, but to its exact opposites: *quies mentis* (quiet of mind),[29] *pax interior* (internal peace),[30] and the aforementioned *laetitia spiritualis,* which according to Bindo is the distinctive characteristic of Christians in opposition to the unhappiness of the pagans.[31] Of all the emotions that a human being can feel, therefore, there seems to be a 'good' and a 'bad' version, and the fundamental criterion to tell them apart is the role they can have in the process that leads a sinner to repentance. Even 'good' emotions, however, seem to be unappropriate if too excessive, as in the case of sadness seen above. The emotional script associated by Sansedoni and most of the other writers of penitential literature with confession, although far from the Stoic ideal of *apatheia*, is one in which an important role is assigned to the virtue of *modum* or *modestia*, that is the ability not to exceed.[32]

There is however an emotion whose status is more ambiguous, and whose positive connotations are open to debate among medieval religious writers: anger. Anger was an emotion strongly associated with the capital sin of wrath in the theological tradition;

[27] E.g. *Sermones A*, f. 92v (angustia, ansietas), f. 132v (ansiatur, angustiat); *Sermones B*, f.7r (anxietas), f. 25r (inquietudo).
[28] *Sermones A*, f. 97r: 'multi stant triginta annos quod non confitentur verecundia ducti'
[29] *Ibidem*, f. 92v.
[30] *Ibidem,* f. 91v.
[31] *Ibidem,* f. 65r.
[32] *Ibidem*, f. 90v.

however, biblical episodes like the Cleansing of the Temple or the Last Judgement presupposed a divine wrath, and great masters of the past such as Aristotle had theorised the existence of just forms of anger.[33] Ambrogio Sansedoni, following the teachings of his confrere Thomas Aquinas, sees anger as a product of human physiology, as the bile produced by the body is considered responsible for experiencing feelings of anger. As such, anger is per se morally neutral (in this case it is called *ira ex complexione*): however, as soon as reason assents to this physiological manifestation instead of repressing it, anger transforms itself in the sinful *ira deliberativa*, which is forbidden at all levels. Ambrogio combines the classifications of John of Damascus, very popular in the 13th century, and the traditional distinction between sins of thought, word and action.[34] This allows him to distinguish four levels of anger, from the one that shows no external signs to the one that manifests itself in deeds such as insults or physical aggressions.[35]

In contrast to Aquinas, however, Ambrogio does not seem to contemplate, or at least to promote in front of his lay audience, the existence of a morally positive form of anger, *zelum*, that can be defined as the rightful indignation that prompts people to redress wrongs.[36] Since there is no doubt that Ambrogio was exposed to both Aristotelian and Thomist doctrines, this feature must be interpreted as a voluntary omission. This is likely to be a case in which theology and pastoral care differ in content, on account of their different aims. Ambrogio and Bindo, like many other Italian preachers of this period, aimed to present eminently practical advice (the extent of this practical nature will be gauged in more detail later) to a society in which conflict was endemic. It is probable that they did not consider a reflection on *zelum* as something useful to achieve their purpose

[33] Casagrande, Vecchio, *I sette vizi capitali*, pp. 54-56.
[34] see also Damascene, *De Fide Orthodoxa*, XXX, p. 122; Thomas Aquinas, *Summa Theologiae*, II, ii, q. 158, a. 7.
[35] *Sermones A*, f. 94v.
[36] Throop shows that *zelum* was however firstly popularised in the context of Crusade preaching and not only because of Aristotelian influences: 'Zeal, Anger and Vengeance'.

in preaching.[37] Accordingly, Ambrogio follows the theological tradition that sees in divine wrath a metaphorical instrument, which God uses to instil in humanity feelings of fear, helpful to reform flawed mores, hence emptying it of any real emotional character and making it something completely different from human anger. Sansedoni distinguishes in this spirit the *ira affectiva* that characterises men from the *ira effectiva* belonging to God.[38] If the latter is a manifestation of God's perfect justice (*reptitudo iustitie*), we will see that the former is considered by Ambrogio and other religious writers as the main obstacle to the possibility for postlapsarian humans of formulating correct judgements, both in the context of trials and in more personal matters.

3. Emotions and Conceptions of Justice in Late Medieval Siena

This model distinguishing 'good' and 'bad' emotions was elaborated by religious writers of the 13th century, belonging in the majority of cases to Mendicant orders or lay confraternities, to be a comprehensive moral guide for the faithful, including for situations involving conflict, violence and crime. The appropriate emotional and behavioural responses to such situations promoted in their texts will be analysed in this section. As anticipated earlier, however, reflection on these themes in the 13th century was widespread, and the wealth of Sienese archives for the period examined here allows us to access other emotional patterns that people could employ in these situations. The role of emotions seems to have been indeed very important in all the models of criminal justice present in Siena, despite their different ideological premises. Drawing on the arguments of philosopher Robert Solomon, it must be remembered that many people

[37] On the differences between theological and pastoral works, even if written by the same author, see Hanska, *'And the Rich Man Also Died'*, pp. 141, 169.
[38] *Sermones A*, f. 81r.

across times and cultures approach ideas of justice through the experience of emotions rather than through concepts and grand theories.[39] This is particularly evident in Sienese judicial documents from the 13th century, in which defendants of all social classes appealed to concepts such as mercy or justice, but justified their actions, even in the case of vendettas, not on the basis of an abstract logic of retribution, but of emotions such as sorrow or anger. In the feud between the families of Cione Picchiati and Piero Cacciamonici studied by Waley, for example, Cione's son justified avenging his father's homicide because he could not bear 'so much sorrow for his father's death' ('tantum dolorem de morte patris').[40]

The 'culture of revenge' described by Zorzi and the 'chivalric mentalité' outlined by Kaeuper had their own emotional patters. The chivalric ideal was also a powerful influence in Italian cities. Possibly it was particularly so in Siena if, as argued by Giuliano Pinto, the strength of its courtly culture became a cliché)[41] receiving an offence was considered a cause of sorrow and anger, emotions that could and ought to be cured by 'giving hurt for hurt', as stated in the *Lancelot* romance.[42] Taking one's revenge transformed these feelings into a pleasant sense of happiness, as summarized by the 14th-century merchant writer Paolo da Certaldo:

'the first cause of happiness is to take one's revenge; that of sorrow is being offended by one's enemy'.[43]

[39] Solomon, *A Passion for Justice*, p. 3.
[40] Waley, 'A Blood Feud with a Happy Ending', p. 51. For similar expressions in documents from other Italian cities see Dean, *Crime in Medieval Europe*, p. 97.
[41] Pinto, 'Honour and Profit', pp. 81-91.
[42] Kaeuper, 'Vengeance and Mercy in the Chivalric Mentalité', p. 175.
[43] Paolo da Certaldo, *Libro di buoni costumi*, p. 54; quoted also in Zorzi, 'La cultura della vendetta', p. 156.

The feeling of sorrow and rage (which action against one enemy could convert into satisfaction for one's achievement) described in lay sources seems to have much in common with an emotion, called *liget*, analysed by Michelle Rosaldo in the context of the Ilongot culture, in the Philippines.[44] As is the case for *liget*, the feelings described by the bearers of a culture of revenge were not mediated by deep introspection, which was conversely the favourite mode of valuing emotions of the Church, but seemed to reflect the world of social bonds (*amicitia* and *inimicitia* first of all) more than the inner movements of one's soul.[45] Moreover, the happiness generated by revenge did not seem to coincide with the feeling of quiet contentment which the most devout Sienese and Rosaldo's Christianised Ilongots aimed for, but was linked instead to a state of agitation and energy (again, associated with *liget* in the mindset of non-Christianised Ilongots).[46] It is clear that the Mendicants completely denied the validity of this conception of happiness and the premises it was built on by calling it anxiety, and tried to substitute this model of emotionality altogether.

Most of the petitions for pardon associated with the general amnesties of 1321 and 1328[47] present in the Archivio di Stato of Siena appeal to feelings of sorrow, fear, anger or even repentance to move the treasurer (*camerarius*) and the governors of the city, as is typical of petitions for mercy.[48] The ideology of public order promoted by the popular government was however based on the contrary on a stricter control of emotionality. The Sienese statutes, too, presented the same legislation repressing excessive grief that

[44] Rosaldo, *Knowledge and Passion*.
[45] Rosaldo, *Knowledge and Passion*, p. 36.
[46] *Ibidem*, p. 52-53.
[47] ASS, Biccherne, Banditi e carcerati 731 and 732. These two volumes will be discussed in more detail below and in Chapter 4.
[48] Zemon Davis, *Fiction in the Archives*, p. 57; Vallerani, Rubin Blanshei, *Medieval Public Justice*, pp. 339-ff.

Lansing described for Orvieto.[49] The minutes of the General Council show that trials could be invalidated if the judge had not been considered dispassionate enough in his verdict, according to the traditional view that justice should be administered without love or hate.[50]

More often, however, different conceptions of emotionality, linked to the different discourses about criminal justice, intermingled in concrete situations, as has emerged from Chapter 1, too. An example can be the different attitudes towards two violent games: the *ludus batallie* and the *gioco delle pugna*. The former was a simulated battle fought in Piazza del Campo with wooden weapons, which however often ended up in stone throwing, causing multiple casualties and damage to buildings. The latter was a fist fighting game, slightly less violent and therefore more tolerated by the government.[51] Stone throwing during these games was forbidden for obvious reasons already in the earliest version of the statutes of the city, from the period 1262-1270, and guards responsible for enforcing the law were placed in the Campo whenever these events took place.[52] The risk of potential escalation of such activities even if carried out under vigilance already seen concerned the councillors of Siena in the 1270s, especially when such games happened to coincide, as was often the case, with a religious festivity. The influx of people from the countryside would increase the number of participants (and,

[49] See for instance *Costituto volgare*, pp. 319 ff.
[50] ASS, CG 15, f.46, 05/02/1272: the condemnation of a group of people 'occasione Abbatie de Refeno' is invalidated 'ex eo quod pro furore contra eos fuit processum et non de iure'.
[51] On violent games in the Italian communes see Ortalli (ed.), *Gioco e giustizia nell'Italia di Comune*, in particular the contributions of Settia, 'La 'battaglia': un gioco violento'; and Zorzi, 'Battagliole e giochi d'azzardo a Firenze'.
[52] Zdekauer, 'Il frammento degli ultimi due libri', vol. I, p.148, c. XXXIII. The evolution of the Sienese legislation on these games is also outlined, on the basis of published sources, in Settia, 'La 'battaglia': un gioco violento', pp. 130-ff.

although this is not mentioned explicitly, this would possibly be seen as a scandalous distraction from the religious celebrations).[53]

The *ludus* retained however a certain number of advocates, and the Statutes of 1274-1282 explicitly stated that the game was still permitted, provided that the council and the *podestà* did not forbid it. It is possible to read between the lines that members of the government had tried to ban the *ludus* for good, but had not yet prevailed.[54] A discussion of this issue in the General Council, in 1281, hints that at stake was not only the 'honour of the city' and of its ruling class, but also competing visions about appropriate patterns of masculine emotionality. The motion discussed by the council concerned the abolition of the *ludus*, motivated by the fact that, despite the laws, stone throwing was still often taking place in conjunction with it.[55] It is rare to find a discussion in the minutes of the period examined here in which the councillors were so divided, and a high number of them intervened to make their position heard.[56] Particularly interesting is the speech delivered by Jacopo di *dominus* Renaldo Gilli, who maintained that the game should be allowed because it excited 'inter cives Sene amorem et pacem', feeling of peace and love among the citizens of Siena. Bindo di *dominus* Ricco added that the *pugna* was 'honorabilis et iuvenibus fructuosa' (honourable and profitable for the youth), although stone throwing should be persecuted and *inermes* (those unable to defend themselves) should be protected.

These motivations suggest that part of the councillors believed that letting people (especially the youth, more heated by nature)[57] have a –theoretically- controlled outlet for

[53] The first reason is at the origin of the ban of *batallie* (battles) at Christmas 1270 (ASS, CG 13, f. 84v) and of the increased surveillance of the city suggested to the new podestà to avoid *meschie* (fights) during the feast of the Assumption of the Virgin (*Ibidem*, f. 1r, 14/08/1270).
[54] *Statuti 3*, f. 119v.
[55] ASS, CG 24, f. 21r, 08/02/1281.
[56] Bowsky, *A Medieval Italian Commune*, pp. 74-75.
[57] Crouzet-Pavan, 'Un fiore del male'; Goodich, *Violence and Miracle*, p. 35.

violent behaviours generally associated with emotions of anger or sorrow[58] could be positive for a number of reasons. First of all, being able to do so was for free Sienese men a mark of their honourability, as it is in a variety of societies, as seen above. Moreover, this possibility could have, according to at least one of the councillors, the cathartic effect of sublimating 'negative' emotions into 'positive' ones of peace and love (producing the state of happiness associated with responding to offences), so that anger and sorrow would not be channelled into real violent acts: as suggested by Zorzi, such 'battles' can be interpreted as moments of collective socialisation among members of different classes and circles.[59]

In conclusion, it seems that part of the council held a view that was more compatible with the 'culture of revenge' model, and hence found the open display of strong emotions appropriate at least in controlled contexts; on the other hand, the majority of it adhered to an ideology that saw in excessive male emotionality a weakness and a danger. Eventually the assembly decided in favour of banning the *ludus*, although it took a second meeting to reach this conclusion.[60] In 1285 the ban was renewed and the *batallia* described as 'absolutely useless and detrimental' ('valde inutilis et dampnosa'), and unwelcome 'to almost all the good men of the city' ('quasi omnibus bonis hominibus civitatis').[61] The latter formulation suggests that the opposition to violent games was as much practical as was moral. The Statutes of 1287-1297 confirmed this decision by banning both the *ludus* and the *pugna*, denying even to the *podestà* and the council the

[58] Especially in medieval physiology and sermons: Ambrogio Sansedoni for instance maintains that violence springs 'ex hodio et rancore et mala voluntate' (*Sermones A*, f. 102v).
[59] Zorzi, 'Battagliole e giochi d'azzardo a Firenze', p. 71.
[60] ASS, CG 24, f. 22r, 11/02/1281.
[61] Zdekauer, *La vita privata dei Senesi nel Dugento*, p. 73.

power of authorising it, and establishing fines going from 10 to 100 l. against the participants.[62]

Nevertheless, popular support for the *ludus batallie* remained vast, as shown by a discussion held in the General Council in 1289, in which the councillors considered raising the fines for participating in it since the current ones seemed not to be deterrent enough.[63] The same statutes show the forms this dissent could take (besides the illegal organisation of such games without the consent of the authorities), and these involveed exactly the manifestations of aggressiveness that the *ludus* provided an outlet for: among them we find for instance going to Piazza del Campo to shout insults against the podestà and the *capitano del popolo* to force them to authorise the game.[64] This example shows that the citizenry was divided between different emotional scripts and models of behaviour, and, although the one that supported a stricter control of the aggressiveness of the Sienese prevailed in the council debates, the other was never obliterated in practice.

The wider debate, still central nowadays, in which the Sienese government was engaging was that between offering controlled outlets for societal violence and opting for its thorough repression, at the possible cost of making it incontrollable. Different Italian communes approached the issue in different ways, but often tried to replace, particularly in the course of the 14th century, fighting games with other recreational activities such as tournaments and races as an outlet for male energies.[65] Zorzi argued that this was all part of a disciplining strategy meant to disarm the population in order to make it more controllable, and should be connected to the emergence of signorial regimes (though this

[62] *Statuti 5*, f. 238v.
[63] ASS, CG 38, f. 19r, 23/08/1289.
[64] *Statuti 5*, f. 239r.
[65] Rizzi, 'Il gioco tra norma laica e proibizione religiosa'; Gasparri, 'I rituali della cavalleria cittadina'.

was not the case for Siena). At the same time, he acknowledged, alongside other scholars, that ecclesiastical influences in these processes must be also taken into account.[66]

As pointed out by Skoda, in the Late Middle Ages there was ambivalence even among moralists and jurists about the role of emotions in violent or criminal acts.[67] This phenomenon was caused, I argue, by the interaction between the models of criminal justice I have described, characterised by a different approach towards the acceptability of emotional displays. In order to understand what role penitential thought had in the lives of 13th- and 14th-century Sienese, I will now try to outline the practical advice and models of behaviour promoted by pastoral texts, and then discuss the influence of these conceptions in documents produced by laypeople.

4. The Penitential Model of Civic Virtues: Humility, Patience, Mercy

The political debate about violent games in 13th-century Siena, and its focus on what emotions and behaviours were appropriate for a (male) member of the community, tackled other wider issues, such as that of the virtues that the model citizen should possess. If part of the assembly promoted characteristics such as a keen sense of one's honour, openness to show one's negative emotions when appropriate, and a certain degree of bellicosity, which could be fruitful during military campaigns (the *ludus batallie* could after all be seen as an important moment of military training for the youth),[68] the majority of the Sienese lawmakers favoured a model of citizen able to restrain his emotions, an ability that seemed all the more important in order to preserve the public order.

[66] Zorzi, 'Battagliole e giochi d'azzardo a Firenze', p. 82; Rizzi, 'Il gioco tra norma laica e proibizione religiosa'.
[67] Skoda, *Medieval Violence*, p. 235.
[68] Settia, 'Ut melius doceantur ad bellum'.

Expressions frquently used in the minutes of the General Council, such as 'good, wise and law-abiding men, lovers of peace and concord', seem to define this ideal.[69]

Was this feature really a consequence of recovered Stoic influences, as posited by Carol Lansing? Were there other sources by which the authorities could be inspired in the promotion of such a model of ideal citizen? Without denying a role to suggestions gathered from Classical literature, it seems that there was a more obvious candidate, one that had a much more pervasive role in the life of 13th-century Sienese than the work of the ancient philosophers: the theological and pastoral teaching developed mostly by the Mendicants. As mentioned above, since late antiquity genres such as homiletic and hagiography had had the role of transmitting models of behaviour from the clergy to the population.[70] Some transformations which they underwent thanks to the 'pastoral offensive' of the Fourth Lateran Council made them even more apt to deliver such messages to a community of citizens, such as the Sienese, that aimed to live a fulfilling religious life while remaining in the *saeculum*, working and raising a family, instead of pursuing a life of seclusion. These genres were precisely concerned with making the theological reflection on virtues, vices and their role in attaining salvation available to a wider public, and constituted therefore a more likely influence on people of different social standing than the ponderous *summae* of the masters of Scholastic theology; they could also constitute a more helpful source of inspiration for governments looking for justification for their policies.

In the case of Sienese hagiographies, particularly relevant for the study of the relationship between virtues, emotions and situations of conflict are the lives of Andrea

[69] ASS, CG 18, f. 90v, 20/04/1274: 'boni, sapientes et legales, amabiles (sic) pacis et concordie' (these are the qualities that the citizens sent to approve a compromise between the commune of Massa Marittima and the signorial family of the Pannocchieschi must have according to the councillors). On the expression 'legalis homo', see Odegaard, 'Legalis Homo'.
[70] As an example of the proliferation of works on social comportments in 13th-century Italian communes see Romagnoli, 'Le buone maniere'.

Gallerani, Ambrogio Sansedoni and Pietro Pettinaio. Unlike many early medieval saints or their Sienese contemporaries affiliated to more traditional monastic or canonical orders, these three saints (two of whom were laymen, moreover) were in all respects part of their society, and spent their days interacting with people on account of their activity as preachers, merchants, and volunteers in charitable institutions. The ethical problems that they faced were identical to those faced by their less saintly fellow Sienese. All three holy men are shown to have been influenced, to various degrees and at least in the first part of their lives, by the widespread 'culture of revenge'.This is a touch of realism that shows how much their sanctity was not just *admiranda*, meant to be admired, but also *imitanda*, meant to provide an example to emulate.[71]

The case of Andrea Gallerani, exiled from Siena for having perpetrated a homicide at the beginning of his hagiography, is particularly extreme; Pietro Pettinaio, too, seems to have lived a somewhat turbulent life before marrying his beloved wife. This circumstance has prompted Bartolomei Romagnoli to talk of a model which exalts the redeeming value of marriage and work.[72] A condemnation dated 1231, in which a certain *Petrus pectenarius* is mentioned, could offer a documentary validation to the hagiographical tradition, although this identification is not at all certain.[73] Even in the case of Ambrogio Sansedoni, presented by the authors of his *vita* as a *puer senex* whose sanctity is evident since his early childhood, a remark from the author of the *Summarium Virtutum* leads the reader to think that the Dominican had been involved in his youth in episodes of violent conflict:

[71] Kieckhefer, *Unquiet Souls: Fourteenth Century Saints*, pp. 12-14; Vauchez, 'Saints admirables et saints imitables'.
[72] *Vita P.P.*, p. 5: 'benché (...) fosse stato giovane furibondo e assai tempestoso'. Bartolomei-Romagnoli, 'Pier Pettinaio e i modelli di santità', p. 147.
[73] Pellegrini, 'Pietro Pettinaio'.

'Once, when I said that repentance for revenge is the most difficult thing, he said, as if he were greatly offended: 'On the contrary, some people suffer until death, when they happen to say or do something with the aim of taking their revenge': and had he not felt that this applied to his own situation, he would not have uttered such a strong declaration'.[74]

However, as soon as they embarked on the path of holiness they became examples of a life lived avoiding conflicts and violence, something which was possible because they acquired a set of virtues that the hagiographers present as the key for the prevention of violence in society: these virtues are first and foremost humility and patience (two virtues that had a distinct nature in late antique and early medieval elaborations, as will be seen, but that in 13th-century Sienese sources became more and more intertwined), but also mercy, whose nature will be examined in more detail later.

5. Humility and Emotional Control

The insistence on the virtue of *humilitas/patientia* in these hagiographies is highlighted by the structure of the texts that often, as is typical of 13th-century saints' lives, organise their contents not entirely in chronological order, but also by topic.[75] After the story of the saint's birth or the events that bring him to his conversion, the lives of Pietro Pettinaio and Andrea Gallerani and the *Summarium virtutum* of Ambrogio Sansedoni thus proceed to extol their heroes' virtues one by one, listing *exempla* of how the saints possessed each of them under separate headings. The chronological structure is

[74] *Summarium*, col. 211: 'Semel mihi dicenti quod pœnitere de vindicta est difficillimum, mire indignatus est dicens: 'Quinimo solet quis dolere ad mortem, cum ei concurrit dicere aliquid vel facere in vindictam': quod nisi in se verificari sensisset, tanta assertione non protulisset'.
[75] Webb, *Saints and Cities*, p. 192.

recovered only at the end of the narration, to recount the death of the protagonist and some of his post-mortem miracles (these are however missing in the *vita* of Pietro Pettinaio). *Humilitas* is always assigned a heading of its own in each of these texts.[76] Furthermore, it seems that the hagiographers could not help butalso insert episodes where the saint is principally praised for behaving 'with great humility' ('magna cum humilitate') or 'humbly' ('humiliter') under other headings.

The stress on humility and its quasi-equivalent of patience in these sources is relevant here because these virtues consisted, in their 13th-century version, in a distinctive way of performing (or better, of not performing) one's negative emotions, in particular in relation with violence and conflict: this representation was a result of a combination of traditional and innovative ideas. In adherence to a long-standing tradition, humility was described as the custodian of all the other virtues, since he who is virtuous but has no humility is doomed to fall into the sin of pride.[77] *Humilitas* was in fact traditionally seen as the contrary of pride, *superbia*, the sin that according to the hagiographers and preachers was one of the principal causes of violence in society, or at least of the desire to take one's revenge. The exaltation of humility in Christian texts was of course a feature that dated back to the very beginning of Church history, and was corroborated by a number of biblical and patristic quotations. Some of them also appear explicitly or implicitly in our texts: for example, 'Humility [is neighbour to] wisdom' (Proverbs 11,2),[78] 'Learn from me; I am gentle and humble of heart' (Matthew 11, 29),[79] 'Do not esteem anything more notable than Humility, anything more amiable. She is indeed the

[76] *Vita A.G.,* col. 52, 'Hic de humilitate vitæ & exaltatione mortis'; *Vita A.S.*, ch. XVIII, 'De profunda ipsius humilitate'; *Summarium,* ch. I, 'De origine, puritate, humilitate, & sapientia B. Ambrosij'; *Vita P.P.*, ch. VI, 'Dell'umiltà sua'.
[77] Casagrande, Vecchio, *I sette vizi capitali*, pp. 3-6.
[78] *Vita A.S.*, col. 191.
[79] *Vita P.P.*, p. 69.

special defender and almost a custodian of all virtues'.[80] However, although the hagiographers built on pre-existing reflections on this virtue, their texts treat humility and its external manifestations in a way that is different from previous conceptions and presents some elements of novelty. As pointed out earlier, Christian notions of virtues are liable to change in the course of time and require their own history. In the case of humility, this remains still to be written, since scholars have rather focused on the study of the seven traditional Christian virtues (the four cardinal, prudence, courage, temperance and justice; and the three theological, faith, hope and charity).[81] What is clear, however, is that *humilitas*, like obedience and patience, was in early medieval times closely associated with the monastic world.[82] It was described as the necessary disposition for the monk who wanted to live a contemplative life. It was at the same time the result of the *cura corporis*, that is the set of corporal privations (fasting, nakedness and other penitential practices) that monks imposed on themselves, especially in Eastern monasticism.[83] As such, it was rarely an object of preaching to the laity until the 10th-11th centuries, as highlighted by a statistical study of virtues and vices in early medieval sermons.[84]

In its 13th-century Sienese manifestation humility became on the contrary a virtue eminently related to active life, and to the relationship between the individual and society. The typical *locus* in which a saint exercised his humility was a situation of tension between him and one or more of his fellow citizens, that risked escalating into a violent conflict: *humilitas* was therefore a virtue of associated life, of the 'vita civile' cultivated

[80] *Vita A.G.*, col. 54; *Vita P.P.*, p. 69. This sentence originally appears in St. Jerome, *Epistola* 148, 20, PL 22, coll. 1214: 'Nihil habeas humilitate praestantius, nihilque amabilius. Haec est enim praecipua conservatrix et quasi custos quaedam virtutum omnium'; it is more likely however that the hagiographers quoted it from Gregory the Great, *Homilia in Evangelia*, 1:76, where the same wording appears.
[81] The only contribution entirely devoted to an historical analysis of the concept of humility in ancient and medieval texts is, to my knowledge, Oliva Gallardo, 'Humildad, término, concepto y representación medieval'.
[82] Casagrande and Vecchio, *I sette vizi capitali*, p. 14, define it as a 'virtù tipicamente monastica'.
[83] Oliva Gallardo, 'Humildad, término, concepto y representación medieval', p. 280.
[84] De Reu, 'Vertus chrétiennes et vices démoniaques'; and in particular *Ead*., 'A Statistical Treatment of Sin and Holiness', p. 350.

and analysed by the intellectual elite of the Italian communes.[85] In sum, humility in 13th-century Sienese hagiographical dossiers was first and foremost a civic virtue practiced within society to prevent the rise of conflicts.

Traditional descriptions of humility as the knowledge of oneself that prompts men to recognise their insignificance compared to God, and therefore to debase themselves and to despise worldly honours,[86] are certainly also present in these texts, but mainly as a starting point to go beyond through the presentation of practical examples. For instance, Ambrogio Sansedoni 'with that same humility, as if he thought it wiser, desired to be promoted to true greatness, but despised being glorified by men': out of humility he refused to become bishop of Siena, or to hold any other prestigious office.[87] Pietro Pettinaio also considered himself a sinner worthy of being despised,[88] and Andrea Gallerani, 'thoroughly despising the world and worldly vanities, did not spurn anyone more than himself, to the point of not caring if he was despised by someone else'.[89] This last facet of indifference towards offences could influence the behaviour of the individual towards his neighbour and his community, and seems to be the one in which the authors of these *vitae* are the most interested, and the one that receives the most diffuse treatment.

In its practice, this 'ethical' form of humility is tied to a model of control of one's emotionality, since Sienese saints manifest it chiefly in their ability not to get upset or react when they are insulted, threatened or otherwise offended, a characteristic that the

[85] Lansing, *Passion and Order*, p.16. The most important works on the 'pedagogia dei costumi sociali' elaborated by lay authors in the communes are by Artifoni: see e.g. his 'Preistorie del bene commune', in particular p. 79; and 'Tra etica e professionalità politica'.
[86] Oliva Gallardo, 'Humildad, término, concepto y representación medieval', p. 281.
[87] 'Eadem namque humilitate, tamquam prudenter æstimans, promotionem veræ magnitudinis appetebat, magnificationem vero hominum respuebat', *Summarium*, col. 211. For the dychotomy between religious concepts, characterized as real, and secular ones see Chapter 1.3.
[88] *Vita P.P.*, p. 75.
[89] *Vita A.G.*, col. 54: 'Mundum et mundanas despiciens penitus vanitates, nullum præterquam seipsum spernebat, hoc etiam despiciens si ab alijs sperneretur'.

hagiographers praise and highlight frequently, and which must have been particularly striking to the Sienese. According to the Dominican friars who wrote the *Vita* of Ambrogio, the best example of the saint's humility is indeed his ability not to react to the persecutions of the members of the Sienese factions that he tried to pacify.[90] During one of his sermons on peace he was publicly insulted and threatened by a 'magnus vir' (powerful man) described as 'ira plenus et vindicta' (full of anger and vengefulness) and 'discordiarum amator' (lover of dissensions), who addressed him as follows:

'You false man, you are a seducer and deceiver of Christian people, full of ambition and vainglory: you are worthy of every punishment, which I will give you, unless you desist from what you have commenced'.[91]

The preacher however does not betray any feeling of discomfort or rage, but reiterates 'humiliter' the necessity of following God's commands of making peace with one's neighbour, asks the man to forgive him if he upset him with his words, and asks God to forgive the offensive words of his adversary. A preacher's peace-making activity had clear political implications and could raise the most skilled to positions of prestige. During the *magna devotio* of 1233, for instance, Gherardo of Modena received from the commune of Parma the power of revising its statutes. Accusing preachers of trying to acquire personal power through their peace-making activities his was possibly a common argument among their detractors.[92] The inclusion of this episode under the heading

[90] *Vita A.S.,* col. 191: 'Maximam etiam Dei servus ostendit humilitatem in iniurijs & persecutionibus, quas a pravis hominibus pacisque turbatoribus, quam ipse perficere optabat, passus est: ex quo multa exempla præclara visa sunt, ex quibus vnum breuitatis caussa referemus.'
[91] *Ibidem*: 'Tu falsus homo, seductor & deceptor populi Christiani es, omni ambitione & inani gloria plenus: tu omni supplicio dignus es, quod ego tibi daturus sum, nisi ab inceptis desistas'.
[92] On the hostility that pacificatory predication could rise, see Thompson, *Revival preachers*, p. 102. On Gherardo of Modena, see Zafarana, 'Boccabadati, Gherardo'.

devoted to the saint's humility, where his refusal to take on high offices in his order and in the Church is also stressed, was certainly a way of rejecting such accusations by showing that Sansedoni was not in pursuit of personal glory.

Besides the holy man's absence of vainglory, however, the hagiographers highlight his control of emotions and their bodily manifestations, which enabled him to pronounce a detached and well-argued speech even after having been publicly attacked. The way he speaks seems as important as what he says, or even more so. This circumstance is considered wondrous and equivalent to a miracle in its effects, since it causes such a strong impression on the 'magnus vir' that, suddenly converted, he throws himself at the feet of the saint and declares himself ready to repent and make peace with his enemies. Ambrogio then makes him stand up, kisses him and exhorts him to persevere in his intents. After that episode, the seditious man becomes a 'devotus Christianus', whose example helps the preacher convert many more people. The authors present this anecdote as one of the many instances of threats and insults addressed to Ambrogio on account of his pacifying mission, all of which could be examples of his humility exactly because of his emotional self-control, although only one is portrayed for brevity's sake. The hagiographers thus describe, at least rhetorically, two competing emotional scripts, one based on virtuous self-restraint and associated to sanctity, the other one characterised by a manifestation of anger and aggressiveness and deemed vicious and dangerous.

6. Patience and Humility *vs.* Anger and Pride

Another story appearing in the section devoted to the saint's *humilitas* shows how this virtue was linked, in the hagiographers' mind, to mental and bodily discipline. To illustrate in his preaching the principle that only a humble soul is able to pursue the path

of wisdom, Ambrogio uses an *exemplum* set in the classical world. He tells of a peculiar entry test used in the ancient school of philosophy of Athens to evaluate whether a student was worthy of being admitted:

'And for this reason the Athenians, in their prosperous school of philosophy, often placed next to the classrooms men who incited the students to pride and impatience with insolent words. And if they found someone to be impatient they would tell him: 'You will not be admitted to the teaching of this school, because you would not be able to learn'. They maintained on the other hand that those who they found to be patient and humble became proficient in their studies'.[93]

It is clear from the two episodes described above, as anticipated, that the vices tackled in these examples of humility are not only pride, but also anger, whose opposite virtue was traditionally that of patience. This was another quality treated at least until the 11th century as eminently monastic, and consisted in the ability, as Ambrogio puts it just after this *exemplum*, to 'endure misfortunes'.[94] As seen in this last excerpt, 13th-century Sienese hagiography tends to create an overlap between these two virtues, so that they appear to be almost synonymous. This is so true that the author of the *Summarium Virtutum* can praise under the name of 'socialis patientia' the same attitude of tolerance to insults and offences that in the *Vita* of Ambrogio had been described as humility:

'He had so much *socialis patientia* that you would hardly believe that had understood or

[93] *Vita A.S.,* col. 191: 'Et ideo Athenienses in suo florentissimo studio Philosophiæ, persæpe iuxta scholas viros statuebant, qui studentes contumeliosis verbis ad superbiam & impatientiam prouocarent. Qui si sorte aliquem reperissent impatientem, dicebant: Non ingrediaris disciplinæ scholas, quia inhabilis es ad eas addiscendas: eos autem quos patientes & humiles inueniebant, multum in studio proficere affirmabant'.
[94] *Ibidem*: 'mala ferre'. For the monastic nature of patience, see Little, 'Anger in Monastic Curses', p. 27: 'The virtue of patience was so characteristic of the monastic ideal that the occasional layperson who exemplified it was perceived by others as being in some way monastic'.

heard the injurious things that were said against him'.[95]

The adjective *socialis*, with which the virtue of patience is described here, highlights the ethical role already seen in the episode of the confrontation between the saint and the 'powerful man': the context for the exercise of *humilitas/patientia* was indeed that of social and interpersonal relationships. A model promoting these qualities could prove particularly relevant for those Christians (a growing number in the 13th century) that wished to live a fulfilling spiritual life without renouncing an active role in their society. In this context, not even the saintliest among the Sienese were able to avoid encountering potential occasions for conflict, which indeed occurred to them quite frequently. During their life they were offended, often because their example of piety exposed by contrast the sins of (often powerful) people who thus felt threatened by them. Their mastery of emotions, however, enabled them to let provocations fall and immediately forgive their offenders. In his Life, Pietro Pettinaio does not react to the threats of an aristocratic family offended by a vision the holy man had concerning one of their members, recently deceased; when a man in a hurry accidentally collides with his combs stall, damaging his products, he is not at all upset and readily forgives him; when a group of youngsters accuses him of being a magician endowed with diabolic powers, he behaves as if he had not even understood their words.[96] Ambrogio Sansedoni is repeatedly qualified as untouched by the insults he often receives when he preached. Whenever he suspected his words had the potential to upset someone and unleash a fight, 'he did not refuse to ask for forgiveness from anyone, no matter how inferior in rank,

[95] 'Socialis patientiae tantum fuit, ut vix eum intellexisse crederes quod adversum se sinistri dictum fuerit vel audisse', in Laurent, 'Un legendier dominicain', p. 38.
[96] *Vita P.P.*, pp. 114-115.

because he was diligent in demanding humbly to be reconciled with his brother'.[97]

Humilitas was therefore closely associated to *patientia* because the awareness of human insignificance compared to God had as its practical outcome that of making feelings of offended pride or anger in front of provocations meaningless, thus nipping the rise of violent confrontations in the bud. The relevance to the context of communal society of the ethical teaching that the hagiographers tried to provide through stories like these becomes even more evident when they are compared to archival evidence on criminal processes: insults and petty accidents like those described in hagiographies could easily lead to an escalation of violence if the characters involved were not saints.[98] Court records from the series *Podestà* and the *Capitano del Popolo,* as well as petitions for pardon, show how apparently innocent situations such as jokes,[99] bets[100] and children's games[101] could easily escalate into violent crimes. The connection between the two civic virtues proposed by religious authors was meant to target the combined negative effects of the two vices of pride and anger, specular to the qualities proposed and seen as the origin of crime and violence. Pride is described in sermons and hagiographies as the root of the desire for revenge, since the latter springs from the belief that one's honour has been wounded, and that restoring it is more important than abiding by the divine precept that retribution must be reserved to God alone (Romans 12,19: 'Vengeance is for me, I will repay, says the Lord'). The following quotation from the life of Ambrogio is particularly eloquent, and both his *Vita* and the *Summarium Virtutum* abound in other

[97] 'A quantumque parvo non dedignabatur veniam petere, satagens humiliter flagitare reconciliari fratri suo', *Vita A.S.,* p. 211.
[98] Bowsky, 'The Medieval Commune'.
[99] ASS, Biccherna 731, f. 6r, 1321. Meo Nini says jokingly to Pietro di Giovanni: 'Va' sta' co' frate Geri, già se' capotorzolo et va' ti bactendo' ('go with friar Geri, you are already an idiot, go flog yourself') and Pietro attacks him with a bread knife.
[100] *Ibidem*, f. 67r.
[101] *Ibidem*, f. 37r.

similar expressions:

'The blessed Ambrogio said in his sermons that revenge is a sin of idolatry, because it is something that belongs only to God: so that when a man takes his revenge he usurps what pertains to God, and for this reason he who takes his revenge should be extremely sorry and do penance'.[102]

Vengefulness is therefore a manifestation of idolatry, which can be easily assimilated, as Sansedoni does in his sermons, to the sin of *superbia* (since this vice consists of a rebellion to the rules established by God to differentiate divine and human prerogatives, as in Sirach 10, 14: 'Pride's beginning is man's revolt from God').[103] At the roots of violence, whether motivated by a desire for revenge or not, there is also the sin of anger, accompanied by the emotional and behavioural manifestations described above. Anger, according to Ambrogio, blinds those who experience it, preventing them from expressing fair judgments of other people's behaviour, and prompting them to resort to revenge.[104] Behind all violent acts and enmities there seems to lie a set of concepts including 'anger' (*ira*), 'hatred' (*hodium*), 'rancour' (*rancor*) and bad will (*mala voluntas*).[105] Pride is involved only in situations in which the sinner resorts to violence as a response to someone else's behaviour, perceived as provocative and inacceptable.

[102] *Vita A.S.*, col. 191: 'Dicebat B. Ambrosius in prædicationibus suis, vindictam idololatriæ peccatum fore; quia ad solum Deum vindicta pertinet: unde homo vindictam faciens, quæ Dei sunt occupat, & ideo vindictam faciens maxime dolere debet & pœnitentiam facere'. See also *Summarium*, col. 211: ''Vindictam reputabat idololatriæ scelus: quia quod soli Deo conuenit, in se vindicando arripit sibi homo.' In *Sermones A* the same argument appears at f. 20v (see also Kaeppeli, 'Le prediche', p. 6): 'Unde si te vindicas, usurpas quod Dei est, quia multo maiorem et iustiorem pro te faceret <vindictam>, quia frequenter contigit quod homo volens se vindicare, incurrit maius vituperium, iuxta illud proverbium seculare: mal ven su om chi dà pe<na>'.
[103] *Sermones A*, f. 109r: pride and vainglory are the cause of 'guerre et brige in mundo'.
[104] *Ibidem*, f. 94v.
[105] E.g. *Ibidem*, f. 2v: 'unde simile apparet in hiis qui sunt in hodio et ira et mala voluntate'; f. 65r 'nebula rancoris et hodii'.

Anger produces bursts of aggressiveness that can be directed to objects that have nothing to do with the original cause of internal turmoil (often originally provoked by *tristitia,* a feeling that can correspond either to sadness or to frustration, as pointed out above). An example of this is Sansedoni's considerations on how fasting in some people provokes a sense of *tristitia* that prompts them to get angry, even aggressive, and to blaspheme: this applies particularly to the aristocracy ('et maxime hoc accidit de istis domicellis').[106] He then recounts the story of a knight (*miles*), whose habit of fasting every Saturday in honour of the Virgin caused him to get angry, blaspheme and mistreat his wife. Eventually, the Virgin herself decided to appear to him to advise switching from fasting to almsgiving. *Tristitia*, Ambrogio concludes (providing again an example of how emotions can be good or bad according to their role in the economy of salvation), is good only when it prompts someone to repent of their sins.[107]

In the light of this, the association between humility and patience is, according to Sienese hagiographies, the most effective response to uncontrolled emotionality. The feelings of those involved in fights and arguments are an aspect that excites a particular interest in their Mendicant authors, who also focus on the external manifestations that anger could cause. Those who contrast the Sienese holy men are described either as *conturbati, inflammati, indignati* or straightforwardly, as in the case analysed above, *ira pleni,*[108] whereas the saint is not touched by such uncontrollable emotions, and is on the contrary often characterised by positive feelings of *hilaritas* and *iucunditas*, reflected by

[106] *Ibidem*, f. 48r.
[107] *Ibidem*, f. 48r: 'Tristitia est bona quando homo dolet de peccato suo'.
[108] *Vita A.S.*, col. 187 ('ad odia magis inflammati'); col. 191 ('conturbati'; 'inflammatus', 'ira plenus'); *Summarium*, col. 235 ('in magna angustia cordis & turbatione multa', 'iratus', 'cum indignatione'); *Vita A.G.,* col. 53 ('ex indignatione', 'indignati'); col. 54 ('indignato'); col. 57 ('indignatus', 'hac indignatione intense gravatus');

his facial expression and his way of speaking.[109] The contrast between emotions and behaviours typical of those enmeshed in the worldly logic of anger and pride on one side, and the devout on the other is illustrated very well in the life of Andrea Gallerani, a charitable layman who lives in his family's palace together with his relatives. The 'nobilis Galleranorum prosapia' (noble stock of the Gallerani) who surround the saint seems to reflect the behaviour often associated in this period with aristocratic clans, devoted to the preservation of their reputation and hence involved in urban conflicts. This behaviour had also characterised Andrea before his conversion, as testified by his involvement in a homicide. In this case, too, it is possible to talk about a clash between two emotional scripts supported by different approaches to conflict, of which one is based on associating prestige with the open expression of anger, and for this reason is exemplified through leading figures of powerful and aristocratic men. The confrontations between Andrea and his family reflect at least partly the hagiographical *topos* of the obstacles on the path to perfection caused to the saint by his environment of origin. However, the attention to the angry behaviour of the Gallerani, contrasted with the *humilitas* always displayed by the saintly layman, seems to go beyond the commonplace to offer a model of conduct.

In an episode appearing in the chapter devoted to Andrea's compassion towards the sick, his brother, in a fit of anger for an unspecified reason ('ex indignatione'), throws a key that accidentally breaks some of the vials of medications used by the saint in his visits to the sick.[110] Andrea, instead of reacting angrily, 'nihilo est mutatus' (was unmoved), and God decides to reward his self-control by miraculously repairing the vials. In this case his brother's anger, unlike in the most traditional examples of the *topos* of the hostile family, is not directed specifically towards the pious activities of the protagonist,

[109] *Vita A.S.*, col. 191: 'hilari vultu et laeta facie'; *Summarium*, col. 211: 'mire erat iucundus', 'propter multam insuper iucunditatem suam'
[110] *Vita A.G.*, col. 53.

but is just the irrational gesture of someone who cannot and is not expected to curb his emotions. Although the episode is supposed to illustrate the saint's compassion by highlighting his work as a doctor of the poor, the hagiographer seems to be struck by his mastery of emotions and their physical manifestations (expressions, as it has been seen, of *humilitas/patientia*) as much as by his charitable activity.

Immediately afterwards, a second episode concerning Andrea's service to the destitute again underlines his ability to bear 'humiliter' the vexations of his relatives. One day he loses the sense of time while curing the sick in the hospital he has founded, and comes back home only after the third toll of the bell, the sign of the beginning of the curfew. The members of his family, 'indignati', refuse to open the door for him, but he tolerates this with devotion, patience and humility, and starts praying, until God again decides to reward him with a miracle by opening the door for him.[111] This second episode appears to be closer to hagiographical commonplaces, but also illustrates a motif that must have enjoyed a certain degree of popularity in 13th-century hagiography, as its similarities to the Franciscan *opusculum* 'De vera et perfecta laetitia' would suggest. St Francis of Assisi, dictating to Brother Leo his considerations on the nature of true joy, imagines experiencing a similar situation, where the brethren of his convent lock the door against him for having come back too late at night, and insult him. The ability not to lose his temper in such a situation would represent, according to the founder of the Friars Minor, the highest source of spiritual joy: 'I tell you that if I have patience and am not moved, in this there is real joy and virtue and salvation of the soul'.[112] In this case, too, it is worth highlighting, the suppression of negative emotions does not result in Stoic *apatheia*, but in the *laetitia spiritualis* dear to Ambrogio and Bindo. The paradigm

[111] *Ibidem*: 'ut vere devotus et patiens, humiliter sustinebat'.
[112] *Opuscula Sancti Patris Francisci Assisiensi*, p. 324-326: 'Dico tibi quod si patientiam habuero et non fuero motus, quod in hoc est vera laetitia et vera virtus et salus animae'. A similar episode can be found also in the *Compilatio Assisiensis*, ch. 109, pp. 1662-1663.

presented by the preachers seems therefore to be more than an idiosyncrasy, and instead a characteristic of 13th-century penitential spirituality.

In conclusion, the virtues of humility and patience acquired a renewed importance in 13th-century hagiography, which was unrivalled by the traditional theological and cardinal ones (with the partial exception of justice that, as will be seen in the following chapter, in Sienese texts has a strict connection to *humilitas* and *patientia*). There was a clear shift from monastic conceptions of these qualities, towards a representation of them as eminently civic virtues meant to provide the community with practical models of behaviour. This aspect was further pinpointed by the fact that the hagiographers and the preachers focused on 'the identification and explanation of virtuous conduct', rather than on 'the analysis and definition of a virtue as a concept', to the point that the distinctions between *humilitas* and *patientia*, clear in monastic literature on virtues of the previous centuries, became blurred, without however invalidating the ethical aims of the texts.[113]

7. Changes in the Control of Bodily Manifestations in Sienese Hagiographies

Another difference in the representation of 13th-century Sienese saints, compared to the traditional monastic model, is the different focus on bodily manifestations. This is an aspect linked to the change in the ideas of the virtues analysed above, since -as has been seen- they consist in a control of emotions and behaviour that has little to do with traditional ascetical practices. Corporeal expressions are, throughout the history of the hagiographic genre, fundamental to establish the role of the saint as a mediator between the natural and the supernatural world, and in early medieval monastic *vitae* the ability to

[113] Iannella, 'Civic virtues in Dominican homiletic literature', p. 32.

perform miracles is generally acquired through the *cura corporis*: that is, the set of ascetic practices established by the Fathers of the desert as a way of taming worldly passions. The list includes frequent fasting, nakedness, or the use of instruments aimed at inflicting physical pain on oneself such as hair shirts and whips. The attitude of the Mendicant orders towards these practices was ambivalent, since at least among the Friars preachers of the 13th and 14th centuries the presence of a 'spiritual fringe', with an enthusiastic attitude towards the *Vitae patrum* (represented by figures such as Jacopo da Varazze and Domenico Cavalca), can be registered. On the other hand, however, the importance of preaching as the central charisma of the order highlighted the prominence of an active life devoted to the salvation of as many souls as possible, something incompatible with extreme asceticism.[114] The debate has a relevance that goes beyond the internal life of the Mendicant orders, since it could be argued that Franciscans and Dominicans were among the main purveyors of ethical models to the laity.

The prevailing attitude of the Sienese hagiographers is clearly in favour of a more active lifestyle. Instances of fasting and bodily mortification (for example, the refusal of wearing fine clothes in favour of rough and dark fabrics displayed by both Andrea Gallerani and Pietro Pettinaio)[115] are present, but they do not occupy a central role in the texts and are characterised by remarkable moderation. The saints express in more than one occasions their aversion towards excessive practices, which could thwart the main activities carried out by them and their companions: that is preaching and assistance to the destitute, both central to the definition of a model of Christian active life (although both Andrea Gallerani and Pietro Pettinaio opt in the final part of their existence for a more contemplative lifestyle, maybe also on account of their old age). Ambrogio

[114] Delcorno, 'Le *Vitae patrum* nella letteratura religiosa medievale'.
[115] *Vita A.G.,* col. 54; *Vita P.P.*, p. 13.

Sansedoni, for example, seems to regard some of them as ostentatious and potentially more detrimental than beneficial for the salvation of the soul.[116] He shows moderation also in fasting, and seems to be concerned about his health (perceived as a tool of the trade for a preacher) as well as about the mortification of the body.[117] This relative lack of interest in fasting in the lives of Sienese saints affiliated to the Mendicant orders is visible also in the *vita* of the Servite Francesco Patrizi (1266-1328):

'He was not too frugal in his meals: he said that necessary food should not be denied to a donkey and to a servant –that is, to the body-, so that he would not kick or be rebellious, but so that you find him strong and ready for all sorts of good deeds'.[118]

Pietro Pettinaio, too, does not hold in high esteem any penitential practice that endangers the health of the devout and could therefore prevent them from undertaking their charitable activities, as it is evident when he reminds his companion Baldino to put on his shoes in order not to catch an illness:

'Oh, my dearest fra Baldino, don't you know the truth? You should know that God has made you the father of these poor people, and if through your fault or carelessness you sicken and die, you will not be able any longer to serve God in this holy enterprise (...); so I beg you and advise you, dearest brother, that at least when it is as bitterly cold as this, you will go around with shoes on'.[119]

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[116] *Vita A.S.*, col. 192.
[117] *Summarium*, col. 211.
[118] 'In refectione non nimium parcus erat: dicebat enim quod asino [et] servo seu corpori non sunt alimenta necessaria deneganda, ita tamen quod non recalcitret, vel ipsum non sentias contumacem, sed ut invenias ipsum promptum et fortem ad omne opus bonum', in Soulier (ed.), 'Legenda Beati Francisci de Senis', p. 181. It is remarkable that the metaphor of the donkey comes directly from a cornerstone text of monastic asceticism such as the *Vitae patrum*, where it illustrates however a totally opposite position: see Delcorno, 'Le *Vitae patrum* nella letteratura religiosa medievale', p. 191.
[119] *Vita P.P.*, p. 40.

This model of moderate penance and charitable zeal offered by saints linked to the Mendicant orders is part of a trend of 13th-century hagiography which is to be found all around Italy. However, the holy men still educate their bodies to withstand restraint, although of a different kind: that is, those related to the suppression of any expression of hostility and contentiousness towards their neighbours, at the cost, again, of a lot of work on themselves. This is evident in particular in the description of how Pietro Pettinaio obtained his legendary control over his tongue, which allowed him never to offend anyone by means of an ill-judged word and earned him the cognomen 'Tecelano', 'the silent one'.[120] The divine gift, considered by Pietro da Monterone to be the most shining example of his *humilitas*, is obtained after an apprenticeship of prayers and exercise that lasted for fourteen years.[121] Control of one's tongue is a theme also widely debated in lay literature of the 13th century: the *Liber de doctrina dicendi et tacendi* of Albertano of Brescia is a case in point.[122] This was part of a programme of education of ideal citizens that implied the same shift in the conception of emotionality described by Lansing for the legislation on grief.[123] Once more, a dialogue between religious and lay proposals for emotional models is visible.

The popularity of this theme did not fade in the following centuries, for control over one's words is featured as one of the most important aspects of the behavioural model proposed by Sienese preachers of the late 14th century- early 15th. Topics related to the political life of the city were as much present in their sermons as they were in those from the 13th century, and, among the many threats posed by evil to the Christian

[120] *Ibidem*, pp. xxx-xxxi.
[121] *Ibidem*, p. 71.
[122] Albertano of Brescia, *Liber de doctrina dicendi et tacendi*; see also Casagrande, Vecchio, *I peccati della lingua*.
[123] Artifoni, 'Preistorie del bene comune', p. 78. Fraulini, 'Disciplina della parola, educazione del cittadino'.

community, interpersonal violence (often of vengeful nature) still had a prominent place. The remedy to the problem of urban conflict presented by the later Mendicants consisted precisely in the control over one's words, in order to avoid the sins of perjury and calumny, seen as the principal weapons whereby peaceful relationships were destroyed. Late 14th- and 15th-century preachers seem to have considered reputation more important than life itself, and tended to attribute the place of the worst crime against the virtue of *caritas* to detraction, in disagreement with patristic traditions that assigned it to homicide: in doing so they seem to have reflected the values of laypeople.[124]

Reaction to insults and calumnies, therefore, was considered almost as a natural response to an unacceptable practice, as it is apparent from the words of the Augustinian preacher Girolamo da Siena (d. 1420 ca.) about slanderers: 'hanno più offeso colla lingua, che col coltello' ('they offended more with the tongue than with the knife').[125] Although the condemnation of slander is common both to the 13th and to the 15th century, the focus of the preachers seems quite different. Whereas later moralists concentrate their attention on the negative actions of the offender, and consider the reaction of the offended as inevitable, 13th-century Mendicant ethics aimed at providing a model of appropriate response to provocations, and focused on this aspect as the prime way to prevent violent conflicts. In the examples analysed previously the initiative of forgiving their enemy and making peace comes in almost all cases from characters who, having received an offence, decide to renounce their right to revenge. This suggests that, in the 13th-century model, the offended party was considered almost as responsible as the offender for the start of a conflict. The civic virtues of humility and patience proved, however, useful to both sides. On the one hand it was a way of controlling one's words and actions so to avoid insulting one's neighbour. On the other hand, it was useful to block the performance of the socially

[124] Paton, *Preaching,* p. 162.
[125] Girolamo da Siena, *Il soccorso dei poveri*, p. 58.

recognised script of the birth of a 'mortal enmity',[126] escaping an escalation of hostilities. The establishment of peace between two enemies required in fact, the sources suggest, a double emotional movement: the offender must repent of his action, and the offended must agree to forgive.[127] Here the priority is given to the moment of pardon, which was considered a choice powerful enough to press the other party to make a move towards repentance, thus restoring peace between them.

8. Mercy as a 'Plot' for Dispute Settlement

The theme of forgiveness brings us back to the episodes and concepts analysed in the previous chapter. Following the suggestions of the scholarship on the history of emotions it is now possible to define the feeling of anguish and guilt, arising from the contemplation of the moral conflict between compliance to social obligation and that to religious rules, as another 'plot' in competition with the script of 'mortal enmity'. The latter prescribed exacting satisfaction for one's incontrollable emotions of hate and shame through violent retribution; whereas the former opted for overcoming the unpleasant feelings by making a choice in favour of Christian values, and entering the emotional path of repentance. As described earlier in this chapter, penitence implied going through more disagreeable feelings, but eventually resulted in a transformation of anger, sadness and shame into the rewarding tranquillity of internal peace and spiritual joy.[128] If humility and patience prevented disputes from happening, the virtue corresponding to a second script, in which two parties already in conflict found a solution thanks to an appeal to Christian

[126] Smail, 'Hatred as a Social Institution', p. 94.
[127] Rovigo, 'Le paci private: motivazioni religiose nelle paci veronesi', p. 215.
[128] The connection between peace and joy was clearly present in the mind of the Mendicant authors. Ambrogio Sansedoni states that 'letitia ex pace causatur' (joy is caused by peace) (*Sermones A*, f. 3r). As an example of the fact that what brings peace after a conflict also produces joy the preacher mentions the institution of marriages between people of formerly rival families, to seal the restored harmony (*Ibidem*, f.12v).

values and rejected the logic of retaliation, was mercy (*misericordia*) or forgiveness. Once again, however, it must be noted that the religious authors proposing these scripts had a decidedly pragmatic attitude that prompted them to focus on paradigmatic *exempla* rather than on abstract definitions of virtues or theological concepts. In the episodes discussed in Chapter 1 the word mercy was not explicitly used, but in Ambrogio Sansedoni's sermons the term seems to signify exactly the characteristic that lies behind the behaviour of people like Mino and Cherubino.

Although a more detailed study of the abstract concept of *misericordia* in 13th-century Sienese texts will be made in Chapter 3, it is important to highlight now that as a virtue and a behaviour it was described as the opposite of *ultio* and *vindicta* (revenge).[129] If revenge consists in retribution to one's offender that is supposed to be equal to the damage received, mercy is by contrast concerned with unequal exchanges. Ambrogio's sermons and the hagiographies show indeed how the tool proposed to change the dynamic of the 'culture of violence' is the exchange of good for bad and the subversion of the logic of symmetry. The practice of the works of mercy described in Matthew 25, 31-46 is a case in point of this attitude and a central tenet of Christian ethics, since these seven good deeds were considered the basis on which Jesus would choose the elect. The good Christian, therefore, should act as a pacifying force in society by subverting expectations expressed by lay culture thanks to the practice of mercy. Its non-symmetry enabled to create a new circle of obligations between the offended and the offender, this time virtuous according to the Christian vision and not vicious.

The emotional plot of mercy can be situated, in the path of penitence and salvation described above, as a first step that involved passing through different types of emotions.

[129] An example could be *Sermones A*, f. 41r: 'Deus pronior est ad miserendum quam ad ulciscendum' (God is more prone to mercy than to revenge).

The virtues of humility and patience seemed to be the fulfilment of it, a stage in which a person had already obtained spiritual joy and internal peace and was therefore immune to sinful feelings. The influence of this model on the laity might have been underestimated by previous scholars, even those who, such as Lansing, have also highlighted a tension in parts of society between traditional expectations from male members of the elite and new conceptions of emotionality. The case of Albertano and his *Liber consolationis et consilii*, which she analyses in detail, is certainly an example of this clash, in which however religious influences should not be underplayed.[130]

The story of Melibeus and his wife Prudence, told by Albertano, might be better understood by referring to the complex dynamic between three different models of approaching conflict and expressing emotions that I have tried to describe so far. Melibeus initially reacts to the offence he has received by displaying the histrionic manifestations of grief that were traditional in communal Italy: he cries, pulls his hair and tears his clothes.[131] Prudence's reproaches to her husband because of his excessive manifestation of sorrow, labelled as weak and feminine, surely fit in the model that Lansing shows was promoted by the communal elites.[132] This paradigm contrasted with the traditional approach of the 'culture of revenge' upheld by the young advisors that Melibeus summons, who exhort him to immediately take his revenge 'in a manly fashion' (*viriliter*) and display aggressiveness towards those who think otherwise (i.e. an old judge who suggests a more prudent attitude).[133] The way Prudence speaks about emotions, however, owes as much to the preachers' reflection as it does to Stoic philosophy. The woman does not condemn sorrow if it is not excessive (following in that the moderate

[130] Lansing, *Passion and Order*, pp. 159-171.
[131] Albertano of Brescia*, Liber consolationis et consilii* (henceforth *Liber consolationis*).
[132]*Liber consolationis*, p. 2 (Prudence likens Melibeus to a bereaved mother by quoting Ovid, *Remedia Amoris*, I, v. 127-130).
[133]*Ibidem,* p. 10.

approach of Seneca) and, above all, reflects, by quoting St Paul, the opinion expressed also by Ambrogio Sansedoni, according to which 'sorrow is good if one commiserates over one's sin'[134] because it afterwards is 'turned into joy'.[135] This is again a case in which two of the three models agree with each other (although they never correspond completely) in opposition to the third.

The conclusion of the sequence of events, moreover, leans decidedly in favour of the penitential approach. The emotional pattern followed by Albertano's character is exactly the same as that which is represented in the miracle stories of Sienese hagiographies. The trajectory from sorrow to joy is indeed embodied by the characters once Melibeus has opted for forgiveness, thanks to the advice of his wife. In this case, the virtue that the man is advised to follow is openly labelled by his wife as *misericordia, pietas* or *clementia.*[136] It consists exactly in reciprocating something with its opposite as suggested by the medics summoned by Melibeus, giving for instance peace in exchange for war. Mercy is therefore in this case, too, identified as a non-symmetrical exchange in opposition to the logic of analogical retribution initially supported by the protagonist (according to which an offence has to be followed by a specular act of violence).[137] Once Melibeus is converted to the practice of this virtue, his sorrow and rage disappear[138] and his opponents experience the feelings of sadness connected to penitence described by Ambrogio. They start crying, 'dolore cordis intrinsecus tacti' (touched by an interior pain of the heart) and perform the physical gestures appropriate to show their remorse, such as kneeling in front of the man whom they had offended.[139] These manifestations of

[134] See above, note 109. *Liber consolationis*, p. 5: 'Seculi autem tristitia mortis operatur. Quae enim secundum Deum est, potentiam in salutem stabilem operatur' (2Cor, 7-10).
[135] *Ibidem*: 'quia post convertitur in gaudium' (Jn 16, 20).
[136] *Ibidem*, p. 123.
[137] *Ibidem*, p. 67.
[138] That Melibeus' sorrow had converted to rage is evident from Prudence's remark that he had taken counsel in a state of anger, which is something that has to be avoided: *ibidem*, p. 65.
[139] *Ibidem*, p. 113.

emotionality do not seem to be considered reprehensible, but on the contrary commendable even though they are intense. When they finally depart, having received Melibeus' absolution on account of their contrition, repentance and confession of theirs sins[140] both parties do so, predictably, 'cum gaudio et letitia' (with delight and joy).[141]

The parallels with the penitential model of emotionality are evident: the spiritual turmoil of the young witness in Pietro Pettinaio's life and Mino Luglioli's restored quiet after he resolved his inner dilemma (see Chapter 1) come back to mind. The *Liber*'s conclusion mirrors so closely the ritual of the sacrament of penance that Frances Andrews comments that 'the enemies acknowledge their guilt in a form close to that of the confessional prayer'.[142] Melibeus goes so far as to bid farewell to his former enemies with a quote from the Gospel, 'Ite in pace, et amplius nolite peccare' (Jn 8,11: 'Go, and do not sin again henceforward'), that has been used at various points in the history of Christianity as an absolution formula.[143] Albertano's account testifies very clearly to the success of religious actors in spreading this model also outside strictly religious circles. In the light of this conclusion, although Stoic influences must still be considered important in the *Liber*, the winning model of behavioural and emotional management here seems to be one of religious origin.

It is also worth remarking briefly that although prudence, as the name of Melibeus' wife suggests, is the central virtue discussed in the text, Albertano also highlights other virtues as central in the 'art of citizenship', whose construction, according to Enrico Artifoni,[144] forms the principal aim of his literary activity. These

[140] E. g. *Ibidem*, p. 115: 'excessum penitentie et cordis contritionem atque peccati confessionem' ('a display of penance and contrition of the heart and confession of the sin').
[141] *Ibidem*, p. 127.
[142] Andrews, 'Albertano of Brescia', p. 335.
[143] For a very fitting 13th-century example, see Francis of Assisi, 'Epistula ad quondam ministrum', in *Fontes Franciscani*, p. 96: the founder of the Franciscans state that in case of venial sins the friars can confess them to one of their lay brethren if no priest is readily available. The 'lay confessor' however cannot impose any penance except from concluding the ritual with the words: 'vade et noli amplius peccare'.
[144] Artifoni, 'Prudenza del consigliare'.

virtues are exactly the triad proposed by Mendicant sources. As seen before, the practice of mercy constitutes the final solution to the conflict narrated, and its praise deserves its own paragraph in the text;[145] the same is true for patience, opposed by Prudence to Melibeus's rushed desire for revenge.[146] Humility does not obtain its own paragraph of praise but its opposite, *superbia*, is openly condemned in another one: to strengthen her arguments Prudentia quotes biblical passages extolling humility that in many cases are the same that appear in the hagiographies (e.g. Proverbs 11,12). Moreover, Melibeus describes his enemies' change of mores subsequent to repentance as an obtainment of the virtue of humility:

'Even though great pride moved forward from you against us, greater humility followed as a consequence'.[147]

In examples of mercy described in Sienese hagiographies, too, merciful attitudes can be associated to the other virtues analysed insofar, such as in the case of Cherubino's decision in favour of forgiveness, manifested 'magna cum humilitate'.[148] In conclusion, despite the usefulness of distinguishing two different 'plots' in religious approaches to conflict, it must be remembered that the model proposed by religious actors is a very pragmatic one. Too strict separations and definitions of the qualities proposed, therefore, do not prove particularly helpful, because they are all intertwined and do not seem to have a completely fixed role in the process of repentance (so that it is not entirely clear whether they are its results or causes).

[145] *Liber consolationis*, p. 123.
[146] *Ibidem,* p. 93. Melibeus opposes directly revenge to patience as two models of conduct by saying: 'talis ergo patientia pessima est, vindicta vero optima' ('patience of this sort is then the worst choice, revenge on the contrary the best one'), p. 91.
[147] 'Licet magna superbia in vobis contra nos precesserit, maior tamen humilitas est secuta', *Ibidem*, p. 126.
[148] *Vita A.S.*, col. 199.

9. The Strategic Role of Virtues

Part of the pragmatism expressed by religious authors through their model based on the triad of 'civic virtues' is reflected in what they promise to those who practice them. Although the spiritual advantages of doing so are evident to any Christian (i.e. avoidance of sin and the anxiety connected to it, God's favour, salvation), the friars tend to highlight the social and material ones as much as the spiritual. An example taken from Ambrogio Sansedoni's sermons makes it clear by discussing theoretically what is played out in the hagiographical episodes and in the *Liber*. After having exposed the *leitmotiv* that revenge belongs exclusively to God, the preacher assert that Christians must not only avoid retaliation and offenses to their neighbours, but also have a duty to bear offenses patiently and act mercifully towards their enemies:

'But because you might say: 'I do not want to take my revenge, but I do not want to deal with my enemy neither to do anything good to him nor anything bad', does not the apostle say: 'My proposition is better, because it is better to soothe the rage of the wolf, if a shepherd can, than to kill him' ?[149] That is to say, I tell you: if you want to soothe the rage of the wolf, that is your enemy, *feed thy enemy if he is hungry, give him drink if he is thirsty; by doing this, thou wilt heap coals of fire upon his head* (Romans 12, 20),[150] that is, you will marvellously kindle his desire to serve you. This is why Augustine says: I do not remember that anyone who was prone to forgiving died a bad death'.[151]

[149] I was not able to find Ambrogio's reference in the Pauline epistles and the other apostolic writings.
[150] See also Proverbs 25, 21-22. Augustine, followed by other commentators, interprets this sentence as a metaphorical description of the sense of remorse and shame which our enemy feels if we treat him nicely: Augustine of Hippo, *Expositio Quarumdam Propositionum Ex Epistola Ad Romanos*, col. 2083.
[151] 'Sed quod forte diceres: 'nolo me vindicare, sed nolo aliquod habere facere cum eo neque bonum neque malum', non dicit apostolus: 'melius est consilium meum, quia melius est mutare rabies lupi, si homo potest in custodia ovium, quam ipsum occidere'? Scilicet ergo dico tibi: si vis mutare rabiem lupi, id est inimici, 'si esuerit inimicus tuus ciba illum, si sitit potum da illi. Haec enim faciens carbones ignis congeres super caput eius', id est mirabiliter adcendes eum ad servitium tuum. Unde Augustinus: 'Non memini mala morte

The practical advantage of this way of terminating conflicts is strongly highlighted by the preacher, first of all in the remark, attributed to St Augustine, that forgiveness and generosity can preserve people from a violent or dishonourable death. This aspect is discussed again later in the same sermon, when Sansedoni, describing the effects of the virtue of *patientia* in situations of conflict, concludes:

'If you tolerate it with patience, it will be useful both to you and to your neighbour, because you bring peace to yourself by putting your anger aside, and you win him over and put him to shame by hindering his evil intentions against you and preventing him from damaging you whether you are present or absent'.[152]

Mercy is therefore encouraged as the behaviour that, in addition to ensuring to the believer a place in Heaven, gives him also the maximum social and individual gain already on earth. It preserves the Christian from the unpleasing consequences of a lasting enmity: Sienese preachers were well aware of the escalating potential of even purely verbal offences, from which it was easy to pass 'to blows and wounds', 'ad verbera et vulnera', as Bindo puts it.[153] It also wins him a new friend and therefore a new source of support. The end of the controversy between the two parties is in any case still conceived in terms of winning and losing: however, the winner is the one who subverts the rules (the subversive character of the act of mercy is highlighted by the word 'confundere',

interisse qui facilis est ad indulgendum.''*Sermones A,* f. 20r. Similar concepts are expressed also in *Ibidem,* p. 89r. I could not identify the reference in Augustine's works.

[152] 'Si tu patienter substinueris, et tibi proderit et proximo, quod te pacificas removendo iram et illum vincis et confundis, impediendo eius malam voluntatem a te et quod te non ledat in absentia vel presentia', *Sermones A*, f. 20r.

[153] *Sermones B*, f. 50.

which is used also by Bindo when commenting upon the same Biblical excerpt and proposing the same interpretation of it)[154] by making reference to an alternative logic.[155]

In these passages the friars, as knowledgeable of the rules of the culture of revenge as any other citizen of an Italian commune, point out that, in the struggle between the two opposed but socially recognised values of forgiveness and revenge, the former should be chosen because of reasons of 'instrumental rationality', or of calculus of the consequences.[156] The pragmatism of Mendicant preachers, nevertheless, goes as far as considering the possibility that an enemy's wrath might not be assuaged by one's display of virtues. In that case, Bindo advises the hearer to run away, or to defend themselves without using violence. Only if everything fails, does a victim become justified in their use of violence against an offender ('te defende secure').[157] At the end of the day, however, the friars seem to say that the alternative to humility is humiliation, as God's punishment will strike sowers of discord already in this life.[158]

The importance of being in friendly terms with neighbours and fellow citizens becomes an even more remarkable benefit of mercy if we consider the role that *fama* was acquiring in 13th-century judicial procedure, thanks to the diffusion of the *ex officio* trial.[159] The social standing of an individual in the community had a great importance to determine what type of judicial treatment one would receive. Factors such as physical appearance, past life, and signs of integration in the neighbourhood mattered in the

[154] *Sermones B*, f. 50v.
[155] The same idea of 'winning' a dispute, and not just concluding it, through the use of mercy is present also in *Liber consolationis*, p. 106: 'ut per reconciliationem et concordiam vincas discordiam et guerram' ('so that through reconciliation and concord you win over discord and war').
[156] The expression is borrowed from Weber, *Economy and Society*, pp. 24-25.
[157] *Sermones B*, f. 53r: 'Quadrupliciter te defendere debes: primo verbis dulcissimis ira proximi mitigando, et si hoc non valet debes fugere, et si non potes debes te defendere proximum non offendendo. Sed si non vales hoc facere, te defende secure'.
[158] *Sermones A*, f. 91r.
[159] Vallerani, *Medieval Public Justice*, pp. 44-ff.

verdict. A strategy that could offer not only the advantages of victory in a conflict, but also the end of resentment between parties, which could lead to slander and damage to one's *fama,* represented therefore an ideal solution. The *Liber consolationis*, too, highlights how in the management of a conflict this vital immaterial good was always at stake. Melibeus and his advisors often recall that a defeat would entail a loss of it, and Prudence remarks that, if he confiscated his enemies' goods instead of forgiving them, his cupidity would be blamed and he would lose his *bona fama.*[160]

Sienese examples can show how one possible way of restoring a tarnished reputation was the practice of religious virtues or the reference to Christian logic. In the story of the miraculous apparition of Ambrogio Sansedoni to the duelling enemies discussed in Chapter 1, it was noted how accusations of pusillanimity like the one faced by Cherubino after sparing Salimbergo could be overturned if one's actions were openly motivated by religious reasons, although Cherubino needs to make reference to as highly exceptional a circumstance as a miracle to do so successfully. A Sienese petition for amnesty dated 1321 describes another instance in which a person whose reputation was low within the community could make reference to her conversion to Christian values to regain a better social standing. In the document, Cina Grassa of Camollia narrates how in 1318 the *podestà* had condemned her to a 400 l. fine for having attacked *dominus* Damiano Marchi of the same *terziere*, one of the three districts in which the city was divided, with an iron currycomb.[161] The woman admits having attacked him, but justifies her actions as a case of legitimate defence: the man was trying to rape her, because he believed that she was 'non bona' (not respectable). For some reason, Cina's reputation within the neighbourhood was not a good one, and that could apparently expose her to very concrete risks and to unfavourable treatment in judicial settings. The judge indeed

[160] *Liber consolationis*, pp. 119-120.
[161] ASS, Biccherna 731, f. 24r.

believed the accusation of the *dominus*, probably a man of good social standing, since only judges and knights could use this title in Siena.[162]

However, Cina had taken action to clean up her reputation just before the crime was committed. She had just come back 'from visiting the shrine of St Francis and had been purified of her sins, and wanted and intended to live respectably, as she has done up until now'.[163] The woman might have been a local prostitute: her intention of 'honeste vivere' after the pilgrimage to Assisi contrasts with the definition of prostitutes as 'inhoneste persone' in the Statutes of Siena.[164] She was in any case considered as sexually or socially deviant by the community. The solution she had found to restore her *fama* and start a new, honest life (which, according to her, she is still living when she requests the pardon) was a conversion to Christian values, made explicit in her performance of a penitential practice like a pilgrimage.[165] Although this does not seem to have worked in 1318, when Cina was condemned, she mentions her conversion path in the petition of 1321. This suggests she thought that it was an important circumstance to mention in her favour, and that a prolonged performance of her new penitential identity was needed for society to acknowledge it. Eventually, she manages to obtain an agreement with the government, and in exchange for a florin her condemnation is cancelled.

The practice of Christian virtues could therefore be a useful way of preserving or restoring one's reputation, provided that it was performed correctly, thus triggering repentance and the 'right' type of emotions in opponents. The examples examined so far seem to indicate that the requirements for a successful performance were public

[162] Giorgi, 'Quando honore et cingulo militie', p. 149.
[163] *Ibidem:* 'a visitando (sic) limina beati Francisci et esset peccatis munda, et vellet et intenderet honeste vivere, sicut est hactenus consueta'.
[164] *Statuti 3*, f.118v.
[165] On pilgrimage as a form of non-solemn public penance, see Mansfield, *The Humiliation of Sinners* p. 21.

knowledge: given the socialised nature of conflict in communal society, its conclusion, even if non-violent, also had to be public.[166] Secondly, one had to make open reference to Christian values and logic as the motivations behind one's actions. This had to be clearly communicated to the opponents and recognised by the audience in order to produce the shift between systems. Only under these conditions could an act of forgiveness come across as such and not as an instance of *pusillanimitas*.[167]

As pointed out by Solomon, 'mercy and forgiveness do not deny or cancel an injustice, but presuppose and affirm it'.[168] Such an act is not, or at least should not appear as, the last resort of the weak to avoid the negative consequences of a defeat, but a deliberate action that puts the individual who performs it in a position of moral superiority. Thomas Aquinas underlined this point by asserting, in his *Summa Theologica*, that only the person against whom the sin (or the crime) has been committed has the right to forgive it.[169] For this reason mercy was an attribute often associated in the Middle Ages with authoritative figures such as God and kings. 13th-century authors also tried to present the triad of civic virtues as correlated with a position of prestige within society. Prudence, in the *Liber consolationis*, describes mercy as an attitude which guarantees victory in disputes and is appropriate not only to 'parvos et mediocres', but even to kings.[170] The 13th-century Augustinian theologian and archbishop of Bourges Giles of Rome, moreover, proposes humility as a form of 'political wisdom' appropriate to sovereigns, who need it as a reminder of the limits they have in spite of their great

[166] Guarisco, *Il conflitto attraverso le norme*, p. 135.
[167] For an example of how important avoiding charges of pusillanimity could be for males in preindustrial Europe, see Zemon Davis, *Fiction in the Archives*, p. 42, in which the author analyses a letter of pardon requested by a 16th-century French gentlemen who had turned a loan quarrel into homicide because he believed he would be considered pusillanimous if he did not retaliate on the man who had insulted him.
[168] Solomon, *A Passion for Justice*, p. 258.
[169] Gorringe, *God's Just Vengeance*, p.119.
[170] *Liber consolationis*, p. 124.

power.[171] Ambrogio and Bindo, in their sermons, repeatedly use the word *curialitas* as a synonym for mercy, to establish a link between the behaviour of the members of a *curia* (a term indicating all types of court, but that in this case seems to refer to aristocratic courts)[172] and the virtue they are trying to promote.[173] The preachers seem to try to overcome the necessity of appealing to a miracle to choose forgiveness without being shamed by society, which was present in the Sienese hagiographies, through the notion that mercy is a regal behaviour. Far from coinciding with forms of voluntary humiliation performed for reasons of weakness, it represented the ability of 'viriliter resistere' to one's base instincts.[174]

This last reference to virility has a special relevance too, since as argued by Lansing the shift in emotional conventions in the 13th century proposed a new model of masculinity, based on the control of one's emotions instead of the possibility of expressing them.[175] Bearers of traditional conceptions of masculinity seemed indeed, in the 13th century and later, unconvinced about the manliness of the model of behaviour proposed by religious actors. The three virtues discussed in this chapter are often associated with effeminate weakness and pusillanimity, and vengeance or aggressive reactions to perceived offences are upheld as the gold standard.[176] Melibeus' hasty advisors describes the prompt start of a war as the conduct the man has to play out if he

[171] Giles of Rome, *De Regimine Principum*, I, II, p. 127, quoted and translated into Italian in Casagrande, Vecchio, *I sette vizi capitali*, p. 19.
[172] Du Cange, *Glossarium mediae et infimae latinitatis*, ad vocem 'curialitas' quotes Philip of Bergamo, who in his *Cato Moralizatus* defines like this: 'curialitas, quae dicitur a curia, est magna domus Nobilium'. On the courtly *curiae* set up by Italian magnates to celebrate their newly knighted members see Gasparri, 'I rituali della cavalleria cittadina'.
[173] *Sermones A*, ff. 125v.
[174] *Sermones A,* f.107v.
[175] Lansing, *Passion and Order*, in particular pp. 5-7.
[176] See Onori, 'Pace privata', and the examples of lay moral writing mentioned in Zorzi, 'La cultura della vendetta'.

wants to behave 'in a manly way' (*viriliter*) at least three times.[177] Literature on medieval masculinity has shown how lay definitions of maleness often promoted behaviours that were in disagreement with religious ideals, to the point that priests could be perceived as effeminate.[178]

However, religious people, especially the Mendicants who had been raised among the laity and were not isolated from the rest of society, found in the 13th century –just as in other historical moments- ways of reconciling traditional ideas of masculinity and Christian values. The military metaphors extensively used in religious literature since early medieval times (when monks were often described as *milites Christi*, soldiers of Christ) were still used. However, they now they associated strength, resilience and prowess, the attributes constituting masculinity in the Middle Ages, with the ability of controlling one's emotions, rather than to their display.[179] A striking example of this is represented by a sermon attributed to Ambrogio Sansedoni. It is reported in the *Historiae Senenses* by the Sienese priest Sigismondo Tizio (1458-1528), who claimed to have used original sources (now lost) in his portrait of the saint.[180] In the sermon, if it is authentic, the friar describes penitence and self-control as a war against the Devil, enemy (*inimicus*) of mankind, who tries to lead men to sin by exciting their sensuousness to arouse sinful feelings. The saint's exhortation is clearly rooted in military metaphors:

'Do not let any toil stop you from fighting strongly, brothers, and from restraining yourselves. (..) We have to sustain the strong attacks of the enemy'.[181]

[177] *Liber consolationis*, pp. 7, 11, 76.
[178] Swanson, 'Angels Incarnate', goes to the point of saying that 11th- and 12th-century priests were seen almost as bearers of a third gender identity, which he calls 'emasculinity'.
[179] Lindeman, 'Fighting Words', p. 701.
[180] Siena, BCI, Ms. B.III.7, S. Tizio, *Historiae Senenses*, vol. 2, pp. 105-107.
[181] 'Non vos igitur ullus deterreat labor, fratres, forti animo certare, vobisque continere. (...) Impetus graves hostis sustinere nos decet', *Ibidem.*

A useful tool in this battle is the sacrament of confession, which, in his opinion, is the equivalent of fortifications in worldly battles, as it protects the soul against the assaults of the enemy. Weakness is therefore not associated with a lack of reaction to provocations, but on the contrary to the unseemly reactions of those who are not able to curb their emotionality. In Sienese sources, however, such weakness is never seen as characteristically feminine, unlike in Lansing's Orvieto.

10. To what Extent was this Model Influential on the Laity?

The 13th-century shift in attitudes towards (particularly male) emotionality observed by Lansing is confirmed by the comparative analysis of Sienese religious and lay sources. Local elites were indeed promoting a model in which masculinity was connected to emotional self-control, in opposition to a traditional ideal of virility that can be associated with attitudes to conflict related to the culture of revenge. The impact of religious codifications of morally good or evil emotions and of a triad of 'civic virtues' as a framework to perform emotions correctly must however be recognised as the principal inspiration for this modification, although Stoicism could also provide some support for it. An indication of this transformation comes from the observation of the role played by emotions as mitigating or aggravating factors in trials, and as part of the strategy deployed in petitions for pardon. The scribe writing the minutes of the trials at the court of the *podestà* of Siena in 1298, for instance, carefully notes that Bindo di Bindo della Cittina threw a stone at Selvaggia di *domina* Ciocia della Suvera 'iniuriose, irato animo, deliberate et appensate' ('in order to offend, with wrath and on purpose'). Bindo,

not surprisingly, was condemned to pay a fine.[182] Insults against a tax collector were uttered, according to the same scribe, 'cum impetu et furore' (with violence and rage').[183] A petitioner asserted the invalidity of his condemnation on account of the *podestà* having passed judgement in a state of rage (*furiose*).[184]

On the other hand, one of the favourite strategies to justify one's violent actions as a case of self-defence is denying that they were committed in a state of anger: 'non irato animo sed casu fortuito' ('not with wrath but unwillingly'),[185] '[non] irato animo et malo modo' ('not with wrath and evil intentions').[186] In this period, the expression 'irato animo' became a formula frequently used in Italian documents and statutes to describe the accomplishment of premeditated crimes. As seen in Chapter 1, in this period personal responsibility was more and more stressed by religion and criminal justice alike.[187] Premeditation came to be considered particularly hideous.

The *ira* described in these sources is therefore an aggravating circumstance, a case of sinful *ira deliberativa*, and not *ex complexione*, following the classification of the Mendicants. The formula cannot be explained as a borrowing from Roman or canon law, as it does not appear neither in the *Corpus iuris civilis* nor in the *Corpus iuris canonici.* It does emerge in a couple of instances in another possible source for communal legislation, that is, Lombard law, which was known through the *Lombarda*, a high medieval reworking of it .[188] In the past, the use of such formula was interpreted (e.g. by

[182] ASS, Podestà 6, f. 6r.
[183] *Ibidem*, f. 23v. It has to be noted that *furor* is the technical term used in the classification of anger by John Damascene to define the type of rage that is at the origin of violent behaviours, such as insults and aggressions: see Casagrande, Vecchio*, I sette peccati capitali*, p. 75.
[184] ASS, Biccherna 731, f. 582r.
[185] *Ibidem*, f. 6r.
[186] *Ibidem*, f. 24r.
[187] It has to be noted, however, that such an expression never appears in the statutes of Siena and cannot be therefore considered a simple mirroring of its formulas by the judges. For 14th-century court records from other Italian communes featuring this expression as a mark of intentionality see: Smail, *Legal Plunder*, p. 141 (Lucca); Maffei, *Dal reato alla sentenza,* p.86 (Trieste); J. Carraway Vitiello, *Public Justice and the Criminal Trial*, p. 140 (Reggio Emilia).
[188] Azzara, Gasparri (eds.), *Le leggi dei Longobardi*, Rothari 34 and Rothari 277.

Du Cange) as synonymous with the expression used in the *Edictum Rothari regis* to qualify the voluntariness of a criminal action, even though the Lombard concept of *dolus* was different from Roman and late medieval ones. This expression is *asto* or *asto animo.*[189] However, further research has shown that *asto* derives in all likelihood from a different etymology than *haistan,* the expression glossed in Rothari 277 as 'irato animo'. Therefore, there is no correlation in Lombard law between rage and premeditation (the role of rage in Lombard legislation is still not entirely clear).[190]

Moreover, in other contexts such as late medieval France, arguably less pervasively influenced in its policies by Franciscans and Dominicans by comparison with the Italian communes, anger was on the contrary often used in letters of remission as a mitigating factor, showing how different models of emotionality could prevail in different circumstances, without any degree of necessity in the adoption of one or the other.[191] Furthermore, Sienese petitioners would often talk about the pain that committing a crime or hurting somebody had caused them as one of the elements to convince the councillors to grant them a pardon.[192] This shows how the laity had internalised the penitential idea that contrition was a 'positive' feeling to express, in order to broadcast their good nature in front of the authorities.

In at least one case, the direct influence of the friars in the policies of the Sienese government is revealed by a lay source, the *Cronaca di Anonimo senese*, probably written

[189] For the concept of *dolus* in Lombard law see Pifferi, *Generalia delictorum*, pp. 226-227.
[190] Mayer, 'Asto [animo]'. Later glossators of Lombard law and jurists such as Huguccio (d. ca. 1210) explain the term 'asto' as 'voluntarie' without ever making reference to 'haistan' or to rage: see Cremascoli, 'Termini del diritto longobardo nelle 'derivationes'', pp. 61-62. Curiously, the expression appears on the other hand in the Franciscan *Compilatio Assisiensis*, ch. 34, in reference to anger willingly chosen as a response to a dispute: in this episode, St Francis tries to convince a poor man, who is 'irato animo', to forgive his master who has stripped him of his belongings, in order to avoid being eternally damned for his sin of wrath and mortal hatred. It is only when the saint offers to give the man his cloak that the latter, struck by the humility and mercy of Francis, decides to forgive his master.
[191] Skoda, *Medieval Violence*, pp. 33, 237.
[192] E.g. ASS, Biccherne, Banditi e carcerati 731, ff. 140r, 319r, Cases of more overt expression of repentance as the principal strategy to obtain a pardon will be analysed in Chapter 4.

in the second half of the 14th century. When the *gioco delle pugna* of Carnival 1324 degenerates into a deadly battle, only the bishop and the friars are able to put an end to violence by parading the Holy Cross and chanting prayers. The author of the chronicle insists that the consequent ban of the game by the Nine was influenced by these religious actors.[193] This is yet another example of how the open performance of, and reference to, Christian values could operate a shift in the emotional response of the viewers to a given event.[194] The frequency of these passages moving from an emotional pattern based on one of the three models of criminal justice to another based on a different one (seen in Albertano, hagiographies and archival documents analysed in this chapter), suggests that members of the community were competent in the understanding of the emotional responses of all the people present in society. It is likely that a shared belief in the possibility of understanding the feelings and the motivations of others (that is, what neuropsychologists call a 'theory of mind') was at the basis of the success of the strong performance of Christian values and virtues by members of Sienese religious groups in processions, preaching and daily life.[195] This however makesthe membership of specific emotional communities in late medieval Siena extremely fluid, given moreover the difficulty of defining them by making reference to political or social markers external to the manifestation of emotionality. Despite the great heuristic value of the concept of emotional community, such a fluidity suggests that it might not be entirely appropriate for the context of Siena in the period 1260-1330.

As anticipated above, however, the penitential model never entirely triumphed over, but always coexisted with, the other views of emotionality (and criminal justice)

[193] As noted also by Rizzi, 'Il gioco fra norma laica', p. 154.
[194] Anonymous, 'Cronaca senese', pp. 127-128.
[195] Beeman, 'The Performance Hypothesis: Practicing Emotions in Protected Frames'.

which I have described. Other lay authors from this period, such as Brunetto Latini, offer a different view from Albertano. An author such as the latter, however, who has been traditionally described as either an advocate for revenge or for the new 'public' criminal justice, seemed actually to favour a model of dispute settlement deeply influenced by Christian theorisations on feelings. This suggests that such teachings were more influential in the Italian communes than has so far been recognised.

At the same time, although the penitential reflection on feelings has many points of contact with the model of male self-control proposed by communal elites, there are still significant differences between them. They rested after all on contrasting approaches to violence and criminal justice. The threefold classification proposed in this thesis thus seems to maintain its usefulness when analysing 13th-century texts. As seen in the previous chapter, the government's ideology of 'public order' was aimed first and foremost to maintain a peaceful state in the city in order to strengthen its legitimacy and room for intervention. For this reason, what distinguished 'good' and 'bad' emotions in this model was mainly the measure in which they promoted or endangered the public order, such that they did not always coincide with religious classifications. Moreover, the ideology proposed by the political elite was more intensely focused on the suppression of one's feelings. Conversely, the penitential ideal coincided with the logic of retaliation over the necessity to provide an outlet for them, although a very different one based on (often public) manifestations of repentance.

Sienese political sources provide many examples of minority or majority attitudes towards emotions within the General Council, which distance themselves from religious ideals but do not correspond to the mechanisms of the culture of revenge either. The sense of righteous indignation felt by some councillors against the enemies of the community, for instance, presents itself like a case of 'morally good anger'. This has elements in

common with scripts belonging to the other two models, but has unique differentiating elements (this aspect will be analysed in the next chapter). The lack of recognition of the emotional display of repentance of a criminal selected for an amnesty, shown by a Sienese councillor in 1279 and connected to his fears for public order is another exampleof this. It is worth analysing as a conclusion to this chapter, because of its similarities with the miracle stories considered hitherto.

One of the prisoners selected for the amnesty of the Assumption of the Virgin Mary, the patron saint of Siena, in 1279 was Nuto Giraldi, a labourer native of the *contado* of Florence.[196] The institution of the *oblatio*, an amnesty occurring regularly in the year on the occasion of religious holidays, will be analysed in Chapter 4. It is however important to underline now that the prisoners selected for it had to be poor and guilty of minor crimes. The institution had strong religious connotations, and characters venerated by the community for their religiosity, such as Pietro Pettinaio and his companions, regularly acted as advisors in the choice of the inmates to release. Nuto had been condemned to pay the exorbitant sum of 1000 l. for having been naïve enough to publicly admit that he had come to Siena with the intent of killing an enemy, native of his same village. However, although he had had opportunities to carry out the killing, if he had wanted, he had changed his mind and repented of his action, possibly for religious reasons.[197] His story bears striking similarities to the miracle story of Mino Luglioli in the life of Pietro Pettinaio. We can speculate that, just as in the hagiography, emotional aspects were important in the decision of the advisors to choose Nuto as one of the candidates for liberation, since his internal vicissitudes possessed a morally exemplar value. The fitness for release of the man was indeed recognised by almost all the

[196] ASS, CG 23, ff. 15r-17r, 13/08/1279.
[197] *Ibidem*: 'quem bene potuit occidere, si voluisset, sed noluit: et tantummodo propter dictum malum propositum condemnatum ut dictum est'.

councillors, thus implicitly acknowledging that his repentance had cancelled his not at all minor guilt, and allowed him to obtain those 'civic virtues' that could make him a good citizen (or at least a good inhabitant, since Nuto was not a local). However, the notary Cacciaconte argued that Nuto, unlike the other prisoners (jailed for having carried weapons in the city or for false witness), should be kept in jail, probably because he felt that releasing a potential assassin was too much of a threat for public safety. By doing so he not only did not recognise feelings of remorse as morally good enough to reconcile Nuto with society, but he also refused to practice an act of mercy, a virtue that according to the Mendicants was itself a constituent of good citizenry. Although Cacciaconte's higher degree of inflexibility was eventually defeated by the more forgiving majority, the episode is revealing of the array of ideas of justice and just punishment present in Sienese society, a topic that will be analysed in the next chapter.

Chapter 3: Defining the Complex Relationship between Mercy, Justice and Revenge

1. Theological Theories of Redemption and Atonement and Reforms of Criminal Justice

The interaction between theology and law, and the exchange of concepts between these two disciplines, has been a vital aspect of Christianity since its first centuries.[1] The rediscovery of Roman law in the late 11th century, and the subsequent systematization of both law and theology in the 12th and the 13th centuries, nourished the exchanges between the two even more. Attempts to keep them separated, for instance in Honorius III's bull *Super Speculam* (1219), which prohibited the teaching of secular jurisprudence in the theological school of Paris, did not arrest.[2] The strong commingling of languages has been shown by many recent works, as described in the Introduction.[3]

The effects of the utilization and transformation of juridical notions by the clergy on the practice of criminal justice have been discussedin particular detail by Gorringe. He analysed the connection between the development of a theology of atonement from the 11th century, and the more widespread use of judicial violence by secular governments. He concluded that the higher degree of 'vengefulness' attributed to divine justice by the theory of atonement, in comparison with concurrent theological concepts, was reflected in the more retaliatory nature of criminal justice in the Late Middle Ages.[4] Gorringe did not mention specifically the reforms undertaken by the popular regimes, but the model could be applied to this case, too. Moreover, his paradigm is supported by 11th- and 12th-

[1] Pasciuta, *Il diavolo in Paradiso*, 'Introduzione'; Zocca, 'Il carcere nell'età dei martiri'.
[2] Potthast, *Regesta Pontificum Romanorum*, I, n. 6165.
[3] Bériou, 'La confession dans les écrits théologiques et pastoraux'; Chiffoleau, 'Sur la pratique et la conjoncture de l'aveu judiciaire'; Arnold, *Inquisition and Power;* Théry, 'Atrocitas/Enormitas'.
[4] Gorringe, *God's just Vengeance*.

century instances of the use of the terms 'justice' and 'revenge' as synonymous. As far as 13th-century Italian communes are concerned, this fits well with the idea, asserted by Zorzi, that communal public justice was first and foremost, if not exclusively, conceived of as a form of revenge both before and after the emergence of the *Popolo*.[5]

Gorringe's work, however seminal, nonetheless relies solely on the theological works of the most renowned masters. It can be argued that these texts, written for university teaching, were probably not as directly influential in shaping public opinion as literary genres which were conceived specifically as didactic aids to communicate religious concepts to the laity, such as homiletics and hagiography. It cannot be denied that the authors of these two latter genres were in many cases, especially in the 13th century, knowledgeable about the works of the masters of theology. However, their effort to vulgarise highly abstract concepts for a lay audience, and to mediate between religious and lay values, cannot be underestimated, especially in the case of preaching, which has been aptly defined as a 'dialogo tra etica cristiana e *seculum*'.[6] The effect was that, as seen in Chapter 2, practical considerations could well lead preachers to diverge from theological theories, in order to achieve their pedagogical goals. Moreover, Gorringe did not compare his findings with an analysis of the actions of specific lay governments, or of the evolution of their ideological statements in matters relating to criminal justice, to ascertain if and how religious concepts shaped their views. In order to assess the validity of Gorringe's and Zorzi's claims, in this chapter I will analyse how ideas of justice, revenge and mercy are treated in Sienese religious and lay sources. I will argue that pastoral texts presented a different stance on crime and punishment from theological treatises, and one that was more influential on lay conceptions of justice. In Chapter 4 I

[5] Zorzi, 'La cultura della vendetta', p. 154: 'la giustizia è innanzitutto la vendetta, vale a dire che la logica della giustizia è, non a caso, quella della vendetta'. See also *Idem*, 'Conflits et pratiques infrajudiciaires', p. 25; *Idem*, 'The Notion and the Practices of Vindicta', p. 125.
[6] Gaffuri, Quinto, 'Presentazione', p. VIII.

will then discuss whether the positions expressed on these issues in programmatic texts such as statutes and proclamations by the Sienese government were applied in practice, and how they influenced the social strata that did not participate directly in the redaction of official documents.

Gorringe's analysis of the rise of the theory of atonement is in any case an essential starting point in a discussion of medieval ideas of divine justice, and I will summarise it briefly. In patristic and early medieval times the role of Christ's death as a result of judicial violence was understood, following St Augustine, as an act of *redemptio*, a concept of Roman jurisprudence that indicated the payment of a sum to ransom a slave or a prisoner.[7] This was necessary since the Devil had acquired rights over humanity, as part of the latter's punishment for having committed original sin. Christ's death was a plot that God organised against the Devil to ransom mankind from his servitude, by generating a situation in which a perfectly innocent being was punished, thus creating a loophole in the norms of justice that the Devil had to follow in his rule over humanity. This explanation posed however the theological problem of a precise definition of the rights that the Devil possessed over humans, a problematic concept in itself. The problem was overcome by Anselm of Canterbury in his *Cur Deus Homo?* (1094-1098), where the concept of *redemptio* is abandoned in favour of *satisfactio,* a term which in Roman jurisprudence stood for the compensation of a debt.[8] Christ had to die, according to this theory, to satisfy the debt that men had contracted towards God by damaging his honour by committing original sin; in this way, Jesus saved humanity from the inevitable punishment that had to follow. In Anselm's view, God could not have just forgiven

[7] Augustine of Hippo, *De Peccatorum meritis*, II.
[8] Gorringe, *God's just vengeance*, p. 89. Pasciuta, *Il diavolo in Paradiso,* pp. 161-164, underlines even more the juridical nature of this concepts.

humanity without exacting a punishment or requiring satisfaction. The principle guiding divine justice asserts in fact that 'it is necessary that either the honour that was taken away be restored or a punishment follow' ('necesse est ut ablatus honor solvatur aut pena sequatur'), and that 'it is necessary that every sin is followed by either satisfaction or punishment' ('necesse est ut omne peccatum satisfactio aut pena sequatur').[9] Similar ideas were indeed circulating among ecclesiastical authors of the 11th century even before Anselm gave them a systematic justification, and they were explicitly based on a parallel between human and divine justice. In a work advising rulers on how to curb crime, Peter Damian (1007-1072) invoked punishment as a moral duty which authorities owed to their communities and even to the criminals themselves:

'Do you see then how worse it is to tolerate sin than to condemn someone to death? Here in fact death is given as a revenge, and the just Judge will not issue a condemnation for the same crime twice. But if sin is not absolved through revenge, it remains to be extinguished by the eternal fire'.[10]

This strictly retributive conception of divine justice is considered by Gorringe to have mostly managed to replace the Augustinian account, despite instances of survival of the latter in slightly modified versions, and despite criticism, most notably that of Peter Abelard.[11] The French theologian in fact disagreed with the idea that the death of an innocent, such as Christ, could be so pleasing to God as to reconcile him with humanity, and saw the incarnation more as a means for God to show us His love and lead us to love

[9] Gorringe, *God's just vengeance*, p. 94, quoting Anselm of Canterbury, *Cur Deus Homo?,* 1.13 and 1.15.
[10] Peter Damian, *De principis officio in coercitione improborum*, col. 827: 'Vides ergo quanto gravius sit accipere peccatum, quam morte multari? Hic enim mors pro vindicta datur et apud justum judicem non judicatur bis in idipsum. Ubi autem non est solutum vindicta peccatum, manet aeternis ignibus exstinguendum'. See also Prodi, *Una storia della giustizia*, pp. 63-63.
[11] Gorringe, *God's just vengeance*, pp. 109-114.

Him more. Gorringe maintained in fact that Anselm's theory, and the retributivist attitude lying behind it, always found adversaries throughout the history of theology, although this was a minority position. Nevertheless, the diffusion of Anselm's theory seems to have opened up, in turn, a new problem; that is, the apparent contradiction between the vengeful character of God the Father and the forgiving nature of Christ's teachings. Mercy, an attribute seen in the Christian tradition as equally constitutive of the nature of God as justice, did not seem to find a place in this account of God's attitude towards humanity and, even if it had one, it would be in opposition to –and not integrative with- the latter. And if this was the case, a set of questions about the role of mercy arose, such as: what are the limits of mercy? Is justice more important to God than mercy, or is it the opposite? Gorringe did not engage with the question of whether and how these problems were present in the minds of medieval religious thinkers.[12] However, he remarked how Thomas Aquinas fundamentally adhered to Anselm's theory, but managed to find a place for God's mercy. Aquinas claimed that Christ's death was both an act of justice and of mercy, since man was unable to carry out satisfaction on his own and God decided out of love to give him an instrument to do so.[13]

It can be argued, however, that the perceived contrast between justice and mercy, as two opposite ways of responding to sin or crime, was widely discussed in the context of 13th- and early 14th-century Europe, in all likelihood at a non-elite level too. Although mercy had always been an important concept of Christian spirituality, from the 12th century the burgeoning cult of the Virgin as an *advocata* of humanity provided it with an extremely popular spokesperson.[14] There are numerous instances of late medieval texts

[12] He mentions the problem in his discussion of Reformation theology, though: see *Ibidem*, p. 145.
[13] *Ibidem*, p. 120.
[14] See also the diffusion of the iconography of the Virgin of Mercy in Western Europe: Perdrizet, *La Vierge de la Miséricorde*.

in which Mary seems to embody mercy in opposition to the strictly retributive vision of justice personified, quite surprisingly, sometimes by the Father but other times by the Devil.[15] One example is a miracle story narrated by Jacopo da Varazze in the *Legenda Aurea*. In this tale, a man undergoes a trial after his death to determine whether he deserves to go to Heaven or Hell. God gives him eight days to prepare his defence, with Truth and Justice acting as his counsels. However, when his sins and his good deeds are weighed on a scale, the Devil underlines their unequal number and reclaims the man for himself. Truth and Justice cannot deny the prevalence of sin in his life, but the man, as a last resort measure, invokes the Virgin, who places her hand on the scale, tipping it on the side of the good deeds. The man is then given a chance to repent by being sent back to the world.[16] In this context mercy and justice are seen as two opposite principles in a trial that is meant to be otherworldly, but mirrors in all aspects of its structure the procedure of Romano-canonical criminal justice.[17]

A similar plot is shared by the texts belonging to the genre, quite popular in the Late Middle Ages, of mock trials in which Christ, the Virgin and the Devil debate the fate of mankind after death, known as *Processus Satane.*[18] Particularly relevant is the story, circulating throughout the Late Middle Ages in different versions and languages, of the Four Daughters of God.[19] This allegory originated from the interpretation of Psalms 84 (85),11: 'See, where mercy and faithfulness meet in one; how justice and peace are kissing' ('Misericordia et veritas obviaverunt, iustitia et pax osculatae sunt') and in its simplest version presented the story of a king who has four daughters, a son and a servant.

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[15] Becatti, *Maria e Siena*, p. 29. Brown, 'Society and the Supernatural', pp. 143-144, highlights the importance of Marian miracles for talking about a shift in late medieval perceptions of the supernatural: see also Chapter 1, p. 34.
[16] Traver, *The Four Daughters of God*, pp. 5-7.
[17] Pasciuta *Il diavolo in Paradiso,* p. 14.
[18] The most recent study is Pasciuta, *Il diavolo in Paradiso.*
[19] The most extensive study is still the doctoral thesis by Traver, *The Four Daughters of God*. Previous bibliography is listed in *Ibidem*, p. 6.

When the servant commits a crime and is incarcerated, the four daughters discuss his fate: two of them (Justice and Truth) think he deserves a harsh punishment, whereas the other two (Mercy and Peace) want him to be acquitted. To reconcile them and to placate the anger of the King, the son offers himself in exchange for the servant, at which point the daughters agree to liberate the prisoner and the household makes peace. Additionally, open references to the dilemma between mercy and justice in practical situations were made in hagiographies, including Sienese ones. In the life of Pietro Pettinaio, for instance, the holy man is asked for advice by a Sienese priest on what should be his guiding principle in attributing penances to sinners. His answer is that mercy in these matters should be more important than justice, following the example of the generosity of God.[20]

This brief survey is meant to highlight thesignificance of thoughts about the relationship between mercy and justice in large parts of 13th- and 14th-century Europe. It shows also that, notwithstanding the success of Anselm's theory, the array of opinions on this theme was wider than Gorringe had supposed by focusing solely on theological treatises. This is the context in which we need to place a detailed analysis of Sienese religious sources, in particular those that deal more in depth with definitions of mercy, justice and revenge: that is, the sermons of Ambrogio Sansedoni and Bindo Scremi. Despite the unsystematic way in which these preachers treated such topics, if compared to the work of theologians, their sermons are examples of how the clergy discussed these matters in front of a lay audience. These works had the principal aim of providing pastoral care, rather than of creating a coherent system of thought, and they provide for a more direct comparison with Sienese lay sources on the same topics. Whether they considered

[20] *Vita P.P.,* pp. 85-86.

divine justice as essentially retributive and believed this should be the case also for its human equivalent, will be the object of the next sections.

2. The Nature of Divine Justice in Sienese Sermons

As mentioned earlier, Ambrogio and Bindo were not unaware of theological debates, and they make reference to concepts of *redemptio* and *satisfactio* in their sermons, despite presenting slightly different stances to them. While Bindo, in his shorter collection, consistently mentions redemption as the reason for the Incarnation, Ambrogio seems to align himself at least partially with the theories of Thomas Aquinas.[21] He explicitly mentions satisfaction when he says that 'Christ has freed us from sin by performing satisfaction on our behalf' ('Christus nos liberavit a peccato satisfaciendo pro nobis').[22] However, the repayment of our debt towards God is seen in Ambrogio's sermons as only one of the many reasons why Christ descended on earth; the other ones he mentions, again inspired by Aquinas, are the teaching of the virtue of patience, and the display of divine love to humanity.[23] The theory of satisfaction is recalled when the preacher's aim is purely informative or affective (that is, when he wants to elicit a sense of pity for the sufferings of Christ). When he is addressing penitential themes, on the other hand, Ambrogio turns to the theory of redemption, which seems to be more suitable for the creation in the listener of feelings of hope in God's mercy.

A good example is his sermon based on Matthew 11, 2, the imprisonment of John the Baptist. After a first section devoted to its literal interpretation, the tropological

[21] A clear example is *Sermones B*, f. 18r: 'God decided to send His son to redeem man, like a good friend who immediately helps a friend in need' ('Proposuit Deus mittere filium ad redimendum eum (=homo), sicut bonus amicus qui statim succurrit necessitati amici').
[22] *Sermones A,* f.23r.
[23] *Ibidem,* f. 58r. On Ambrogio's lack of interest in systematic theology see the Introduction.

reading focuses on the imprisoned Baptist as a figure of the repentant sinner, jailed first in the *carcer peccati*, then in the *carcer penitentie* (the prison as a metaphor for penance is a very ancient concept in Christian thought, revived in the late Middle Ages by the growing importance of incarceration).[24] This reflection evolves into a dialogue between the prisoner and God, which takes the form of a defensive speech by the accused in front of a judge, who is also the accuser. This reflects a change caused by the inquisitorial model, which -as will be seen in Chapter 4- was becoming widespread in Siena in this period. This is the substitution of the trial as an *actus trium personarum* (a process involving three persons: accuser, judge and accused) with a model in which the figures of the judge and the accuser were fused into one[25]. The sermon seems therefore to be a form, however simplified, of the popular trials over the fate of humanity, or over a soul, mentioned above. The legal nature of the dialogue is highlighted by expressions such as *ad rationem stare cum aliquo* (to go to trial against someone)[26] and *allegare/allegationes* (the citation of normative sources).[27] In this simplified version of the spiritual trial, no role is assigned to the Virgin or the Devil. The only characters are the sinner, God, and the preacher, who offers instruction to the sinner on how to convince God to acquit him. This dialogue, too, is based on the opposition between mercy, on which all the arguments of the sinner are based, and justice, whose spokesperson is God. The Almighty responds to the first attempts of the sinful soul to obtain forgiveness by saying that 'His justice opposes iniquity' ('sua iustitia contradicit contra iniquitatem') and that by sinning a person becomes a 'servant of the Devil' ('servus Diaboli') who cannot be saved from

[24] *Ibidem,* ff. 7v-10v. For the prison as a metaphor for penance, see Heullant-Donat, Claustre, Lusset (eds.), *Enfermements*. For the more and more frequent use of incarceration in the Late Middle Ages, see Geltner, *The medieval Prison*.
[25] Sbriccoli, 'Tormentum id est torquere mentem', p. 23; *Idem*, 'Vidi communiter observari', n. 48.
[26] *Sermones A,* f. 8r, 'sta mecum ad rationem'. For the legal character of the expression, see Du Cange, *Glossarium Mediae et Infimae Latinitatis*, s.v. 'ratio'; *Latinitas Italica*, in *Database of Latin Dictionaries*, s.v. 'ratio' (indicating that the expression is synonym with 'iudicio certare').
[27] Pasciuta, *Il diavolo in Paradiso,* p. 89.

eternal death.[28] When the sinner alleges that God is omnipotent and has the possibility of going against the laws of nature by giving life to the dead, He admits that he could save him, but does not want to do so:

'A power that does not tend towards justice is a tyrannical power, as is said in the Book of Wisdom: *might shall be our right* (Wis 2,11), therefore it is not appropriate for me to behave so and dismiss justice, for I am the God of justice'.[29]

To this *allegatio* (the normative sources used in the debate are in this genre almost always quotations from the Bible)[30] the preacher replies by advising the sinner to mention another passage of opposite meaning:

'I demand this because I know you do justice when you have mercy, and so I take refuge in mercy since all the scriptures affirm that *his mercy reaches out to all that he has made* (Psalms 145, 9), therefore when you have mercy you do the justice you promised through your prophets*: on whatever day the impious man converts he will live* (Ezekiel 33, 12 and 16)'.[31]

God again reminds the sinner of the retributive nature of his justice, but the latter's arguments become more and more pressing. A series of other biblical passages are mentioned to show that mercy and forgiveness are, much more than justice, the supreme

[28] *Sermones A*, f. 8r.
[29] *Ibidem*: 'Potentia qua non adtendit iustitia est potentia tirampnica, sicut dicitur in libro Sapientie: *sit fortitudo nostra lex iustitie*, unde sic uti et dimittere iustitiam mihi non competit, quia sum Deus iustitie'
[30] Pasciuta *Il diavolo in Paradiso,* p. 117.
[31] *Sermones A*, ff. 8r-8v: 'Hoc etiam volo quia scio quod iustitiam facis quando misereris, et ideo ad misericordiam confugio quia omnes scripture hoc adfirmant, quia *misericordia Eius super omnia opera Eius*, et ideo faciendo misericordiam facis iustitiam quam per prophetas tuos promisisti: *quacumque conversus fuerit vita vivet* etc.'

demonstrations of His omnipotence. Even the tone of the sinner becomes more triumphant as he accumulates points in favour of mercy, as is evident by expressions such as 'I am demonstrating to you that you cannot deny to me what you promised through your prophets'[32] and 'because I triumph over you even according to [the laws of] nature'.[33] As a final point, the sinner successfully asserts the necessity for divine justice to follow the path it started by letting Christ die to liberate men from their servitude to the Devil, defined as an act of mercy as well as a way of 'facere iustitiam'[34]. It is clear that in this dialogue the concept of *satisfactio*, based as it is on strict retribution notwithstanding Aquinas' corrective addition of mercy, is set aside in favour of the older redemption theory, which focuses even more on the latter.[35]

In this instance, therefore, Ambrogio presents mercy as an aspect of God's justice, and not as an attribute in opposition to it. In order to understand more clearly the relationship between justice and mercy in the work of the Sienese mendicants, however, we need to examine more examples in which Bindo or Ambrogio explore this topic. In other excerpts from Ambrogio's sermons, such as 'I answer and say that God is more prone to take pity than revenge, to mercy than to justice, and waits for you to repent'[36] and 'therefore I ask you to deal with me not only with justice but also with mercy',[37] it might appear that mercy and justice are opposite and irreconcilable approaches, between which God in each different circumstance picks one to the exclusion of the other.

However, I would argue that the real opposition is that, as is apparent from the first of these quotations, between *misericordia* and *ultio/vindicta*. When God is presented

[32] *Ibidem*, ff. 8v-9r: 'probo tibi quod non potest mihi negare quod per prophetas tuos promisisti'.
[33] *Ibidem*: 'quia etiam secundum naturam te vincam'.
[34] *Ibidem*, ff. 9r-9v.
[35] The theory of redemption is mentioned also in *Ibidem,* f. 69r.
[36] *Ibidem,* f. 41r: 'Respondeo et dico quod Deus pronior est ad miserendum quam ad ulciscendum, plus ad misericordiam quam ad iustitiam, et te expectat ad penitentiam'.
[37] *Ibidem,* f. 43v.: 'unde non peto quod mecum agas modo cum iustitia sed cum misericordia'.

as a punisher, who acts in accordance with Anselm's tenets discussed above, the nouns *ultio* and *vindicta,* and the related verbs *ulciscor* and *vindicare*, are normally used.[38] *Iustitia* is sometimes used to indicate strictly retributive justice, and appears therefore to be a synonym of these words. However, it indicates more often the set of approaches that God can assume in His judgements, which include both retributive and merciful ones. An example is the sermon on John the Baptist discussed above, in which it is stated that the justice of God can be implemented through mercy. That justice is not always an equivalent to retribution appears even more clearly from Bindo's sermons, in which the Franciscan gives his interpretation of what the traditional Romanist definition of justice as 'the willingness to give everyone his due' means in a Christian context:

'This is what we owe to each one: to God indeed we owe honour, to our neighbour love and to ourselves punishment'.[39]

Such a multifaceted conception of justice, ranging from retributive to more restorative meanings, seems to mirror the distinction between *rigor iuris* (the strict implementation of the norm), *aequitas* (defined by Hostiensis as 'justice mitigated by the sweetness of mercy')[40] and the occasional departure from the rule (according to the principle 'ex causa licet leges transgredi'). All together, they constituted the possible ways of applying justice

[38] E.g. *Ibidem*, f. 35r, 'divina vindicta' (talking about examples of divine chastisement such as the destruction of Sodom); f. 27v, 'timeo quod se vindicabit'. For this meaning of *vindicare/vindicta* in reference to God in another literary genre see the late 13th-century novel collection Favati (ed.), *Novellino*, novella 17. This can be contrasted with an example of *misericordia* showed in the novella 15 and a case of dilemma between mercy and justice described in the novella 14.

[39] Bataillon, 'Les Sermons du Franciscain Bindo', p. 108: 'Iustitia firmat eam (=animam) in proximi utilitate, ut ei non noceat set magis proficere faciat. Hoc debemus unicuique: Deo enim debemus honorem, proximo amorem et nobis punicionem.' See also *Sermones B*, f. 41v: 'Reddite Deo honorem et reverentiam, proximo amorem et benevolentiam, corpori rigorem et penitentiam, et neminem offendatis nec verbo nec facto nec voluntate, nulli auferendo que sunt sua nec pacem nec famam nec aliquid sed sitis pleni iustitia'.

[40] Henry of Segusio, *Summa Aurea*, 1.5, tit. De dispensationibus: 'iustitia dulcore misericordiae temperata'.

in Roman-Canonical jurisprudence.[41] Divine justice, for the Sienese preachers, seems therefore to encompass pure mercy, pure retribution and everything in between. In one of his sermons, devoted entirely to the analysis of the prohibition against judging expressed in Matthew 7,1, Bindo explains the coexistence of these aspects in God's justice by drawing a parallel between them and the three persons of the Trinity (possibly a variation on the parallelism, seen before, between Mary and mercy, and God/Devil and justice):

'*The Father*, indeed, *instead of passing judgement on any man himself, has left all judgement to the Son* (John 5,22), as is said in the Gospel of John. And the reason is that to the Father pertains power, to the Son wisdom, and to the Holy Ghost goodness. Therefore, if power judged, sin would be punished immediately and everyone would die; if goodness, everyone would be forgiven; that is why wisdom, which discerns everything, that is, good and evil, gets to judge.'[42]

God's infinite justice consists therefore in the ability to perfectly balance different approaches in response to humanity's sins: in this balance, however, mercy seems to be the favoured and most characteristic attitude. This is something that both Bindo and Ambrogio agree on. In another sermon by Bindo, in which he employs again the parallelism between different facets of justice and persons of the Trinity, Jesus is described as a mitigating agent of the Father's wrath towards sinners, just as in the apologue of the Four Daughters.[43] Additionally, although Ambrogio does not present a

[41] Cortese, *La norma giuridica*, I, pp. 179-181.
[42] Bataillon, 'Les Sermons du Franciscain Bindo', p. 109: '*Pater* enim *non iudicat quemquam, set omne iudicium dedit Filio*, sicut dicitur in Johanne. Et ratio huius est quod Patri appropriator potentia, Filio sapientia, Spiritui sancto bonitas. Si igitur iudicaret potentia, statim pecatum puniretur et omnes perirent; si bonitas, omnibus parceret; ideo iudicat sapientia que discernit omnia, scilicet bonum et malum.'
[43] *Sermones B*, f. 22v: 'Pater irascitur contra peccatores, ipse Filius meretur eis veniam et spatium penitentie, et mitigat ira Patris ne perdat eos pro quibus ipse tanta substinuit'.

systematic theorization of the role of mercy and retribution in the Incarnation, he asserts that, on the other occasions in which God acts as a judge, forgiveness is privileged over strictness. His sermons present many exhortations to penance based on faith in God's pardon, and he insists that pardon is bestowed on everyone who becomes 'as voluntary in doing good as he was in doing evil'.[44] His idea of satisfaction –in line with much 13th-century reflection on penance- is thus more an exteriorisation of contrition than a proportional compensation to those who have been damaged by a sin.[45] In Ambrogio's view mercy also plays a large role in the Last Judgement, since it is not only one of the criteria the Lord uses to evaluate people's final fate, but also the basis on which that evaluation will be made. For Ambrogio, revenge is therefore only a 'measure of last resort' that God executes on unrepentant sinners, since repentance is the first step to forgive the others and consequently act mercifully.[46] This is what emerges from his exegesis of Matthew 18, 23-35, the parable of the King and the debtor servant: mercy will be shown to those who are merciful, whereas for the others the admonition is the following:

'You, wretched and ungrateful man, refuse to forgive a single offence from a single neighbour and peer, and so you provoke against you the King's wrath and the punishment and revenge for such a great ingratitude.'[47]

In short, as the preacher comments in another sermon, God is 'merciful by nature and just by accident (here Ambrogio uses the term in its Aristotelian sense)'.[48] The balance

[44] *Sermones A*, f. 96v: 'tam voluntarius ad beneficiendum quam [fuit] ad malefaciendum'.
[45] See also Bériou, 'La confession', p. 265.
[46] *Sermones A,* f. 129r.
[47] *Ibidem*, f. 126r: 'tu miser et ingratus uni vicino tuo et pari non vis dimictere unam offensam et iniuriam unius verbi, unde provocas contra te regis iram et tante ingratitudinis vindictam et penam'.
[48] *Ibidem*, f. 84r: 'misericors per naturam et iustus per accidens'.

between *vindicta/ultio/iustitia* and *misericordia* emerging from his collection poses, however, didactic problems for Ambrogio. This prompts him to highlight the issues arising from the possibility that the audience overrates one of the two elements. Since, because of the overall penitential character of 13th-century preaching, Sansedoni focused on the importance of God's mercy, he frequently warns the audience against postponing repentance and confession or continuing a life of sin on account of overconfidence in God's mercy, too.[49] However, Sansedoni reminds the listeners that an excessive fear in the harsh justice of God can be also fatal, as it could produce *desperatio*, the feeling that not even God's mercy can forgive one's sins, which is another impediment to confession and therefore salvation.[50]

The analysis of the Sienese sermons carried out so far seems to highlight two important aspects which concern the meaning of the words *vindicta/ultio*, *iustitia,* and *misericordia* in these texts. Firstly, as anticipated, revenge and mercy appear to constitute the two opposite ends of a spectrum that goes from perfect symmetry, in paying back an offence with an equivalent action, to perfect asymmetry, consisting in forgiving the initial offence (even if, as seen in Chapter 2, mercy is also meant to produce emotional satisfaction). Parallels between revenge and economic exchanges of a symmetrical type have been noted by both anthropologists and historians, especially those focusing on societies in which an economic compensation to the victim or their family was considered an alternative to revenge.[51] The Church, conversely, tended to praise asymmetrical monetary exchanges as virtuous, exactly because of the impossibility for men to extinguish the 'credit obligation', as Todeschini puts it, contracted with God through the

[49] *Ibidem*, f. 40r: 'Non timeas, quod Deus est misericors, quod multa minatur et pauca facit (...) et ne credas quod Deus velit dampnare tam nobilem creaturam sicut est homo'. See also f. 91v.
[50] *Ibidem*, f.62r.
[51] Anspach, *À charge de revanche*; Miller, *Eye for an eye*, pp. 31-35; Berni, 'Elogio dell'ira', p.9.

Incarnation.[52] This has a parallel in the Mendicants' preference for mercy in the aforementioned spectrum. Justice, on the other hand, appears as a more complex concept with a polysemic value. In religious discourse, the word *iustitia* is sometimes used as a synonym of purely retributive justice. *Iustitia,* however, is much more than that, being a word that can stretch to include all the approaches considered valid when performing a judgment, including non-retributive ones (which in fact happen to be the ones that God favours).

Having presented a picture of divine justice according to Sienese sources, it is now time to evaluate whether, and to what extent, this paradigm can be transferred to their discourse on human justice. Was the latter a mirror of divine justice, according to Bindo and Ambrogio? What were its specific aims, and what advice did the Mendicants give to the Sienese government?

3. The Dangers of Judging: Aims and Problems of Human Justice According to the Sienese Preachers

Ambrogio and Bindo often made direct references to human criminal justice, either to draw parallels between penance and incarceration or other forms of punishment, or to highlight the specific characteristics of divine justice by contrasting them to human justice, as in the sentence:

[52] Todeschini, 'La riflessione etica sulle attività economiche', p. 157.

‘For things are not the same in the court of God and in the court of this world, since he who confesses to being a debtor is jailed and whipped, whereas in the court of God he is absolved quickly and completely.’[53]

With all the caution that preachers needed to have when talking about current events, Ambrogio and Bindo also directly approached the world of communal courthouses.[54] As this last quotation makes clear, Sienese preachers could stress the differences between divine and human justice very clearly. Quotations (mainly based on Romans 12,19) have already been mentioned in Chapter 1, which showed how they saw *vindicta* as the response to wrongs that God reserves to Himself, attributing to humanity, by contrast, the duty to act mercifully on every occasion. The reasons why mankind should avoid revenge are clearly detailed by Ambrogio, and depend mainly on the limitations intrinsic to the postlapsarian condition. The Sienese sermon in which this theme is discussed more in detail is that for the third Sunday of Advent, based on 1Corinthians 4,1. In this passage, St Paul remarks that the validity of the sacraments does not depend on the morality of the person who administers them. More generally, he continues, making a solid judgment on someone’s morality is actually something which humans are not able to do, because the Fall has obfuscated their capacity to tell good and evil apart:

‘A judgement of this sort is highly unreliable, because even I (=Paul) am insufficient to judge on this topic, therefore he says: *I do not even judge myself* (1Corinthians 4,3) because I do not know myself.’[55]

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[53] *Sermones A*, f. 128r: ‘quod non sic in curia Dei sicut in curia mundi, quod qui se confitetur debitorem incarceratus et flagellatus, sed in curia Dei citius et ex toto assolvitur’.
[54] For the limitations set by the religious orders on the topics preachers could approach, see Introduction, note 109.
[55] *Sermones A*, f. 16r: ‘Istud tale iudicium est valde dubium, quia ego ipse insufficiens sum ad hoc iudicandum, unde dicit: *neque me ipsum iudico* quia me ipsum non cognosco’.

In this case the verb 'to judge' clearly means 'to evaluate the morality of someone's behaviour': this faculty does not belong to mankind, who are therefore not considered able to decide whether someone truly deserves a punishment for their wrongs. As seen in Chapter 2, according to penitential spirituality emotions play a big role in preventing people from knowing themselves and judging others correctly. In this instance, too, humility, defined as the 'door through which the sun of justice comes in',[56] is offered as a remedy to counteract the tendency to judge a neighbour's behaviour.

What is even more interesting in this sermon is that contiguity between the meaning of the term *iudicare* indicated above and its other, more technical sense of 'acting as a judge in a trial', causes a shift from a discussion of the prohibition of judging in general to a treatment of the same command in situations in which an actual trial, spiritual or secular, is held. In the case of the 'internal forum' of confession, the advice to priests is not to demand too much from sinners, and not to judge their inner motivation for repenting, thus utilizing mercy as the guiding principle of the sacrament (as also suggested by Pietro Pettinaio). The situation becomes more complicated, though, when it comes to determining how a government can perform a correct judgment despite men's limitations in discernment. The existence of governments seems to be the only exception to the rule preventing people from resorting to punitive attitudes towards wrongs. This of course poses problems concerning the restriction and legitimacy of this retribution, which Ambrogio Sansedoni treats in his usual unsystematic way. He makes both explicit remarks about the conditions for a government to legitimately exercise its power, and analogies between divine justice and the justice of the *podestà*. The purpose of a

[56] *Ibidem.*

government, according to the preacher, is to prevent the proliferation of conflict in society, which is the reason why authorities can legitimately reward crimes with punishments and use violence for this end, unlike every other human being:

'For authorities were created to maintain the peace and the good state of the world, so that those who hinder others with violence be hindered by the violence of a greater power, and, in this way, those who do not dread the judgement of God will be scared of sinning because of their fear of other humans'.[57]

Governments therefore legitimately exercise the act of *iudicare* and make use of retributive approaches to sin/crime (otherwise, as seen above, they are a 'potentia tirampnica', prone to punish innocents, or to leave evil people undisturbed). This passage shows very clearly, however, that the circumscribed purpose of punishment by lay authorities is, according to Sansedoni, deterrence, and not, as proposed by Peter Damiani, revenge for a sin committed by the criminal. This therefore makes it different from the main aim of divine justice. The importance ascribed to deterrence in this and other excerpts from Ambrogio's sermons seems to mirror the growing role that this concept had obtained in contemporary lay reflection on crime. According to Fraher, deterrence had become as central in the new system of criminal justice as the *publice interest* principle.[58] Later in this chapter the analysis of lay conceptions of justice will indeed include quotations that express very similar ideas, with a similar wording. Deterrence is also central to the legitimation of human acts of *iudicare/iudicium* according to Bindo who, following the Franciscan liturgy, preaches on the same Pauline verse on the fourth

[57] *Ibidem*, f. 22r: 'Item quod ad conservandam pacem et bonum universi dominia sunt inventa, ut qui vi alios reprimunt vi potentiae maioris reprimantur, ut saltem humana formidine peccare timeant qui divina iudicia non formidant'.
[58] Fraher, 'Preventing Crime in the High Middle Ages'.

Sunday of Advent: he, too, passes in his exegesis from the more generic sense of the word 'judgement' to the specific legal one, and mentions deterrence as the reason why that of judges is the only *iudicium permissum*.[59] In another passage Bindo makes the same point, but, unlike Ambrogio, he opens up to the possibility of seeing punishment as something meted out, to quote a Senecan adage, not only *ne peccetur*, but also *quia peccatum est*:[60]

'The brigand is hanged not only so that he be chastised by this punishment, but so that everyone seeing his disgrace beware. This is also why all the other types of executions happen in a public place'.[61]

Deterrence seems to be the most important motivation of punishment in this case too, but Bindo bears in mind how for at least some sectors of society an execution could be seen as a just retribution for someone's sins. It is not surprising that similar ideas circulated in Mendicant milieux since, as previously seen, they became prominent in theological reflection from the 11th century on. It must be noted, however, that they have only a marginal role in the pastoral works of Sienese Mendicants, who seem to put greater emphasis on deterrence as the central motivation for punishment.

Moreover, even though deterrence legitimises the use of violence by governments, there are still clear limits to their actions. Going back to Ambrogio's sermon on judgement, governments are advised to bear in mind that their main purpose is the salvation of the members of their community, so that their rulers, far from using indiscriminate violence, should consider themselves to be the servants of their

[59] Bataillon, 'Les sermons du Franciscain Bindo', p. 106.
[60] The reference is to Lucius Annaeus Seneca, *De Ira*, liber I, 19.
[61] *Sermones B,* f. 58r: 'Suspenditur latro in furcis non solum ut illa pena affligatur, sed ut omnes videntes ignominiam eius sibi caveant. Sicut enim omnes alie iustitie fiunt in loco publico'.

community.[62] An authority that is over reliant on the use of retributive violence is, by contrast, a plague inflicted by God on humanity to punish it, and afterwards destined to punishment in turn:

'If you have authority over evil people you are a rod, since He (=God) gives you power not for your sake but so he can take his revenge on them through you, as is evident in the story of king Sennacherib, of whom Isaiah says: *Woe, too, upon the Assyrian! What is he but the rod that executes my vengeance* etc. (Isaiah 10, 5), *I have sent him to punish one nation that has proved false to me* (Isaiah 10,6). But just as a man does with the rod that he uses to beat his son, since he afterwards destroys it, in the same way the Lord does with such ministers, since after having taken His revenge on God's enemies God takes His revenge also on them'.[63]

Authorities are therefore always considered at risk of using retributive violence in a sinful way, so much that, according to Bindo, foreign *podestà* were nominated so as to free the citizens from the necessity of passing death sentences, something perceived as an undesirable responsibility:

'*Podestà* are, as you know, the authorities to whom power over cities is given, and they execute the statutes of that city concerning both punishing and governing men. For instance, a statute of the city decrees that those who steal must be hanged. A thief is captured; the citizens say: 'Who is going to hang him?'. Everyone says: 'Not me',

[62] *Sermones A*, f. 16v.
[63] *Ibidem*: 'Si dominium habes super malos es baculus, quia dat hanc potestatem non propter te, sed ut per te vindicet se de eis, sicut patet de Senacerib rege de quo dicitur Ysaia: 'Ve Asur, virga furoris mei et baculus etc.', 'ad gentem fallacem mittam eum'. Sed sicut facit homo de baculo dum verberat filium, quia postea eum frangit, sicut facit Dominus de talibus ministris, quia postquam se vindicavit de eo et de inimicis Dei et Deus vindicat se de eis'. References to Sennacherib appear in in Is. 36, 1 and 37,17.

therefore they elect someone who on behalf of the others passes execution sentences and keeps the city in good state'.[64]

This excerpt seems to reflect John Whitman's argument that modern European criminal justice systems were created after the disappearance of ordeals, with the aim of limiting the responsibility of people involved in acts of judgement and thus relieving their moral anxieties.[65] This was connected to the fear of contravening the precept expressed in Matthew 7,1 ('Do not judge others, or you yourselves will be judged') and of shedding blood, something which Christianity, on account of its Jewish heritage, until at least the Middle Ages considered a form of 'spiritual pollution'.[66] The monocausal explanation proposed by Whitman does not seem to be able to account for the complex evolution of European criminal justice, and Fraher has argued, more convincingly, that medieval people did not worry as much about the exercise of discretionary power as about its abuse.[67] Nevertheless, his work has the merit of highlighting how at least part of the medieval ecclesiastical milieu still expressed unease over the irreversibility of the death penalty, because of the possibility of judicial errors.

The 14th-century *vita* of Agostino Novello, Prior General of the Augustinians, who was active in Siena in the 13th century, expresses a similar anxiety. It states that Agostino, who had worked as a jurist before becoming a friar, had managed to avoid the most sinful activities judges are exposed to, which could be an impediment to conversion

[64] Bataillon, 'Les sermons du Franciscain Bindo', p. 115: 'Potestates enim, ut scitis, dicuntur rectores et domini civitatum quibus datur dominium super civitatem, et exequuntur ordinations ipsius civitatis, vel de punigendis vel regendis hominibus. Verbi gratia: statutum civitatis est ut qui furatur suspendatur et huiusmodi. Capitur fur; dicunt cives: 'Quis eum suspendet?'. Dicit quilibet: 'Non ego', et ideo eligitur unus pro omnibus qui huiusmodi iustitias faciat et conservet terram in bono statu.' As will be seen later, Sienese laws did not punish simple theft with death, but only highway robbery and repeated theft.
[65] Whitman, *The Origins of Reasonable Doubt*.
[66] *Ibidem*, p. 32.
[67] Fraher, 'Conviction According to Conscience'.

to a religious life, including passing death sentences.[68] Both Sienese preachers, who often make references to the possibility of judicial errors, highlight the fact that members of the government, because of their human nature, are still liable to commit mistakes of judgment when prosecuting a criminal, and ought therefore to privilege cautiousness over zeal in order to avoid punishing innocents, is frequently highlighted by both Sienese preachers, who often make references to the possibility of judicial errors. This is what Ambrogio does in an *exemplum* meant to illustrate the involvement of the mind in any sin committed by the body: two friends, one intelligent (the mind) and one stupid (the body), decide to take a dangerous shortcut instead of a safe but longer road, and are captured by brigands. The brigands are imprisoned by the local police force, but the *podestà* does not understand the situation and condemns the innocent friends to death as well: 'and in the same way God will condemn both soul and body to death'.[69] In another sermon, on the theme 'Be merciful, then, as your Father is merciful' (Luke 6,36), the preacher shows that what makes a good judge is the ability to evaluate circumstances dispassionately:

'I say that he who judges has to judge justly and not be enraged. If indeed he judges justly and not on the basis of anger I say that he behaves justly. Therefore, I say that our Lord is not enraged by anger or hate, but he judges justly and like a just judge he punishes and extinguishes evil'.[70]

[68] AASS *Maii* IV, col. 617.
[69] *Sermones A,* f. 18r: 'et Dominus noster condempnabit animam et corpus ad mortem'.
[70] *Ibidem,* f. 84v: 'Dico quod ille qui iudicat debet iuste iudicare et non irasci. Si enim iuste iudicat et non propter iram dico quod iuste facit. Ita dico quod Dominus noster non irascitur nec per iram vel hodium, sed iuste iudicat et sicut iustus iudex punit et extinguit malum'

If men could attain God's impassibility, they could be as good judges as He is, but as seen in Chapter 2 humans are very susceptible to *ira*. The final advice is, again, to privilege mercy and to avoid judging in its moral meaning, since 'iudicare' is an 'impedimentum misericordie'.[71] Bindo, as also noted by Bataillon, seems to show an even deeper interest in the problems faced by judges in their work, and in the possible abuses of power they might incur.[72] He highlights how easy it would be for a *podestà* to make a judicial mistake because of someone's false witness:

'Someone will say about someone else: 'that person has stolen that thing' and he lies, and someone else will say to another: 'I heard that person is a thief', and in the end the *podestà,* because of his reputation, will put him on the torture rack and make him confess by force to what he did not do, and in this way an innocent will be hanged'.[73]

Bindo's sermon commenting on 1Corinthians 4,5 ('You do ill, therefore, to pass judgement prematurely, before the Lord's coming...'), is again all based on a shift from the moral sense of *iudicare* to its technical one, and ends up being a small treatise on how a communal judge can avoid abusing his power.[74] As was typical of canonical jurisprudence, in particular concerning the detection of heresy, the focus is placed on doubt and circumspection, at the cost of leaving a criminal unpunished. The government's responsibility is considered to be that of protecting peace by punishing only the most

[71] *Ibidem*, f. 85r. An example of how anger affects human discernment is the 'ira hominis qui ex deliberata ratione irascitur et concipit ut se vindicet et mala retribuat', which is labeled by the preacher as a serious sin: *Ibidem*, f. 94v.
[72] Bataillon, 'Les sermons du Franciscain Bindo', p. 99: 'il s'intéresse beaucoup aux devoirs, aux difficultés et aussi aux abus des juges'.
[73] *Sermones B*, f. 35r: 'Aliquis dicet de alio: 'Talis furatus est talem rem' et mentitur, et ille dicet alteri: 'Audivi quod talem est fur', demum potestas propter famam ponet ipsum in eculeo et faciet vi confiteri quod non fecit, et sic suspendetur innocens'.
[74] Bataillon, 'Les sermons du Franciscain Bindo', pp. 105-110.

egregious criminals, those who could create *scandalum* in the community, whereas the final judgment on one's personal merit is left to God.[75]

If proper *vindicta* is not therefore in the remit of the government, according to the preachers, authorities still have to strike a balance between different approaches. Deterrence is in fact limited -with regards to who should be punished and in what way- by the necessity of mercy as a corrective to the dangers of judging. This emerges clearly from the two sermons composed by Ambrogio on the parable of the sower (Matthew 13, 24).[76] The sermon focuses entirely on the limits of the implementation of penalties, in particular of the death penalty: the theme must have been very topical at a time when this type of punishment was becoming more widespread in Siena (as will be seen later), and more generally in communal Italy.[77] Although the command to not separate tares from wheat is initially explained as a reference to the difficulty of telling heretics apart from good Christians, the discussion immediately broadens to include other types of crime and criminals, such as *latrones* (robbers). In the case of heresy, Ambrogio is willing to recognise the legitimacy of the death penalty for those whose heterodox beliefs are manifest and notorious, on account of the gravity of the sin, equated to a *crimen lesae maiestatis* against God. In the case of suspicions that cannot be proven, however, both in cases of heresy and of common crimes, mercy should prevail over retribution. With regard to crimes not related to religious beliefs, Ambrogio seems to admit that lèse majesté might justify the use of capital punishment. In the cases of less 'political' crimes, however, such as highway robbery, the reasons of mercy are juxtaposed in the argumentation to those of justice, without the emergence of a clear stance.

[75] See also Forrest, *The Detection of Heresy*, pp. 16-19.
[76] *Sermones A*, ff. 28v-33r.
[77] See in particular Zorzi, 'La pena di morte'; Lansing, *The Florentine Magnates,* ch. 10 and Pazzaglini, *The Criminal Ban*.

It has to be noted that a total rejection of the validity of judicial violence was associated in the 13th century with the 'Albigensian' heresy. As such, it had been refuted by anti-Cathar writers and theologians like Aquinas, who had on the contrary interpreted the command expressed in the parable of the sower as the necessity of not killing 'ex ira' (on account of wrath) but only 'ex zelo iustitiae' (on account of rightful indignation).[78] When commenting on the same Biblical verse therefore Ambrogio cannot go as far as embracing doctrines suspect of heresy, but his emphasis on caution and mercy when deciding whether to inflict the death penalty contradicts Aquinas' clearer support for judicial violence. Moreover, Ambrogio's conviction, expressed in his sermon on John the Baptist, that sinners can repent and save their souls any day while they live, is very different from Aquinas' comment on the same verse, in which he says that this is a very rare occurrence.

In conclusion, there is a clear attempt in Sienese sermons to highlight the differences between the 'curia Dei' and the 'curia mundi', which ultimately pursue different aims in relatively different ways.[79] Revenge does not seem, according to Bindo and Ambrogio, a term that could refer in the same way to human and divine justice, given the different nature of their retribution. Mercy is on the contrary an element that human judges are repeatedly asked to take into account. Ultimately, as highlighted in Chapter 1, a higher degree of judicial violence or other solutions based on social control are not seen as the most effective responses to the problem of crime and sin in society. An ethical answer, not a political one, is proposed by the penitential model of criminal justice: the practice of virtues such as humility, patience and mercy described in the previous chapter.

[78] Thomas Aquinas, *Summa contra Gentiles*, l. III, cap. 146. On Catharism and refusal of judicial violence see Bellini, *Respublica sub Deo*, pp. 10-11, n. 8.
[79] Although Jacob, 'Jugements des hommes et jugement de Dieu', p. 43, argues that the Christian tradition, unlike others, often posits a relation of imitation between human and divine justice.

The judicial consequence of this seems to be a preference, expressed not only by Sienese religious sources as seen in Chapter 1, but also by a variety of 13th-century homiletic, pastoral and theological texts, for arbitration over recourse to trial.[80] In Hugh of St Victor's version of the Four Daughters apologue only arbitration by the Almighty can solve the controversy among the virtues.[81] The satisfaction, above all emotional, of the parties was thought to be ensured much better in this way than through the *ex officio* trial. The latter received criticisms for this aspect from religious thinkers, such as the author of the 14th-century preaching manual *Fasciculus Morum*, who comments that

'because many people today cannot take their revenge with material weapons, they therefore retain hatred through hardened anger in their hearts'.[82]

Arbitration is also, as argued by the 13th-century French theologian William of Auvergne, the closest practice to confession that human law can offer.[83] In this case, too, it seems that 13th-century clergy saw confession, more than Aristotelian political theories of the common good, as the pivotal tool to reflect on crime and conflict, to shape their advice to local authorities, and to be influenced in turn by lay elaborations on criminal justice.

However, the frequent analogies between human and divine justice that derived from the use of legal metaphors to talk about penance and other religious concepts could easily create problems of overlap, as underlined by Bériou in her study of such analogies in theological texts. Among the risks, she lists too great an emphasis on the powers of the priest as a judge at the expense of the importance of divine grace in confession, and an

[80] Chapter 1, section 2.
[81] Hugh of St Victor (incertus), *Adnotationes elucidatorias*, II.83, coll. 387-390.
[82] Smail, 'Hatred as a Social Institution', p. 91.
[83] William of Auvergne, *Summa aurea* (*De sacramento poenitentiae*, f. 22M2r), p. 484, quoted in Bériou, 'La confession', p. 277.

insistence of the role of *justice vindicative* at the expense of that of *misericorde.*[84] To these risks I would also add that of offering ways of legitimizing, through comparisons with God, too large a scope for the use of force by human authorities, against the original intention of the preachers. In this way governments would also have been able to use, in addition to the materials provided by theologians who supported the theory of satisfaction, the ideas of preachers who, on the contrary, asserted a very different view of human and divine justice. The next sections of the chapter will therefore be devoted to ascertaining what the view of justice expressed in lay sources was, and whether religious ideas had any influence on their authors.

4. The System of Criminal Justice in Siena and its Functions

In order to pursue the aim described in the last section, it seems useful to start by describing what role criminal justice had in the minds of Sienese legislators, what the system of penalties looked like, and what the explicit and implicit aims of criminal justice were in the period 1260-1330. Criminal justice, as said before, played a central role in the political ideology of Italian city-states, with its strong emphasis on the importance of public order, and Siena was no exception.[85] The *ordinamenta* (executive regulations) provide a good example, since every time a new *podestà* took office some of them were re-examined. Among these were many concerning central issues of criminal justice, such as those concerning cases of arson, those about the general safety of the city and those regarding the best ways to make sure that offenders were captured by the communal police force, the *berrovieri.*[86] Alongside these revisions, moreover, specific chapters of

[84] Bériou, 'La confession', p. 277.
[85] Mucciarelli, 'Appunti sul controllo sociale nell'Italia comunale', pp. 325-329.
[86] The study of communal police forces is a rather new field of research for the scholars of the Italian Middle Ages: the most recent works are Grillo, 'Du cri à la patrouille', and *Idem*, *L'ordine della città*.

the statutes relating to criminal issues had to be periodically read aloud during the meetings of the General Council. These chapters included for instance the harsh norms punishing those who infringed the terms of an *instrumentum pacis* and those castigating revenge 'in alium quam in principalem', that is, not directed against someone who had personally offended the avenger but against his relatives or associates.[87] Both of these are fundamental for the comprehension of the dynamics of violence and its repression in medieval Siena, and will be further discussed later in this chapter.

The reason why the reading regarded only those specific sections of statutes and *ordinamenta* is never spelled out. It can only be assumed that the matters they regulated were considered particularly important for the 'good and peaceful state' of the commune. The revision of the *ordinamenta* concerning public order, in any case, was not a pure formality with the aim of getting the new *podestà* acquainted with the local legislation.[88] In 1297, for example, the discussion regarding the regulations on how to curb crime in the city, which started on the 9th of January shortly after the installation of the new *podestà*, did not conclude until the 22nd of March, after being addressed on four different occasions and having occasioned a lively debate.[89] Despite the clearly important role that criminal justice had in the agenda of Sienese councillors and officials, the complex system

[87] An example of this custom can be found in ASS, CG 51, f. 23v, 03/01/1296; f. 75v, 11/03/1296.
[88] It must be remembered that judicial power in the Italian communes was exercised by 'foreign' officials, that is the *podestà* and the judges whom he brought with him from his place of origin; the only local contribution was of notaries who assisted them. A discussion of the implications of this can be found in Vallerani, *Medieval Public Justice*, pp. 2-3. Vallerani argues that, because of this feature, unique to the political system of the Italian communes, scholars should refrain from explaining the nature of such polities through an analysis of their judicial systems, and equating their strength to the pervasiveness of the *ex officio* procedures they implemented or failed to implement. These methodological indications must be taken into account; however, the role of the other political organisms of the city in the administration of justice must not be underestimated. If it is true that trials were conducted by foreign magistrates, one must equally remember that they were conducted on the basis of legislation on criminal justice elaborated by the General Council and the Nine. Additionally, as seen above, public order and criminal questions were often debated in the assemblies of the general council in the presence of the Nine, the other major officials, and in some cases the *radota* (an additional group of councillors). *Podestà* had to take into account the orientation of other political bodies in this and all other fields, especially in view of the *sindicatus*, the audit in which the actions of the 'foreign' officials were judged by the commune at the end of their tenure.
[89] ASS, CG 51, ff. 29r, 09/01/1297; 52r, 05/02/1297; 71v, 25/02/1297; 79v, 22/03/1297.

of legislative sources designed to repress criminal activity in the city constituted more a set of 'police regulations' than a proper scientific body of criminal law in the modern sense: ambiguous formulations and contradictory norms are not rare occurrences.[90] Even so, by comparing the different versions of the Statutes described in the Introduction, it is possible to reconstruct the Sienese system of penalties and its evolution.

Such an analysis shows that in the criminal legislation of the commune, as is typical of all Italian city-states in the time-span examined here, the punishments envisaged for offenders were mostly fines and corporal penalties. Guy Geltner has shown that it was in the Italian Middle Ages that incarceration started being used as a proper punishment, and not just as a temporary condition between capture and sentence.[91] His arguments hold also true for Siena, since the lists of outlaws and criminals preserved in the archives show occasional instances of people sentenced to imprisonment; criminals who were not rich enough to pay their fines ended up spending prolonged periods in jail; and that incarceration was a sanction contemplated by the criminal legislation of the local Church.[92] Nevertheless, the statutes do not expressly mention it as a punishment for any offence.

As for corporal penalties, the latest of the statutes considered here, the *Costituto volgare* of 1309-1310, envisaged them for a variety of crimes, i.e.: throwing objects from a tower with the aim of starting a feud (amputation of the right hand), the use of bows or crossbows in the city (amputation of the right hand), ringing the war bell without good reason (amputation of the right hand), rebellion (beheading), gathering at the house of an

[90] Armstrong, 'The Sienese Statutes of 1262', p. 17.
[91] Geltner, *The Medieval Prison*.
[92] ASS, Biccherna 725, f. 67r: the feudal lord Ulivieri di *dominus* Ranuccio, receives in 1272 a life sentence: 'in perpetuum stare debeat in carcere communis'. For life imprisonment in ecclesiastical criminal legislation see Zdekauer, 'Statuti criminali del foro ecclesiastico'. See below for a more thorough discussion of this legislative collection.

aristocrat during a riot (amputation of the right foot), adultery (amputation of the right hand), breaches of the terms of an *instrumentum pacis* (death penalty), treason against the commune if successful (death penalty), premeditated homicide (beheading), contract killing (beheading), kidnapping (hanging), insults if uttered by a jester (amputation of the tongue), blasphemy (amputation of the tongue), robbery or repeated theft (hanging), complicity with a professional thief (amputation of the right hand), arson (the stake), murder of the *podestà* or a member of his entourage (death penalty), sodomy (*suspensio per virilia*, i.e. being hanged by the genitals), revenge killing of someone who had not personally offended the avenger (death penalty), forgery (the stake), killing of parents (death penalty), false testimony (amputation of the tongue and upper lip), impenitent heresy (the stake), stone-throwing (amputation of the hand), false identity (amputation of the hand).[93] Condemnations to death also entailed confiscation of property and the destruction of one's house. In the case of mutilations, though, it was often possible to pay a (generally very high) fine to avoid them.

The situation had been very different in 1262, according to the statutes compiled in that year, in which corporal punishments were essentially limited to homicide, punishable by beheading.[94] This is a rather early case of application of the death penalty to homicide of any nature (no distinction is made in the text between manslaughter and murder), especially if we consider that the first few known instances of capital punishment in Siena date only to the 1250s and concern a forger (1250) and a *latro*, a professional and recidivist robber (1257).[95] The crimes of which these two men were accused were considered particularly abhorrent, unlike manslaughter.[96] Moreover, an examination of

[93] *Costituto volgare*, *passim*.
[94] *Statuti 2*, V, c. 187.
[95] Ascheri, 'La pena di morte a Siena ', p. 495.
[96] On the tolerance often showed in the Middle Ages towards manslaughter, see Green, 'Societal concepts of criminal liability'.

the list of condemnations pronounced during the *podesteria* of Palmiero Martini of Fano (July-December 1270) shows that this chapter was not actually applied. All cases of homicide in the register (except one, probably considered particularly treacherous or brutal, the author of which was condemned to a fine of 3000 l. or to beheading if insolvent) were punished with a 1500 l. fine, in accordance with the more lenient dictates of the statutes of 1274.[97]

This evolution does not follow the well-established paradigm, mentioned at the beginning of the chapter, of criminal justice becoming ever stricter in the late Middle Ages. It might reflect instead a growing concern of the legislators for the intentionality of criminal acts, which is, as suggested in Chapter 1, a theme of late medieval jurisprudence in which the influence of penitential spirituality was particularly visible. In a society in which a 'culture of revenge' regulated many types of social interactions, respecting the norms of 'fair play'[98] in the use of violence was considered particularly important. A homicide that was committed at night or secretly, one that, in short, treacherously escaped the control of the rest of the community, was never considered socially acceptable, unlike one openly committed to restore the equilibrium of power between rivals. Indeed, already in *Statuti 2* (1262) special provisions were taken against homicides committed 'de nocte vel occulte', which were subject to *ex officio* investigations (unlike other types of homicide, apparently).[99] This traditional distinction between open and secret homicide persisted until the end of the period analysed here. A new way of distinguishing between types of homicide emerged however in 1287, when *Statuti 5* introduced a distinction between voluntary homicide, punished with a 3000 l. fine (later transformed by a correction in the margin into a death sentence), and a violent

[97] The list is in ASS, Biccherna 725, ff. 1bis r-16v. For the 1500 l. fine see *Statuti 3*, f. 144v.
[98] See Chapter 1, note 52.
[99] *Statuti 2*, V, c. 187.

death occurring as an involuntary consequence of a fight (*rixa*), subject to a 2000 l. fine (corrected in the margin to 3000 l.).[100] These frequent changes in the punishment of homicide seem to reveal an intense discussion about what constituted an acceptable way of punishing it. This crime was starting to be seen in a different perspective, in which the intentionality of the misdeed, a problem also central to 13th-century canon law and theology, was becoming more important than other considerations, which had been dominant in previous centuries.[101] The outcome of this discussion was, however, in line with the current historiographical paradigm highlighting the increasing severity of criminal justice from the mid-13th century, and which links it to its instrumental use by the government to legitimise its wider functions.[102]

In Siena, the watershed for this increased severity seems to be represented by *Statuti 5*, written at the beginning of the regime of the Nine (in Chapter 4 it will be seen that not only the statutes, but also the practice of criminal justice seem to have become harsher in the 1280s). Other types of corporal punishments seem to have also acquired a growing importance in the Sienese legislation by the end of the 13th century. The process was very rapid: as previously discussed, by 1300 they were in most cases alternatives to the payment of heavy fines within a defined amount of time after the condemnation (sometimes this was true also for the death penalty, as in the case of adultery or kidnapping). If we consider that in 14th-century Siena the price of a modest house was

[100] *Statuti 5*, f. 268v. It is however likely that death penalty for premeditated homicides was introduced even before 1287 in an *ordinamentum*. The condemnations pronounced during the *podesteria* of Bertolino Maggi of Brescia (January-December 1286) already present many cases of this: ASS, Biccherne, Banditi e carcerati, 725, ff. 484r-524r.
[101] On the importance of intentionality in late medieval religious thought see Tentler, *Sin and Confession*, pp. 161-162; Mansfield, *The Humiliation of Sinners,* pp. 34-35; Goering, 'The Internal Forum'. See also Chapter 1, section 4.
[102] For a pan-European perspective see Dean, *Crime in Medieval Europe*; for an analysis limited to the death penalty in communal Italy see Zorzi, 'La pena di morte in Italia nel Tardo Medioevo'.

around 100 l.-200 l.,[103] it appears evident that the great majority of the population would not have been able to pay a 400 l. or 500 l. sum. This arrangement clearly favoured the rich over the poor, who had, as their only option to avoid the punishment, that of fleeing the city before the beginning of the trial. They would thus risk becoming contumacious (the defendants in cases concerning the *crimina enormia*, the most serious crimes such as aggression or theft, had otherwise to be put in jail after appearing in court),[104] unless they were able to obtain a peace charter from their victims in the case of interpersonal conflicts.

As again shown by Geltner, communal governments were aware that such heavy fines would not be paid by many, and incarcerating everyone would make the jails overcrowded and financially unsustainable; on the other hand, letting poor criminals go unpunished would make communal justice ineffective.[105] Different communes faced this judicial dilemma in different ways, and approaches could change across time: in the first Sienese statutes (*Statuti 2, 3* and *5*), for instance, the problem was tackled by expelling from the city offenders unable to pay the fines.[106] In the *Costituto volgare* of 1309-1310, on the other hand, unpaid fines are commuted more and more often to mutilations, in accordance with the suggestions of jurists such as Pierre de Belleperche (d. 1308) and Cino of Pistoia (1270-1336), and in opposition to other theorists that suggested alternative punishments for debtors and poor prisoners. Around the same period Venice, on the contrary, introduced a system of equivalences between sums of money and months of prison, following the suggestions of more lenient jurists.[107] These changes in the statutes did not cause a steep increase in the number of actual corporal punishments carried out

[103] Balestracci, Piccinni, *Siena nel Trecento*, p. 113, n. 1.
[104] *Statuti 5*, f. 283r.
[105] Geltner, *The Medieval Prison*, pp. 47 ff.
[106] *Statuti 2*, V, c. 91; *Statuti 3*, f. 137v; *Statuti 5*, f. 247r.
[107] Geltner, *The medieval prison*, p. 47 ff. The author contrasts Belleperche and Cino's attitude with that of the anonymous treatise *De carceribus*, which maintained that there were limits to the legitimacy of the incarceration of poor debtors for reasons of mercy. Once more, competing views of mercy and justice can be seen as fostering intense debates in this period. Cino da Pistoia was active in Siena: see Bowsky, 'Medieval Citizenship'.

in Siena, as will be seen in Chapter 4. Nevertheless, the ideological change in penology, described by historians and connected by Gorringe to theological innovations, seems so far to be valid in this case too.

5. Was Vendetta Legal in Medieval Siena?

The role of revenge in this system of criminal justice is however still far from clear. In order to assess the validity of the theories of scholars such as Zorzi and Gorringe, there are two principal claims that have to be analysed in more depth: firstly, whether vendetta was legal in late medieval communes, and secondly, whether communal justice was more broadly conceived of as revenge and whether religious influences were relevant to these lay views. The two claims are closely linked, since, according to Zorzi, the fact that vendetta was central to the education of medieval Italians and legalized in their statutes was the reason why the concept of revenge was so essential to the definition of communal justice.[108] As seen above, lay writers of pedagogical literature in communal Italy did indeed treat vengeance as a central aspect of education.

As for the legality of vendetta, however, scholars have not unanimously supported Zorzi's theories, as seen in the Introduction. Dean, in particular, has argued that the passage to a signorial regime in this period was central to the disappearance of vendetta, since the *signori* aimed to concentrate into their hands the monopoly of the legitimate use of violence as part of their monarchical ideology.[109] The situation in Florence, as described by Zorzi, is nonetheless very clear. *Competens vindicta*, that is, revenge that did not 'inflict a greater injury or offence than that which one had received' and was

[108] Among his vast bibliography, it is necessary to mention at least Zorzi, 'Conflits et pratiques infrajudiciaires'; *Id.*, 'La cultura della vendetta'; *Id.,* 'I conflitti nell'Italia comunale'.
[109] Dean, 'Marriage and Mutilation', p. 21.

otherwise restricted to the original offender, so that a feud would not spring from it, was ratified in the statutes.[110] In support of his arguments Zorzi mentions other legislative texts that regulate vendetta but do not strictly repress it, such as the *Breve consulum* of Pistoia (1180): in his view, in fact, the legal legitimisation of the 'culture of revenge' remained unchanged from the 12th to at least the end of the 14th century, if not later.[111]

Support for Zorzi's argument comes also from Gabriele Guarisco's studies on the statutes of Parma in the first half of the 13th century.[112] A norm dating before to 1238, for instance, is considered by Guarisco to be proof that vendetta was legal. It declares that punishments (perpetual ban from the city and confiscation of property) for taking one's revenge were meted out only if the avenger attacked someone who had not personally committed a previous violent act against him, and if he did not sue his enemy in the court first, allowing him to decide whether to solve the conflict in a trial or in an extrajudicial fashion.[113] According to Guarisco, the enemy did not necessarily have to be the person who attacked the avenger but anyone from his entourage. In this context Siena offers interesting material for comparison, since this city, unlike Bologna, did not experience signorial regimes until the late 15th century, so that, according to the historiographical models presented so far, one would expect its legislation to bestow a judicial legitimation upon revenge in this period.

There are various references to revenge in the statutes of Siena. The most famous, mentioned by different studies in support of the legality of revenge, threatened serious punishments (three times the amount of the fine for the crime committed, or the death

[110] Zorzi, 'Pluralismo giudiziario e documentazione', p. 177: 'inferre maiorem iniuriam vel offensam quam accepta fuerit'.
[111] *Idem*, 'The Notion and the Practices of Vindicta', p. 112.
[112] Guarisco, *Il conflitto attraverso le norme*; *Id.,* 'Il 'popolo' e le pratiche della vendetta a Parma'.
[113] Guarisco, *Il conflitto attraverso le norme*, p. 140, note 23, quoting Ronchini (ed.), *Statuta communis*, p. 281. For a different interpretation of this chapter, however, see Dean, 'Marriage and Mutilation', p. 10.

penalty if the offence called for it) for those who retaliated against someone who was not the author of a previous criminal action against them. It was considered so important as to be periodically read aloud during the meetings of the general council, as seen above.[114] Zorzi and other scholars argue that similar norms, which appear in many late medieval statutes, were meant to avoid a situation in which acts of vengeance would get out of control and degenerate into a long-lasting feud.[115] These laws however do not clarify whether those who took their revenge against the right person, i.e. the one who had offended them previously, were subject to any penal consequence. They also do not specify whether, in the case of homicide, kin could retaliate against the killer, since the original victim could not do it.

Interpreting, as Zorzi does, such chapters as a sign that vengeance, if regulated, was legal is, as also noted by Kumhera, an *argumentum ex silentio* that rests on indicative evidence, since there is no contrary proof that those who performed vengeance on the right person were not subject to the regular punishments for violent crimes (as opposed to three times the amount of the fine, for those who took revenge 'in alium quam in principalem').[116] It is therefore necessary to examine all the other references to revenge in the legislation of any city, including Siena, in order to be able to prove or disprove this claim.

[114] *Statuti 2*, V, cc. 236-238; *Statuti 3*, f. 147v; *Statuti 5*, f. 277v; *Costituto volgare*, V, c. 307. *Statuti 5* and *Costituto volgare* add also perpetual ban for this crime. The studies mentioning this norm as an argument in favour of the legality of vendetta are: Waley, 'A Blood Feud with a Happy Ending', p. 47; Kumhera, *The Benefits of Peace*, p. 102.
[115] Zorzi, 'Legitimation and Legal Sanction', in particular pp. 29-30 and 45-46.
[116] Kumhera, *The Benefits of Peace*, p. 12: 'I disagree with Zorzi's interpretation of the absence of vendetta in the statutes. Their absence signals instead that vendetta was not an acceptable legal exception to the statutes governing assault and homicide'. Kumhera's position on the legality of revenge is however not clear, since later (pp. 102-103) he seems to interpret this chapter as an assertion of the lawfulness of vendetta *in principalem*.

In the statutes of Siena, the other norm explicitly concerning vengeance seems to have a more positive content with regard to its position in the local legal system. Its text, present only in the last collection examined here, the *Constituto volgare*, recites:

'*That he who takes his revenge against a public enemy or one of his relatives up to the third degree shall not be accused of assassination* (*assassinio*). Also, it has been established and ordered that if any citizen or inhabitant of the *contado* of Siena takes his revenge on one or more public enemies, or offends them, the avenger or he or those who offended the father or the sons or the brothers [of their enemy] cannot be accused or sued or subject to an inquisition on account of being assassins, that is of having taken their revenge or offended for money, notwithstanding any other norm present in these statutes. And this norm shall be an exception to all the other norms that speak against it'.[117]

Although this convoluted chapter seems at a first reading to explicitly exonerate avengers from punishments, the word 'assassino' is in the Sienese vernacular not a synonym, as is in modern Italian, of killer. It specifically denotes a hired killer, as also emerges from the Latin version of the *Costituto volgare*: 'assassini (...) seu pro pecunia vindicantes vel offendentes'.[118] Vengeance thus appears to be not so much a legitimized practice, but rather a mitigating circumstance when compared to murder on commission, which was subject - because of its treacherous nature - to more severe penalties. As shown by the

[117] *Costituto volgare*, V, c. 407: '*Che chi fa vendetta di inimico pubblico o vero chi attenesse infino a terzo grado non sia accusato per assassinio.* Anco, statuto et ordinato è che se alcuno cittadino o vero contadino di Siena farà alcuna vendetta d'alcuni o vero alcuno suo inimico pubblico, o vero esso offendesse, che lo detto vendettario o vero el quale offendesse ne lo padre suo o vero li filliuoli o vero fratelli, o vero alcuno el quale allui appartenesse infino in terzo grado, non possa essere accusato, o vero denunziato, o vero inchierersi contra loro o vero alcuno di loro, che li predetti o vero alcuno di loro sieno essuti assassini o vero assassino, o vero abbiano per pecunia vendicato o vero offeso, non ostante alcuna ragione o vero capitolo di costoduto. Et sia questo statuto derogatorio a tutti li altri statuti e' quali favellano contra questo.'
[118] ASS, Statuti della città di Siena 17, f. 358v. Waley, however, interprets it as a legitimisation of revenge in 'A Blood Feud with a Happy Ending', p. 47.

lists of condemnations in Biccherna 725 (1270-1296), murder or wounding on commission would always be punished with a death or mutilation sentence, whereas other types of homicide and aggressions were in many cases subject to fines only.[119] If there was a publicly established relationship of enmity between the two parties involved in a violent crime, then the judge had to take into account that honour had been its triggering factor, and not the much less socially acceptable reception of a sum of money. Yet in either case the defendant would not be acquitted, just treated differently. Making reference once more to the concept of *fama*, so central in late medieval jurisprudence, it can be said that, whereas a man of good reputation could suffer from tarnishes to his honour and be prompted to react, only a person *male fame* would resort to being hired as a killer or hiring one. Examples from early 14th-century petitions from Siena, analysed in the next chapter, will make it clear that the norm was not intended to legitimise revenge, but to set up an aggravating factor for hiring third parties to commit violent crimes.

Another key reference to revenge in the Sienese legislation is the different formulation of the norm against revenge *in alium quam in principalem* in *Statuti 5*, which affirms the prohibition of taking one's revenge 'against someone who is not contumacious'.[120] It is also repeatedly mentioned in the minutes of the General Council of 1289, and from 1303 on, as one of the *capitula* to be read aloud at the outset of the mandate of the new *podestà*.[121] Between 1289 and 1303, some other volumes mention the necessity of reading a chapter 'de vindicta', probably an umbrella formulation including prohibition against both revenge 'in alium quam in principalem' and 'in alium quam contumacem'. In any case, this rubric implies adherence to the idea that 'no

[119] ASS, Biccherna 725, *passim*.
[120] *Statuti 5,* f. 277v: 'contra aliquem quam contra contumacem'.
[121] E.g. ASS, CG 38, f. 1r; ASS, CG 63, f. 33v

criminal should go unpunished, whether such punishment assumed public or private form'.[122] It postulates however that the city's claims to punish a delinquent came first, and only if it failed to do so would private intervention be a valid alternative. The context in which it needs to be placed is another chapter present in all the statutes of Siena. According to this, the *exbanniti pro maleficio*, the offenders who had committed violent crimes and had escaped the trial by fleeing the city, or had been expelled by the commune, could be attacked with impunity if found by a citizen.[123] The meaning of this rule seems therefore to lie more in the desire to exclude from the community the violent criminal who escaped the consequences of his actions, transforming him into an outlaw, than in a legitimation of revenge. The main point here is the definition of who was included in the community of citizens and who was not, rather than a reflection on the limits of legitimate retaliation. If examined from this point of view, this rubric only reiterated what was already stated in the statutes, while making its implications with regard to the practice of vengeance more explicit.

Private revenge, therefore, was not allowed at all within the boundaries of the city and its jurisdiction, among the *cives* and the *comitatini* who enjoyed full rights (but room was left to present it as a mitigating circumstance in the context of a trial, as will be seen in Chapter 4). Violence was on the contrary legitimate against those who were outside the protection of the commune and were trying to avoid its public retaliation against their crimes. This prohibition of revenge within the boundaries of the city seems to be a characteristic not only of Siena, but of many other communes at the end of the 13th century, for instance Bologna.[124] Even Roman law experts such as Piacentino and Azzone

[122] Pazzaglini, *The Criminal Ban*, p. 62.
[123] *Statuti 2*, V, c. 92; *Statuti 5*, f. 247v, *Costituto volgare*, V, c. 120.
[124] Bologna, Archivio di Stato di Bologna, Accusationes, Busta 5a (1286, I), Reg. I, f. 124r: the court condemns to a fine of £2000 (even higher than the usual ones for assault!) Tommaso di Brancaleone of the

considered revenge against *exbanniti* as the only one lawful.[125] The fact that such norms were interpreted in this way in Siena is backed up by the court records present in its archives. Not only are there no instances of defendants explicitly acquitted for retaliatory actions (which could just mean that revenge was not actively persecuted by the commune). There are also cases of people actually condemned for taking their revenge, who however mention circumstances related to honour and reciprocity as mitigating factors in their attempts to be readmitted (sometimes unsuccessfully, moreover).

Although these documents will be specifically addressed in Chapter 4, at least one source that has been used in previous studies to argue in favour of the legality of vendetta in late medieval Siena should be mentioned: the petition presented in 1304 by Mino di Cione Picchiati, who had taken his revenge on the killer of his father and had for this reason been forced to leave the city and move to Viterbo for twelve years.[126] The councillors readmitted him and his brothers in exchange for a huge fine of 1000 l.; Mino had been initially condemned to capital punishment *in absentia*, and his brothers to a 3000 l. fine for having connived in the crime. It is worth noting that the offenders had left the city rather than face a trial in which they could well have been acquitted if revenge taken on the right person, as in this case, had been a legal practice recognised by the commune. Enmities in medieval cities were supposed to be a public matter, well known to the social circles of the parties involved, to the point that finding witnesses in their favour should not have been impossible for these defendants. Kumhera also found this source difficult to explain if the theory of the legality of vendetta had stood true, and postulated that the reason why Mino and his brothers were condemned lay perhaps in the fact that they did

parish of Santa Lucia for an aggression openly motivated by revenge. I thank Lorenzo Caravaggi for the reference.

[125] A. Zorzi, 'The Notion and the Practices of Vindicta', p. 133.

[126] Waley, 'A Blood Feud with a Happy Ending', pp. 45-53. See also Chapter 2.

not kill their enemy in person but through a hired killer; this seems to me too hypothetical to be useful as an explanation.[127]

Other norms from late medieval Sienese legislation show that not only did the commune target all acts of violence, including those motivated by revenge, as criminal, but it also tried to discourage the implementation of the social obligations that were connected, as seen in Chapter 1, to the membership of a 'culture of revenge'. For instance, a trial from 1298 sheds light on an otherwise obscure chapter of the Sienese statutes, which set a penalty of 200 l. for the crime of 'improperare homicidium' (an expression that seems to mean 'insulting to incite a homicide').[128] The defendant in this trial had to respond for having said to someone else (whose relationship to the defendant is not specified):

'Pacino, you are lazing here and your father was killed and is dead, as you know well, and revenge has still not been taken for this'.[129]

This case shows how the practice of insulting people who refused to take their revenge or delayed it after an affront suffered by a family member, well documented for the Tuscan region in this period, was targeted as criminal by the communal legislation.[130] In Siena such insults were punished with a penalty much harsher than that for other types of slanders (from 40 s. to 25 l., depending on the words and the circumstances), in all

[127] Kumhera, *The Benefits of Peace*, p. 102.
[128] ASS Podestà 8, f. 5r. For the statutes see *Statuti 2*, V, c. 202; *Statuti 3*, f. 145v; *Statuti 5*, f. 272r; *Costituto volgare*, V, c. 262.
[129] ASS Podestà 8, f. 5r: 'Pacino (sic), tu moraris hic et fuit interfectus et mortuus pater tuus, sicut tu bene scis, et non dum facta est vindicta inde'.
[130] Onori, 'Pace privata e regolamentazione della vendetta in Valdinievole'.

likelihood because they were seen as particularly dangerous for the peaceful state of the city.[131]

A similar point can be made with regards to another medieval juridical concept in Sienese criminal justice, that is, *inimicitia* (enmity) or *hodium* (hate). Such a relationship was acknowledged by the statutes, which allowed those who were in an open relation of enmity to carry defensive weapons with them, following payment of a florin to obtain a special licence from the government.[132] This norm, mirrored by other examples from late medieval communes, can support the argument expressed by Zorzi and others that the social reality of a 'culture of revenge' was recognised by authorities. They took actions to limit its consequences but did not try to eradicate it completely, since that was not within their capabilities (moreover, political elites took part in this culture too, and might have seen revenge as an ordinary system of social communication).[133]

In Siena, however, the legislators introduced limitations to the rights of those publicly involved in a state of *inimicitia,* which show that they were not inclined to promote this status as something recommendable or even socially acceptable. For instance, *hodium* was a motivation for which the *podestà* could send someone to confinement outside Siena, if the enmity jeopardised public order.[134] Those 'hodio (...) gravati', together with the sick and the most poverty-stricken, were the only adults exempted from participation in the feast of the Assumption of the Virgin Mary. This was cornerstone of Sienese spirituality and civic identity, in which the authority of the city over the *contado* was staged by requiring representatives of all the communities to offer

[131] *Statuti 2*, V, c. 223; *Statuti 5*, f. 273v; *Costituto volgare,* V, c. 276.
[132] This is always the first chapter of the fifth *distinction* of all statutes. An example of the practice can be found in ASS, CG 20, f. 71v, 29/06/1275, in which two licences are granted to two pairs of enemies.
[133] For a similar institution from Parma, known as *diffidancia*, see Guarisco, *Il conflitto attraverso le norme*, p. 137. For revenge as a system of social communication see Verdier, 'Le système vindicatoire'.
[134] *Statuti 2*, V, c. 68; *Statuti 3*, f. 137r. In *Statuti 2* and *3*, moreover, *hodium* is the only reason why the *podestà* is allowed to send someone to confinement.

candles at the main altar of the cathedral.[135] To be excluded from such a celebration was a symbolic affirmation of their status as second-class citizens, although the measure was certainly a sensible one, given the frequency with which urban turmoil happened in conjunction with big gatherings of people, such as religious festivities.[136] Finally, another norm included in the statutes of the armed societies of the *Popolo*, re-established in 1300 with the aim of defending the city, barred from enrolment anyone who had 'a mortal enmity on account of an offence performed by him against someone else'.[137] The other grounds for being excluded from such societies, which aimed to gather all the citizens who loved the 'peaceful state' of the community and rejected *violentia*, were not paying taxes or being a magnate. The members of these categories, as highlighted by many scholars of communal Italy, were almost seen as 'internal enemies' of the community in this period, and did not enjoy the full rights of regular citizens.[138] All these limitations are telling signs that in the ideology of the commune of Siena the most prominent bearers of a culture of private revenge were far from being offered as models of civic virtue; whereas other virtues, promoted by the government and by religious organisations, had a stronger impact than has been recognised so far, as proposed in Chapter 2.

In conclusion, the analysis of the Sienese statutes seems to support Dean's thesis that the explicit legalisation of regulated revenge in the legislation of Florence is indeed not typical of communal criminal justice from the end of the 13th century. If some earlier (12th- and early 13th-century) texts mentioned by Zorzi and Guarisco contained norms

[135] *Statuti 2*, V, c. 37. See also Chittolini, 'Civic Religion and the Countryside in Late Medieval Italy'.
[136] See for instance the law preventing people from the *contado* from carrying weapons to religious gatherings in *Costituto volgare*, V, c. 388.
[137] ASS, Capitano del Popolo 1, c. 20r, *Quod sint sotietates in civitate Senarum*: 'inimicitiam mortalem occasione offensionis facte per eum contra aliquam personam'.
[138] Milani, 'Banditi, malesardi e ribelli'; on the position of tax evaders in the commune of Siena see Mucciarelli, 'Appunti sul controllo sociale', pp. 329-333.

legitimising certain forms of revenge (no such texts are however available for Siena), it seems that from the late 13th century the trend pursued by the legislators was one towards a reorientation of public opinion against the practices connected to the 'culture of revenge'. This is shown not only by the analysis of the statutes carried out above, but also by documents from other Italian communes, particularly Dean's Bologna, and it has also been suggested for extra-Italian contexts such as Angevin Provence.[139] Florence would appear therefore as an exception, not as a typical case.

The court cases involving people accused of revenge crimes show that, as is obvious, the influence of this model on the male population did not disappear all of a sudden; on the contrary, it continued to prosper well beyond the period analysed in this thesis.[140] To a certain extent, legislators took into account the importance of revenge practices in the mind-set of citizens (including in all likelihood their own) by giving them some recognition in the statutes. However, Sienese evidence shows that the model was not at all unchallenged, and it calls for a reconsideration of the variety and strength of the influences that citizens of the Italian communes were exposed to with regards to topics such as conflict, violence and pacification. In Siena, vengeful practices cannot be said to have been legitimised or encouraged by the authorities in any way. The strong republican character of the city, however, prompts us to seek an explanation for this feature that is not based on the emergence of signorial regimes, as suggested by Dean. In the next section, I will try to demonstrate that the commune exalted revenge only when it made use of the logic behind it itself, and I will argue that religious ideas were central in the

[139] Smail, 'Telling Tales in Angevin Courts', p. 203: 'The appeal to the logic of vengeance was not blatant in the appeals: vengeance was sufficiently in bad odor, among both ecclesiastic and secular judges in the mid-fourteenth century, to allow a more obvious appeal to the validity of vendetta'.
[140] The bibliography on revenge in the early modern period is vast. For the main works of the last few decades, see Zorzi, 'I conflitti nell'Italia comunale', p. 8, note 4.

legitimisation, for the government, of a practice that was on the contrary forbidden to private citizens.

6. 'Vengeance is mine': Righteous Indignation and Retribution in the Sienese Legislation

Vindicta and *ultio* are terms that the authorities of the commune use in their official documents to describe the repression of deviant behaviours in the city and *contado*, in line with the examples provided by Zorzi for other Italian cities and the wider scholarship discussed at the beginning of this chapter.[141] In order to understand the meaning of these words in the context of Sienese criminal justice, and to ascertain whether they were exact equivalents of the concept of justice, it is necessary to see what Sienese authorities were trying to achieve when they spoke of revenge against criminals or rebels. As seen in the Introduction, the historiography of the Italian communes has often stressed that the scope of communal justice was essentially that of settling disputes, so that violence in the community would not threaten the stability of social life and the political regime.[142] The idea of a public interest in punishing criminals, however, changed the ideology of the legal system, even if the reality of judicial practice had to come to terms with the limits of communal power, and often resorted to compromise and negotiation instead of applying the literal words of the law.[143]

Alongside the conciliatory functions performed by courts (i.e. allowing enemies to settle their dispute with the help of a neutral third party, the judge), deterrence emerged in this new ideology as a central function of criminal justice. The harsher punishments

[141] Just to mention a few occurrences: ASS, CG 20, f. 25r, 26/02/1275: 'fiat expresse ultio in destructionem rebellium'; ASS CG 52, f. 122v, 20/12/1297: 'fiat vindicta per commune Senarum'.
[142] Vallerani, *Medieval Public Justice*, pp. 15-19.
[143] Sbriccoli, ''Vidi communiter observari''.

meted out by late 13th-century statutes were meant to discourage the proliferation of criminal acts by setting spectacular examples and thus educating the rest of the community.[144] This idea is openly stated in Sienese sources and, as seen, bears resemblance to the Mendicant conception of what the purpose of the public use of violence should be. According to the government, too, virtue had to be inculcated in citizens in order to prevent crime; however, there would always be those who were not stopped from committing crimes by the knowledge of the sinful nature of their behaviour. It was because of these people that punishments had to be fearsome and exemplary:

'(...) so that those who carry out similar illicit actions, seeing that the ways of their malice have been blocked, are chastised with a punishment as much deserved as due; and so that no one, if not for the love of virtue at least for fear of punishment, try or dare to go against the verdicts of the *podestà* (...)'.[145]

On first impressions, therefore, it would seem that the authorities of Siena shared the Mendicants' views of what constituted the appropriate framework for the use of violence by a lay government. They would however use the word *vindicta*/*ultio* to describe it, whereas the Sienese preachers would reserve this expression to divine justice. There are, however, strong indications in the sources which allow us to argue that Sienese criminal justice also had aims that corresponded more closely to the morally retributive meaning of revenge which Gorringe associated with the doctrine of *satisfactio,* and which Sienese

[144] See Zorzi, 'La pena di morte in Italia'; *Idem*, 'Riti e cerimoniali penali'.
[145] ASS, CG 46, f. 86r, 06/12/1293: '(...) ut talia et illicita commictentes sibi viis suarum malitiarum recisis tam digna quam pena debita puniantur; et ut nullus et si non virtutis amore saltem pene metu attentet, audeat vel presumat contra infrascriptam sententiam, equam et iuxtam provisionem'.

preachers excluded from the sphere of human judgement. This aspect, though, has been generally downplayed in the study of legal systems of the Italian Middle Ages.[146]

Even in the excerpt that has just been analysed, the idea that a *pena* is meant to be *digna* and *debita*, a concept expressed in many other Sienese sources, seems to mirror the convictions expressed by Anselm of Canterbury. A sinful act institutes a debt (*debitum*) between the sinner and the authority (in this case the commune, not God), creating the moral obligation for the latter to restore the equilibrium through a 'deserved' punishment of the culprit.[147] The whole rhetoric of the public interest in the punishment of criminals, which is openly used in Sienese *ordinamenta* and council minutes, is precisely based on the necessity of a penalty as a reparation to public authority, whose honour is damaged by crime.[148] The commune punishes, just like God according to Anselm and, partially, to the Sienese preachers, so as to 'take its revenge and recover its honour'.[149]

In this spirit, Albertus Gandinus maintained that peace charters could be admitted in a trial as documents in favour of the defendant, but could not completely cancel a condemnation because the 'iniuria rei publice' (affront to the community) was still extant.[150] This idea seems to be reflected by the evolution of the Sienese statutes on the topic of private peace, whose function seems to have become more and more that of closing off extrajudicial action (once a peace was concluded, any crime committed against the former enemies would be punished in an extremely severe way), rather than

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[146] See for instance Vallerani, *Medieval Public Justice*, p. 72; Kumhera, *The Benefits of Peace*, p. 11: 'those in charge of justice themselves were instructed to resolve conflict more than to punish it'; much more in favour of highlighting morally retributive aspects is Sbriccoli, 'Vidi communiter observari'; *Id,* 'Tormentum id est torquere mentem'.

[147] For similar expressions see ASS, CG 38, f. 13r, 10/08/1289: 'penam condignam'; ASS, CG 45, f. 110r, 23/06/1293: 'pena debita'; ASS, CG 68, f. 90r, 21/02/1306: 'pena debita'.

[148] Vallerani, *Medieval Public Justice*, pp. 65-67. For Sienese examples of the rhetoric of public interest see e.g. ASS, CG 95, f. 133v, 1321: 'item cum sit necesse ne maleficia remaneant impunita'; ASS, CG 15, f. 35r, 17/01/1272: 'ut maleficia ne transeantur impunita'.

[149] ASS, CG 34, f. 87r, 21/12/1287: 'vindictam facere et honorem communis recuperare'.

[150] Albertus Gandinus, *Tractatus de Maleficiis*, vol. 2, p. 194.

compensating a victim.[151] The *ordinamentum de pace rupta*, entailing a perpetual ban and later a death sentence, was sometimes considered so onerous by the citizens that they would refuse to draw a peace charter with a former enemy even after an informal pacification had successfully happened.[152] It is possibly for this reason that in 1302-1304 the commune introduced norms that allowed victims to request the *podestà* to force the relatives of the offenders to draw up a peace charter, as seen in Chapter 1.[153]

An episode in which the idea of the necessity of repairing the 'iniuria rei publice' at all costs was put into practice is the jurisdictional controversy between the commune and the ecclesiastical court of Siena, which lasted from 1288 until 1297.[154] The conflict began when a vicar of the bishop brought a layman to trial for a criminal offence, thus appropriating a right that belonged to the secular court, since ecclesiastical courts could only judge clerics. Following a reaction from the commune and an excommunication of the *podestà* by the bishop, the clash extended its range from the interference of the ecclesiastical court in the exercise of the commune's jurisdictional rights, to what the lay elite considered the excessive leniency of the bishop's tribunal in punishing crimes, so that offenders could get away with their illegal actions. The outcome of the conflict was the approval of new criminal statutes for the ecclesiastical court.

This new legislation gave a more stringent definition of the status of cleric, so as to avoid the clash of competences with lay justice, but they also expressed a fundamental new principle, that of the equivalence of penalties between the two tribunals.[155] In other

[151] Dean, 'Violence, Vendetta and Peacemaking', p. 10.
[152] ASS, CG 53, f. 106r, 23/04/1298; for the norm against breaches to peace charters in the Sienese legislation see *Statuti 2*, V, c. 29, and *Statuti 5*, f. 238r (in which the death penalty is introduced).
[153] Chapter 1, section 3.
[154] Zdekauer, 'Statuti criminali del foro ecclesiastico', pp. 231-260; Bowsky, *A Medieval Italian Commune*, pp. 111-ff.
[155] Their edition, from the volume ASS, Statuti di Siena 15, ff. 215r-226r, can be found in Zdekauer, 'Statuti criminali del foro ecclesiastico', pp. 13-28.

words, the bishop's vicar had to apply to deviant clerics the same punishments that the secular court would apply to lay offenders. The only difference was that instead of death penalty and corporal mutilations, which could not be applied to members of the *genus clericorum* according to canon law, they would be sentenced to life imprisonment. The preservation of this principle of equivalence was very important for the Sienese government, as is shown by the discussion of the new statutes in an assembly of 1297, in the presence of representatives of the bishop. The only amendment to the new legislative corpus made on this occasion sprang from the intervention of Federigo di Renaldo Tolomei. He successfully insisted that deviant clerics serve their condemnation to life imprisonment in the communal prison, in order to make sure that they would not receive too lenient a treatment in the bishop's jail.[156] This whole episode seems to indicate that the question of the fitness of the penalty to the crime was as important to Sienese politicians as was that of preservation of the commune's jurisdictional autonomy, if not even more so; and, also, that the Church could be forced to give in to the trend of greater judicial severity.

The idea of reciprocity lying behind the concept of revenge as moral retribution expressed by religious authors, including those from Siena, seems also to be evident in the tendency the statutes show, towards the very end of the 13th century, to contemplate penalties which increasingly mirrored the crime they punished. Arson was, for instance, punished in the statutes of 1262 with a fine of 1000 l. or a condemnation to the stake if the offender was insolvent and the crime happened in the city, whereas in the countryside they would have to pay 100 l. or be condemned to hanging.[157] Already in 1282, however,

[156] ASS, CG 51, 11/04/1297, ff. 88r-90r, edited in Zdekauer, 'Statuti criminali del foro ecclesiastico', pp. 31-36.
[157] *Statuti 2*, V, c. 222.

the distinction between city and countryside was abolished, and all arsonists were condemned to be burnt at the stake, without having the possibility of paying a fine to save their lives.[158] Mecacci explains this evolution not as an instance of the application of the *lex talionis*, but rather as a consequence of the fear of the damage caused by uncontrolled fires.[159] Although fires were surely a serious and much-feared problem in medieval cities, the fact of choosing the stake as the only penalty for arsonists can be interpreted also as a means of attributing a more mimetic character to the punishment, especially if one takes into account also the similarity of this to other cases, such as that of perjury.[160]

A specific penalty for this crime was added to the statutes only in 1297, but obviously false testimony was punished before that date too, as demonstrated by the lists of condemnations of *Biccherna* 725. These record show that in 1287 the misdeed was punished with a 250 l. fine, whereas in 1296 the sum increased to 500 l.[161] The 500 l. penalty was also affirmed by the norm that for the first time explicitly mentioned perjury in a marginal note of *Statuti 5*, but in case of insolvency the fine was now substituted by the mutilation of the tongue and of the upper lip.[162] The aim of the procedure is made clear in the petitions of *Biccherna* 731, where it is stated that the maiming was performed 'so that the teeth would remain uncovered and [the victim] would not speak anymore'.[163] The offender of a crime in which the human gift of language had been used improperly was thus condemned to a punishment through which they would not be able to speak anymore, in a sort of Dantesque *contrapasso*. This is the law by which, in the Divine

[158] *Statuti 5*, f. 268r.
[159] Mecacci, *Condanne penali*, p. 28.
[160] Hanging seems to have been, moreover, the most common form of capital punishment in medieval Europe, according to a comparative study presented in Mills, *Suspended Animation*, p. 23.
[161] ASS, Biccherna 725, f. 532r (*podesteria* of Guido of Modigliana, July-December 1287); f. 1035v (*podesteria* of Berardo di Gentile da Varano of Camerino, January-June 1296).
[162] Statuti 5, f. 276v (marginal note).
[163] ASS, Biccherna 731, f. 13r: 'ita quod dentes descopertos remaneant et de cetero non loquaretur'.

Comedy, the souls in Hell suffer a punishment that either resembles or contrasts the sins they had committed).[164]

Such instances of the introduction of penalties with a mimetic relationship to a crime (to which we can add the *suspensio per virilia* for sodomites, the amputation of the tongue for blasphemers introduced again in *Statuti 5,* etc.)[165] cannot be derived from the influence of Roman law, in which this principle was not applied. They have much more affinity with the Old Testament *lex talionis* and the aforementioned *contrapasso* of Dante's Comedy, both systems that are directly related to the retributive principle that lies also behind the logic of revenge.[166] The vengeful and retributive nature of the talion was already affirmed in Isidore of Seville's definition that

'Talion is the reciprocity of revenge, so that one receives a penalty equivalent to what they have done'.[167]

It must be noted that, in this case too, Siena does not seem to be an outlier but to reflect a general trend in the evolution of communal criminal justice, as also noted by Zorzi, who mentions sacred texts as a possible source of inspiration.[168]

Revenge as strict retribution was therefore undeniably present as an aspect of Sienese criminal justice, despite the Mendicants' conviction that it should be excluded from human affairs. It would therefore seem that, if there was a religious influence on the development of criminal justice, as suggested by Gorringe and partially by Zorzi, it was

[164] See *Enciclopedia Dantesca*, article *Contrappasso.*
[165] *Statuti 5*, f. 272v.
[166] Armour, 'Dante's Contrapasso', pp. 1-2, note 1.
[167] Isidore of Seville, *Etymologiarum sive originum libri XX*, l. V, 27: 'talio est similitudo vindicte, ut taliter patiatur quis, ut fecit'.
[168] Zorzi, 'Rituali e cerimonie penali', p. 147.

not mediated through the sermons of the Mendicants. However, in order to challenge this vision and show that the voice of the Mendicants was heard by the government, there are still two points I intend to discuss. Firstly, how the commune justified its increasingly retributive approach while at the same time discouraging vendetta and pursuing it as a crime when vengeance regarded individuals, families or factions. secondly, whether the communal idea of justice was indeed essentially correspondent to revenge or was more similar to the spectrum of positions that characterised justice according to the Mendicants.

A more in-depth analysis of the sources shows that Mendicant criticisms and ideas on vengeance and justice were actually taken into account in communal ideas of justice, although they were manipulated in order to serve the interests of the political body. For instance, while it has been seen in Chapter 2 that the emotions associated with revenge were increasingly censored by the government, there are signs in the Sienese sources of the rise of a sentiment of righteous indignation expressed by the authorities against wrongdoers. This was often expressed not in the same way individuals traditionally conveyed anger, but specifically by 'othering' public enemies through biblical and other religious references.

In the minutes of the General Council, for instance, the use of a language of divine revenge, borrowed mainly from the Old Testament, can be identified. This happened in particular when talking about those who were considered the most dangerous for the preservation of the public order, i.e. the rebellious lords of the Maremma, against whom the commune fought long wars, and the *exbanniti* who formed criminal bands in the countryside. In 1287 the scribe defines the area around Buonconvento, infested by one of the latter, as a 'den of thieves' (Jeremiah 7, 11 and the Gospel passages on the Cleansing

of the Temple).[169] In the same year, during a discussion on the actions to be taken against the enemies of Siena (in all likelihood rebellious lords of the countryside), Ciampolo Albizzi (on whom see Chapter 1) and Guccio Malavolti request that they be destroyed 'to the fourth generation' (Deuteronomy 5,6-21; Exodus 20, 2-17), 'to terrify and punish he who might try to betray the city or the community of Siena'.[170] Both quotations are taken from contexts in which the Lord expresses his wrath against those who defy his commandments.

Comparing criminals to religious enemies was another common strategy, as appears in the description of the wrongdoings of Baschiera di *dominus* Bindo della Tosa, a Florentine general who had sided with Emperor Henry VII during his expedition in Italy and had caused much damage in the territory of Siena. Even though the council voted in favour of the remission of his life sentence in 1321, he was described as a man who had wreaked havoc 'more iudaico' (in the manner of the Jews) and 'spiritu diabolico inflammatus et instigatus' (excited and instigated by a devilish spirit).[171] The latter expression was popular in judicial sources, too, to describe the dynamics of the most abhorrent crimes perpetrated in Siena, generally (although not exclusively) used to talk about homicides.[172] In the *Constituto volgare* even pettier crimes, such as backbiting, are associated directly with Satan, by describing those who commit them as people 'e' quali el diavolo portano seco' (who take the devil with them wherever they go).[173] As also underlined by Roberta Mucciarelli, the indignation towards these categories is justified 'facendo riferimento a un preciso sistema simbolico' (by making reference to a precise

[169] ASS, CG 33, f. 11r, 4/01/1287: 'spelunca latronum'.
[170] ASS, CG 34, f. 11r, 30/07/1287: 'usque ad quartam generationem'; 'ad terrorem et punitionem [eius] qui proditionem civitatis vel comunitatis Senarum adtemptasset'.
[171] ASS, CG 95, f. 163r, 22/04/1321. On Baschiera see Tarassi, 'Della Tosa, Baschiera'.
[172] ASS, Biccherne 731, f. 256r: a homicide is committed 'Deum pre oculis non habendo' (not having God in front of his eyes, i.e. having forgotten about God in that moment) and 'diabolico spiritu instigatus'.
[173] *Costituto volgare*, p. 509.

symbolic system).[174] It has to be noted, once more, that in other contexts, such as France, references to the devil were on the contrary used by petitioners as a mitigating factor: they indicated a lack of responsibility and premeditation, because the action had been committed in a state of diabolic possession.[175]

Comparing internal or external enemies to religious opponents, Jews or heretics, was of course not an absolute novelty: in communal Italy the Ghibellines, for instance, were often associated with heterodoxy following this logic. Nevertheless, the combination of this element and the retributive attitude visible in Sienese legislation seems to indicate that the commune of Siena conceived of itself as a community 'blessed by God', which partook in divine justice and was thus legitimized to use revenge as a mode of judging which was otherwise typical, as seen, of the Almighty. The enemies of the commune were characterised as being far from the grace of God and were therefore to be punished in the 'most just way', that is a mimetic one, mirroring concepts of justice utilised by the Divinity Itself. The specular nature of penalties and crimes was often used in vision literature as well, to convey the absence of randomness and arbitrariness in God's justice, and to create an ideology that united legality and morality.[176]

This ideology of criminal justice as an instrument through which the commune reflected divine justice had its end point in the 14th-century statutes of Siena in which, as Ascheri comments, there was a clear influence of what he defines a 'Mendicant culture'.[177] It must be remembered that the statutes were documents of high ideological importance. This is demonstrated by the initiative of translating them into the Sienese

[174] Mucciarelli, 'Appunti sul controllo sociale', p. 342.
[175] Gauvard, *De grace especial*, p. 439.
[176] Barolini, 'Medieval Multiculturalism and Dante's Theology of Hell', p. 88.
[177] Ascheri, 'Législation italienne du Bas Moyen Âge', p. 70.

vernacular to make them more accessible, a strong indication of the image of 'popular government', representing the interests of all citizens and not only of a faction, that the Nine were trying to project. The sixth *distinctio* of the *Costituto volgare* already provides a good example of 'Mendicant influence', with its reference to 'pace perpetua et pura giustitia' (perpetual peace and pure justice) as the motivations for which the office of the Nine was instituted, 'acciocché la giustitia in tutti gli uomini, di qualunque conditione sieno, mellio si conservi' (so that justice be better preserved among all men, regardless of their social status).[178]

The discredit this phrasing seems to cast on familiar and clientelar solidarities, and its focus on individual rather than group responsibilities, indeed reflects very well the penitential discourse centred on personal guilt analysed in Sienese religious sources in Chapter 1.[179] The prologue of the statutes of 1337-1339, nicknamed 'del Buon Governo' by Ascheri, because of their contemporaneity with the famous cycle of frescoes, opens however a different window onto the influence of religious concepts of justice on the lay government. The texts, inspired also by Justinianic legislation, described how Siena

'Lifted her eyes to the top of the mount of justice and thanks to it (i.e. justice), striving for peace, deserved to govern the people entrusted to her in a peaceful state by the will of God'.[180]

It is clear here that the commune, just like many other European sovereigns, legitimised its judicial policy by claiming the role of God's vicar on earth, an idea that

[178] *Costituto volgare*, VI, c. 2.
[179] See also Ascheri, 'Gli statuti delle città italiane', p. 104.
[180] ASS, Statuti della città di Siena, 26. The edition of the prologue is in Ascheri, Funari, 'Il proemio dello statuto comunale del Buon Governo', pp. 351-353: 'ad apicem montis iustitie oculos elevavit et per illius tramites, pacem querens, meruit populum sibi traditum in stato pacifico divinitus gubernare.'

was often promoted in medieval times on the grounds of Romans 13, 1 ('every soul must be submissive to its lawful superiors; authority comes from God alone, and all authorities that hold sway are of his ordinance').[181] As a consequence, another Pauline verse, Romans 12, 19, so central in the penitential reflection on justice and mercy, could assume a new meaning. Sienese hagiographers and preachers used the latter to express the duty to forgiveness that people have towards their fellow humans, since there is no such person as one who is not tarnished by sin (*in primis* the original sin), and who has therefore a reasonable claim to judge and punish others.[182] Accordingly, they harshly condemned revenge as a practice forbidden to Christians. The commune, insisting on the vicarial role of the government in relation to God as in the passage above, could follow the Mendicants' elaborations on the prohibition of revenge, while at the same time making an exception for itself as a collaborator with the divine plan on earth. The Sienese political elite could thus claim a right to exert a public form of revenge as a way of promoting divine order in the city, as they did again in the prologue of the *constitutum* of 1337-1339:

'So that the harsh retribution that follows crimes, which is meant to bring with it the sweetness of peace, can provide solace to everyone'.[183]

The reference to the feelings of relief and pleasure that the community is supposed to feel when witnessing an act of 'public revenge' by the commune sounds like a complete transposition of the emotions connected to the performance of private acts of vendetta onto a public level. The promotion of such public feelings, as opposed to the repression of the same emotional fondness for revenge and the anger associated with it (even when

[181] On this verse, see Sacchi, 'Colpa e pena in Rm 13, 1-7'.
[182] On the relationship between Rm 13, 1-7 and Rm 12, 9 see also Bori, 'Pena, detenzione, etica, culture'.
[183] Ascheri, Funari, 'Il proemio dello statuto comunale del Buon Governo', p. 352: 'ardua scelerum succedente vindicta, que pacis dulcedinem secum ducat, cunctis possit esse solatium.'

a *podestà* or a judge felt them against a defendant), was possible and not contradictory with the rest of communal ideology. This is because the commune, just like God, was conceived of as an entity that could have feelings but was not blinded by them in the way an individual would be, according to (as seen in Chapter 2) both the Mendicants and the political elite of Siena. The commune was indeed seen as a *persona ficta*, a concept that, in its medieval form, is deeply indebted to canon law and the theological doctrines on the Church as a mystical body.[184] As Sbriccoli put it, it was a 'soggetto giuridico maiestatico' that could act as an 'ultor uniuscuiusque civis' (avenger of each citizen).[185]

As seen before, this collective subject could suffer injuries (according to Albertus Gandinus), have feelings and, in the same way as real people, have distinguishing traits, first and foremost that of being –just like God- a father. This emerges clearly from the late 14th-century petitions of the *contado* communities to the government of Siena, in which the latter is described as a father of the former, described as daughters or servants.[186] Even before, and at least from the early 14th century, there are traces of the popularity of such a attribute of the commune, addressed by the citizens as a 'pater iustitie' (father of justice) or 'pater pauperum' (father of the poor).[187] The commune was therefore partially anthropomorphised but, compared to real people, it was considered able to pass judgements without being hindered by the consequences of original sin.

Such an ideological construction is very similar to that developed by late medieval monarchies, and used particularly to legitimise their reforms of criminal justice, which pursued the same basic aims as communal ones.[188] As asserted by Kantorowicz and

[184] Cortese, *Le grandi linee della storia giuridica medievale*, p. 348; Pasciuta, *Il diavolo in Paradiso*, p. 100.
[185] Sbriccoli, 'Vidi communiter observari', pp. 262-263.
[186] Barlucchi, 'Le 'petizioni' inviate dalle comunità del contado', p. 274.
[187] ASS, CG 88, f. 161r, 15/04/1317; ASS, Biccherna 731, f. 67r. More examples will be analysed in Chapter 4.
[188] Gauvard, 'Le roi de France et le gouvernement par la grâce'; *Ead.,* 'La grazia del re di Francia alla fine del Medioevo'.

further examined by Dagron, kingship is conceived of as a 'personnalité collective indissociable mais juridiquement distincte de la personne du roi'.[189] Dagron highlighted how the paradigm of a 'king-judge' was central in Christian Europe throughout the Middle Ages, alongside the other powerful construct of the 'emperor-legislator'.[190] In communal Italy, too, the monarchical ideal had never ceased to be influential.[191] It is clear, however, that, contrary to Dean's theorisation, the passage to a signorial regime was not necessary for a development of the ideology of criminal justice in the direction described so far. Siena, one of the longest-lived republican regimes in communal Italy, shows on the contrary a particularly early transformation in this direction. It seems that the model of God as a just Father and ultimate avenger, who created humans in His own image, but whose ability to judge was not compromised by sin and emotionality in the same way as that of mankind, could offer, through the mediation of pastoral works, material for legitimation to all types of regimes.[192]

What changed between these contexts was the depth of the influence of religious elaborations, and the practical ways in which political elites appropriated these ideas to promote their own agenda. As seen already more than once, for instance, the Italian communes seem to have absorbed some of the penitential doctrines related to personal responsibility and 'good' emotionality more deeply than France.

Just as divine justice, as seen, comprised not only retribution, but also mercy, a commune that wanted to present itself as a mirror of God's righteousness needed to make

[189] Kantorowicz, *The King's Two Bodies*; Dagron, 'Empires royaux, royautés imperiales', p. 90.
[190] *Ibidem*.
[191] Ascheri, 'Die andere Gewalt'.
[192] On the opportunity of reconsidering the importance of the structural similarities between developing 'nation-states' and other forms of medieval polities see Watts, *The Making of Polities*.

room for forgiveness at the same time as it extolled harsh revenge against wrongdoers[193]. There are clear indications that in Siena justice was not seen first and foremost as revenge, but again as a spectrum, and that in this spectrum every possible approach was as valid as the others; only the particular context of a political action would determine which one should prevail. Just as in the sermons, the word *vindicta* is always used in communal documents to indicate strict retribution (as in the examples analysed above), whereas *iustitia* often works as an umbrella term whose contextual meaning is clarified by accompanying specifications. One can therefore find in Sienese sources a variety of expressions such as 'equa iustitia', 'amore iustitie et equitatis', 'intuitu iustitie et iuris rigore', 'iustitia cum misericordia observari'.[194] Mercy also appears separately from justice to indicate an asymmetrical approach to crime, and is almost always coupled with ideas of religious piety, a clear indication that it was an approach connected, in the eyes of the commune, to God's commandment to forgiveness, as in pastoral works.

The expression 'intuitu pietatis et misericordie' ('taking piety and mercy into account') was the typical stated reason for the commune's most ritualised acts of forgiveness, such as the *oblationes*, amnesties of poor prisoners that will be examined in Chapter 4.[195] Mercy was seen as a duty that the commune had towards its citizens, if it wanted to present itself as a legitimate power and not as a 'potentia tirampnica', in accordance with the caveats expressed by religious texts when talking about the use of violence by public authorities. A very clear example of the connection between the duty of mercy and the possibility of presenting oneself as a legitimate user of violence and

[193] This is again true also for monarchies: see Gauvard, 'Le roi de France et le gouvernement par la grace', p. 385, *Ead.,* 'La grazia del re di Francia', p. 149.
[194] ASS, Capitano del Popolo 1, f. 17r, 1300; ASS, CG 46, f. 60v, 7/10/1293; ASS, CG 53, f. 81v, 19/03/1298; ASS, Biccherna 731, ff. 977r, 982r.
[195] For an example of the use of this expression in a different context, that is, the authorisation given by the General Council to the Nine to make peace with a rebellious community of the *contado*, see ASS, CG 88, f. 166r, 22/04/1317: '(...) volentibusque redire ad rectum benivolentie tramitem pietatis et misericordie gremium aperire (...)'.

punishment is the preamble of a document in which the Fifteen made provision for the protection of war prisoners after the conclusion of a conflict (the reference is in all likelihood to the Sienese recapture of Rigomagno from Ghibelline exiles in 1281):[196]

'Because it is by the will of God that we hold our office, which we believe has been assigned to us by the heavenly majesty for the defence of the city, and we proceed in all our decisions and actions in His name and through Him we received the laws to defend the city, thanks to Him we concluded the war successfully, and thanks to Him we overthrew the hardest enemies and the strongest tyrants, it is expedient for us to receive victory and triumph from the omnipotent God, and His generosity and munificence, with all the due reverence and devotion, and not to abuse the generosity and grace given to us, and to prevent other people from abusing them, lest the blessed God who showed us His favour and His wrath to enemies turn his judgement around'.[197]

In a later document, in which a peace settlement was made between Siena and the subject community of Massa over the possession of the rural commune of Gerfalco (owned by Siena but temporarily appropriated by Massa), forgiveness is explicitly recognised as a duty which the commune had taken over from the penitential doctrine of the Church. When Massa decided to recognise Siena's rights on Gerfalco and acknowledge the commune as 'patrem suum' (its own father), the General Council forgave the crimes of the Massani using these phrasings:

[196] Anonymous, 'Cronaca senese', p. 67.
[197] ASS, CG 25, f.38r, Allegato C, 1281: 'Quoniam Deo auctore nostrum gubernamus officium, quod credimus pro defensione civitatis a celesti maiestate traditum et inventum, et in Eius nomine omnia nostra consilia omnesque actus nostros semper progredimur et per Ipsum suscepimus iura defendere civitatis, per Ipsum bella feliciter peregimus, per Ipsum acerbissimos hostes et fortissimos tirannos deiecimus, expedit quidem nobis ipsius omnipotentis Dei victoriam et triumphum, benefitia et largitates Eiusdem suscipere cum omni reverentia debita et devote, nec abuti beneficiis et gratis nobis datis, nec permictere quod ab aliquot abutatur, ne ipse quidem Dominus benedictus qui gratiam suam nobis totam exibuit et inimicis iram suum pervertat iudicium.'

'And since it is the doctrine of the Holy Mother Church that the bosom shall not close for those who return, and it is also in the interest of any father to dutifully and kindly readmit a repentant son, and since the aforesaid commune of Massa does repent...'[198]

The definition of the *Dei iura* (divine rights) the commune was bound to respect and promote, featured in the *abbreviatio constituti*, a summary and explanation of the main principles of the statutes included in their 1337-1339 redaction, is once more the final point in a process of incorporation of the merciful aspect of divine justice:

'These are the divine rights: those related to the Catholic faith and the defense of ecclesiastical courts and their rights, privileges and immunities, to the alms for the poor [uncertain reading], to prisons and prisoners and assisting them and to many other deeds performed to honour God, such as *oblationes* [lit. offerings, but see next chapter for its judicial meaning] and the celebration of holidays and so on'.[199]

In conclusion, the influence of religious ideas on the development of concepts of justice (in particular applied to criminal legislation) postulated by Gorringe also emerges from this comparison of pastoral and legislative sources from late medieval Siena. However, the relationship between ideas of divine and human justice is much less linear than he assumed. On the one hand, lay elites might have been inspired by the Mendicant rebuttal of human revenge when crafting increasingly strict legislation on practices of private retaliation. On the other hand, though, when they promoted ideas of public

[198] ASS, CG 91, f. 40v, 07/07/1318: '...et [ut] doctrina sit Sancte Matris Ecclesie quod gremium redeuntibus non claudatur, ac etiam cuiuslibet patris intersit pie ac benigne filium recipere penitentem, et dictum commune Massanum peniteat...'
[199] Ascheri, Funari, 'Il proemio dello statuto comunale del Buon Governo', p. 353.

revenge as an earthly mirror of divine justice, they appropriated and creatively rephrased religious symbols and prerogatives in ways that preachers were not trying to promote and that, on the contrary, they would have criticized to an extent. At the same time, religious actors seem to have managed to promote in Sienese governmental circles the idea that mercy, a concept so central in penitential preaching, should have a larger role in human criminal justice (and as will be seen in Chapter 4, they did this not only through sermons, but also through their direct intervention in political life). The commune's attitude to wrongdoers became therefore at the same time more severe and more lenient, mirroring the balance between retribution and forgiveness of divine justice.

This set of phenomena shows how, in the period 1260-1330, religious elaborations on crime and violence were indeed influential on lay criminal justice. However, they were not just passively received by laypeople, who on the contrary transformed them to serve their own purposes. These were obviously a legitimisation of the higher degree of violence and invasiveness of communal justice achieved by contemporary reforms, but possibly also the genuine personal conviction of the political elite that they were responsible for the moral state of the community. Sienese evidence shows that religious actors cannot be seen as mere providers of ideological material for government legitimisation, but as an effective 'pressure group' that engaged in a debate with the laity and sometimes (subtly) criticised it. According to the jurist Quaglioni, this characteristic is typical of the 'Judeo-Christian paradigm' of justice, in which this concept (as in Sienese sources) is posited as directly dependent from God and not from political authorities, so that resistance to potential abuses by human powers is always possible.[200]

Finally, the question of the influence of Roman law on these phenomena must be briefly addressed. Siena and Bologna, among other communes, based their legislation on

[200] Quaglioni, *La giustizia nel Medioevo*, pp. 19-20.

Roman law, unlike Florence, where the basis was Lombard jurisprudence.[201] In late Roman codifications *vindicta* (in the sense of violent retribution) was strictly reserved to the Emperor, except in cases of self-defence.[202] This conception could have influenced the elite as much as pastoral initiatives did, and certainly more than the masters of theology, especially in cities, like Siena, that hosted flourishing law schools.[203] Without rejecting this argument, it seems that the cultural influences behind the communal legislation on vendetta were multiple. Among the *glossatores* and the jurists of this period ethical concerns were of paramount importance, too, and they were sometimes heavily influenced by canonists and theologians.[204] Divine and human law were seen as complementary means of regulating human life, although many *glossatores* openly recognised the superiority of divine precepts over all other types of legal authority.[205] In some cases, therefore, trying precisely to tell apart Romanistic and religious influences is rather unhelpful.

However, some of the features displayed by Sienese (and more generally communal) criminal legislation are not compatible with a strict Romanistic approach. As previously noted, the penalties inspired by the *lex talionis* did not exist in Roman law. The chapter allowing revenge on *exbanniti ex maleficio* was contested by some jurists, like Jacopo de Arena, because the Roman equivalents of the originally Lombard institution of the *bannum*, the *relegatio* and *deportatio*, did not imply the loss of legal protection.[206] Even more radical readings of Justinianic law denied all legitimacy to the capital punishments meted out by the *podestà*, granting this power only to imperially

[201] More on this in Chapter 4, section 4.
[202] Rivière, 'Pouvoir impérial et vengeance'.
[203] Nardi, *L'insegnamento superiore a Siena nei secoli XI-XIV*.
[204] Kéry, 'Albertus Gandinus und das kirchliche Strafrecht'.
[205] Cortese, *La norma giuridica*, I, pp. 93-109.
[206] Ghisalberti, 'La condanna al bando nel diritto comune', pp. 18-21; Kumhera, *The benefits of Peace*, p. 60.

appointed officials.[207] The connection between Romanistic jurisprudence and pro-imperial attitudes might have prompted Guelf, popular communes like Siena to privilege a language and ideas inspired by penitential spirituality over explicit references to Roman law that could have conveyed similar ideological messages.[208] As previously stated, the practical applications of this complex theoretical reflection and cultural exchange will be the object of the next chapter.

[207] Ghisalberti, 'La condanna al bando nel diritto comune', p. 19.
[208] More on this in Chapter 4, section 4.

Chapter 4: The Development of Criminal Justice in Siena and the Influence of Religious Ideas

1. The Sienese Sources in the Context of Italian Communal Justice

Judicial sources for the period 1260-1330 are scarce for Siena, as is the case for most Italian communes with the exception of Bologna and Perugia. The main archival collections containing the records from the judicial officers of the city, *Podestà* and *Capitano del Popolo*, are preserved only from the very end of the 13th century (1290 for *Capitano del Popolo* 3 and 1298 for *Podestà* 5) and in small quantities. Another problem posed by the *Podestà* collection is the fact that each volume contains only a specific type of judicial document (e.g. a volume of witnesses' depositions, others containing only absolutions or condemnations...). In most cases it is therefore possible to examine only a small part of any particular trial (only very rarely is it possible to cross-reference information on the same trial from different volumes). There are however other important, even if less direct, sources about criminal activity in Siena, such as the lists of condemnations preserved in *Biccherna* 725 (1270-1296), *Biccherna* 730 (1318-1320) and *Biccherna* 740 (1302-1304). Petitions composed on behalf of prisoners or banished individuals on the occasion of general amnesties are contained in the *Biccherna* 731 (from 1321) and *Biccherna* 732 (from 1329). All these volumes are part of a series that normally consists of communal account books. Finally, information on the everyday application of the Sienese criminal legislation can be found in the minutes of the General Council, where matters of crime, punishment and public order were discussed on a regular basis. Each of these sources presents a particular facet of the judicial practices of Siena, but also specific problems of interpretation.

The wealth of information contained in the lists of condemnations is a case in point concerning the methodological limits that even rich material regarding medieval crime can have.[1] The condemnations are divided according to the *podestà* under which they were issued and state the name of the criminal, his or her crime (this information is however absent from volume 730) and the fine or punishment to which he or she was condemned. They might offer insights on the most prevalent types of crimes committed in Siena in this period, and show the diachronic evolution of criminality in its territory. However, it must be considered that 'prosecuted crime is not the same as criminality': as argued by various historians, it is likely that the community would not deliver up all criminals to formal justice, but only those who had committed acts that were considered particularly abominable.[2] Moreover, the government was not always able or willing to punish the misdemeanours of elites, but only those carried out by relatively marginal people.[3] Even though Sienese sources highlight the willingness of the *podestà* and the government to capture fugitives, and even to weaken family or local solidarity to encourage informing –an aspect that will be dealt with below- it is unlikely that the criminals who were condemned represent the majority of those who committed unlawful acts.[4] As Bowsky noted, no social class had a monopoly on violence. Moreover, it is not really possible to define the percentage contribution of the different social strata to the criminal landscape of Siena more clearly, because the sources state the profession of the

[1] Bowsky, 'The Medieval Commune' p. 3, estimates a number of 17.000 entries for *Biccherna* 725 alone, whereas Pazzaglini, *The Criminal Ban*, p. 21, note 3 believes there are about 20.000. The material is so rich that an analysis of the whole volume proved impossible here, and a sampling seemed the best way to approach it. The data presented in this chapter is therefore based on a sampling of the condemnations issued during the *podesterie* of Palmiero Martini of Fano (July-December 1270), Niccolò di Oddo Palombari of Rome (July-September 1280), Jacopo of Bagnoregio (September-December 1280), Guido da Modigliana (July-December 1287), and Bernardo di Gentile da Varano of Camerino (January-June 1296). I chose to collect samples from the beginning, middle and end of the volume, in order to follow the diachronic development of criminal justice in Siena in the second half of the 13th century.
[2] Dean, *Crime in Medieval Europe*, p. 24.
[3] Gauvard, *De grace especial*, pp. 164-171; Hanawalt, 'Fur-Collar Crime'.
[4] For informing, see below in this section.

condemned very rarely, and it is often hard to infer their social standing from their names alone.[5]

The claim of the *Popolo* that the *magnati* were responsible for most of the disorders in the city cannot be assessed through this type of documents. The minutes of the General Council seem to be a better source of information on aristocratic violence, since the councillors often had to settle disputes between elite families, or satisfy communities in the *contado* who had been damaged by local lords. These sources do not allow us to make statistical considerations on the frequency of such acts, and deal only with situations that could endanger public order and not with more ordinary types of crimes. It is clear, however, that the effects of aristocratic violence could be far more dangerous for public order than those of any other social class. The nobles of the countryside, in particular, had enough men and resources to form quasi-criminal bands that struck the *contado* communities with aggressions and cattle raids. Some of them were former residents of Siena who, after having been banished as Ghibellines or because of criminal actions, sought refuge in their fortresses in the countryside. In many cases local communities could not offer any resistance, and sometimes even ended up being fined by the government for hosting *exbanniti* in their territories. The General Council, however, recognising their powerlessness, would sometimes acquit them.[6] In other instances, the *contado* communities collaborated (apparently) spontaneously with their deviant lords, such as in the case of the inhabitants of Torrita in their relationship with Ghino di Tacco, lord of La Fratta, the 'good brigand' later celebrated in the Decameron.[7] Even among

[5] Bowsky, 'The Medieval Commune', p. 4.
[6] Bowsky, *A Medieval Italian Commune*, p. 63.
[7] ASS, CG 23, ff. 8r, 12v, 28r, 31r, 40r; G. Boccaccio, *Decameron*, day X, novella 2. Magrini, *La verità storica su Ghino di Tacco*, is an account of his life from the perspective of a local amateur historian, who mentions archival sources often.

prominent members of the General Council there were notorious lawbreakers. An example is Scozia dei Tolomei, a very active politician (podestà of Massa Martittima in 1279), who in 1286, together with the rest of his family, was pardoned after a ban for rebellion.[8] The magnates who lived in the city had a large retinue who often committed crimes on their behalf, too, as shown by the frequent presence in the lists of condemnations of *famuli* or *familiares* of magnate families. Similar indications can be found in the minutes of the council. In 1272, for instance, *dominus* Ciampolo Salimbeni, with his *familia* and *sequaces*, attacked and robbed a group of *berrovieri* in the course of a long-lasting dispute between him and the commune, concerning the control of some rural castles.[9]

For the sake of public order the commune often had to intervene to pacify magnate families involved in a feud, such as in the case of the hostilities between Forteguerri and Malavolti, which prompted the General Council to elect friends of both clans as arbiters.[10] In addition to this, rich magnates would often be able to pay the very high fines set up as punishments by the commune. This is shown by some lists, such as *Biccherna* 740, in which there are often indications about the payment of fines by criminals, and from which it is clear that those who were able to pay belonged to the most privileged families (they are often qualified as *domini* or sons of *domini,* or have a family name present in the lists of magnates excluded from the main offices).[11] For these reasons, in all likelihood, aristocratic crime was perceived as qualitatively different from that of the other social classes, even if it was possibly not quantitatively more frequent.

[8] ASS, CG 33, f. 52r, 28/03/1286.
[9] ASS, CG 15, ff. 94r-v, 26/10/1272.
[10] *Ibidem*, f. 47r, 05/02/1272.
[11] For the title *dominus* in Siena see Chapter 2, note 171. For the families listed as *magnati* in Siena across the 13th century see Giorgi, 'Quando honore et cingulo militie se hornavit', *Appendici*.

From a demographic point of view, the absolute predominance of male over female crime stands out clearly, in agreement with a wide body of research on both medieval and modern societies.[12] Female crimes, moreso than those committed by men, were most frequently linked to conditions of material poverty, such as the impossibility of providing guarantors when accused, or the abusive occupation of lands or properties. Men, on the other hand, committed prevalently violent crimes. Between July and December 1270, for instance, a total of 274 people were condemned, among whom 247 men and 27 women (about 10%).[13] Twenty-four of the latter were condemned for the occupation of someone else's properties, one for not providing a guarantor and two for homicide. It is not clear, though, whether they had only abetted the actual killers or had committed the violence themselves, since in both cases they were not the only persons condemned for that crime. In the other sample periods analysed in this section, too, the women involved in a homicide were never condemned alone, but always together with other male offenders. Such is the case of the four women implicated in this crime in July-December 1287, two of whom were explicitly accused of commissioning killings carried out by men. The total number of criminals condemned during this *podestaria* was 789 people, 759 men and 30 women (about 4%).[14]

In general, it seems that the most common crimes prosecuted in Siena and its *contado* in this period were physical aggressions (I list under this category the crimes identified by the medieval terms *insultus, rixa* and *vulnera*), followed by offences against property (labelled as *furtum* or *robbaria*, a term that stands for highway robbery, an action which also implied a high degree of physical violence) and in the third place by homicide.

[12] See for instance Akers, Sellers, *Criminological Theories*, Chapter 11.
[13] ASS, Biccherna 725, ff. 1 bis r-16v, *podesteria* of Palmiero Martini of Fano.
[14] *Ibidem*, ff. 525r-564v, *podesteria* of Guido da Modigliana.

Between July and December 1280, for instance, among 433 condemnations there were 24 cases of *vulnera*, 96 of *insultus*, 7 of *furtum*, 8 of *robbaria* and the killing of at least nine people, with a total of at least fifteen killers involved (the condemnations of 131 people from this sample do not specify the crime they committed, so it is possible that more homicides were carried out).[15] Similar data can be extracted from the other samples considered here. This information conforms to that provided by other research on late medieval criminality, e.g. Misraki's study of Provence, which showed how until the first half of the 14th century criminals tended not to be professionals, but to commit acts of violence. The second part of the century, conversely, witnesses an increase in the rate of theft, performed by brigands and vagrants impoverished by the economic crisis.[16] A similar picture can also be hypothesised for Siena, although a study of post-1350 documents would be required to confirm it.

As noted before, however, it would be naïve to consider this data to be reflective of the reality of criminality in medieval Siena. As suggested by Dean, the greatest contribution that these sources can give belongs rather to the history of criminal justice.[17] The Sienese lists in this respect present advantages and disadvantages in comparison with the other sources used by historians to reach a similar target, for instance English rolls of indictments.[18] The Sienese lists do not allow us to evaluate the percentage of those who were acquitted in trials, which tended to be very high in other Italian communes for which we have more complete judicial sources.[19] It is very likely that the total number of people

[15] *Ibidem*, ff. 281v-303r, *podesterie* of Niccolò di Oddo Palombari of Rome and Jacopo of Bagnoregio.
[16] Misraki, 'Criminalité et pauvreté en France'.
[17] Dean, *Crime in Medieval Europe*, p. 25.
[18] Given, *Society and Homicide in Thirteenth-Century England*; Hanawalt, *Crime and Conflict in English Communities,*; for a review of their methodology see Powell, 'Social Research and the Use of Medieval Criminal Records'.
[19] Dean, *Crime and Justice in Late Medieval Italy*, p. 44.

involved in a trial would result in a much higher figure than the number of those who were eventually condemned. At the same time, though, the possibility of analysing the fines or corporal punishments passed on the offenders allows us to compare the legal principles expressed in the statutes of the city with the reality of the judges' work.

As already noted by Mecacci in a research based on different lists of condemnations, found in palimpsest codices of the Biblioteca Civica of Siena, the judges seem to have applied the legislation scrupulously, since the penalties inflicted on the criminals almost always match those specified in the statutes.[20] Great variety is however evident in the case of aggressions and wounds, on account of the very detailed legislation of medieval communes on the matter, which called for fines of different weight on the basis of the types of wounds inflicted (with bloodshed or not), the parts of the body that were wounded, the types of weapons used and the time and place of the attack. Much as in the case of the Kabyle jurisprudence studied by Bourdieu, the logic of this system is based on a set of schemes that, combined, can generate an infinity of situations, but that are never spelled out completely, or fully constituted into abstract principles.[21]

The lists also show the significant growth in the presence of corporal punishments from the late 1280s. In the first sample analysed in this research, from the second term of 1270, only two corporal punishments were inflicted out of 274 condemnations, and in both cases they were an alternative to the payment of fines, although very high ones: a

[20] Mecacci, 'Un frammento palinsesto'.
[21] Bourdieu, *Outline of a Theory of Practice*, p. 16. The application of this concept to the study of medieval crime could be fruitful also in the analysis of the topic of domestic violence. Skoda, 'Violent discipline or disciplining history?', examines both judicial and literary sources on marital violence to show that there was an ambivalent line between what could be considered disciplining a misbehaving wife and illegitimate violence. However, it is possible that the boundaries between the two were clearer in the Middle Ages than they are nowadays to a scholar analysing the sources. If we consider that statutes were often collections of customary laws that, as for the Kabyles, did not always represent abstract principles but social norms inculcated in the members of the community since childhood, it could be argued that medieval judges and juries, combining different schemes in this case as they did for aggressions, had a less ambiguous view of what was permissible and what was not, without the need of spelling out explicitly their logic.

homicide was condemned to a fine of 3000 l. or, as an alternative, to beheading, and another man to pay 500 l. or lose his right hand for stone throwing.[22] The situation was similar ten years later, in the second semester of 1280, when out of 433 condemnations there was only one corporal punishment indicated. This was a sentence 'in avere et persona' (that is, death penalty and confiscation of property) for an unspecified crime, probably homicide.[23]

Only seven years later, however, in the second term of 1287, the sources present a very different scenario, with 77 corporal punishments inflicted for a variety of crimes (theft, abduction, wounds, homicide).[24] Even if this *podesteria* seems to be rather exceptional for its vigorous crimefighting activity, with a total of 789 sentences in six months, the trend is the same in the following years, even if the judicial activity was not as intense. In the first semester of 1296, for instance, 34 out of 268 condemnations entail corporal punishments.[25] The figures for the death penalty in the first half of the 14th century appear even higher, with an average of around seventy condemnations passed every six months: 72 under the *podestà* Monte de' Suppi (July-December 1318), 63 under Azzolino count of Magliano (January-June 1319), 82 under Benedetto Caetani (July-December 1319), 68 under Guido da Battifolle (January-June 1320), 91 under Filippo Rossi of Gubbio (July-December 1320).[26]

The lists of condemnations of *Biccherna* 721 and 730 do not indicate whether the sentence was actually carried out. Considering the high rate of contumacy in the Italian communes, it is likely that many of them were passed *in absentia* and possibly later commuted into fines.[27] In some cases, the ordinary *Biccherna* account books can confirm

[22] ASS, Biccherna 725, ff. 1 bis r-16v, *podesteria* of Palmiero Martini of Fano.
[23] *Ibidem*, ff. 281v-303r, *podesterie* of Niccolò di Oddo Palombari and Jacopo of Bagnoregio.
[24] *Ibidem*, ff. 525r-564v, *podesteria* of Guido da Modigliana.
[25] *Ibidem*, ff. 1017r-1037v.
[26] ASS, Biccherna 730.
[27] Dean, *Crime and Justice in Late Medieval Italy*, p. 18; Zorzi, 'La pena di morte', p. 52.

that the executions were carried out even on criminals belonging to elite families, but in other instances it is not possible to find confirmations in the financial sources.[28] In *Biccherna* 138, for instance, contemporary with the condemnations issued under Benedetto Caetani, there is no trace of expenses related to the execution of the 82 people condemned during his regime.[29] It could be argued therefore that the development of criminal justice in Siena, especially with regards to the diffusion of the death penalty, follows the model described for other Italian communes.[30] That is, underwent in the second half of the 13th century Siena transformations of its criminal legislation and procedure common, to a certain extent, to all Western Europe.[31]

The popular regimes and the *signorie* that emerged in this period presented themselves as the champions of the 'common good', by increasing the severity of legislation, adding more corporal penalties, raising financial ones and extending the spectrum of behaviours deemed worthy of capital punishment. In Siena, the watershed must in all likelihood be placed at the same time as the emergence of the Nine in 1287. This is shown by the peak of corporal punishments noticeable in the lists of condemnations from that year, although the *Popolo* had participated in the government since the 1230s.[32] According to Zorzi and Vallerani, though, the principal aim of this harshening was political, and consisted in the desire to legitimate weak governments and negotiate penalties to promote social consensus.[33] The necessity of ensuring that criminals were actually punished was, that is to say, not at the centre of this programme of reforms. In the case of Siena, it is likely that the death penalty was not an ordinary occurrence and that, as will be seen, there were spaces for negotiating one's penalty.

[28] Bowsky, 'The Medieval Commune', p. 15.
[29] ASS, Biccherna 138 (July-December 1319).
[30] See Introduction, section 1.b.
[31] Pazzaglini, *The Criminal Ban*, pp. 5-ff.
[32] Barzanti, Catoni, De Gregorio (eds.), *Storia di Siena, vol. 1*, p. 34.
[33] Zorzi, 'La pena di morte' p. 52; Vallerani, *Medieval Public Justice,* p. 3.

However, other indications seem to show that the desire of not letting criminals go unpunished expressed in programmatic documents was not entirely ideological, but also acted upon, as claimed by Sbriccoli.[34] The importance of capturing those who threatened public order is very clear from the minutes of the General Council, where specific *ordinamenta* on the matter are discussed at the beginning of each semester from at least the 1290s.[35] Even before the emergence of the Nine, measures were taken to make sure that criminals would not escape justice: in 1270, for instance, the *podestà* assigned some of the the *berrovieri* specifically to the task of finding and capturing outlaws ('appostent exbannitos et condempnatos a comuni Senarum ad hoc ut potestas possit facere eos capi').[36] If a *berroviere* managed to apprehend a criminal, the General Council would grant him a reward, such as in the case of the imprisonment of Accursino of Asciano, which yielded 10 l. to his captor.[37]

In the same year the councillors discussed whether the penalties set out in the statutes against malefactors were enough to make sure that the public order was not disrupted; in the cases in which they were considered too mild, they had to change them so that the offenders were punished 'harshly' and 'cruelly' through appropriate fines and corporal punishments ('si quis malefecerit, quod puniatur graviter and crudeliter in personis et rebus pro bono statu comunis').[38] Among the speeches of the councillors, that of *dominus* Ciampolo Albizzi stood out for its clarity of purpose: he asked that the *podestà* be able to start investigating homicides and other crimes from the very moment he was

[34] Sbriccoli, 'Vidi communiter observari', p. 245: 'la pena intesa quale segno per eccellenza della pubblicizzazione del sistema (…) cresce progressivamente di peso, importanza e frequenza, lungo tutto il XIII secolo'; *Id.,* 'Tormentum id est torquere mentem', p. 21.
[35] The discussion of the regulations *de custodia civitatis, de malefactoribus capiendis* and *contra illis qui offendunt cives Senenses* (on how to ensure punishment for those who were not subject to the jurisdiction of the *podestà*, i.e. the clerics) regularly appear in the minutes of the General Council, at the beginning of every semester, since July 1290 (ASS, Biccherna 40, f. 18r, 17/07/1290).
[36] ASS, CG 13, f. 21r, 06/09/1270. On medieval police force see Chapter 3, note 86.
[37] ASS, CG 13, f. 21r, 06/09/1270.
[38] *Ibidem*, f. 24v, 21/09/1270.

informed of one, even by sending *berrovieri* to apprehend the offenders as soon as the bell announcing the starting of a judicial action was rung, to lower the rate of contumacy.

He did not propose an increase in the harshness of the penalties (as other councillors did, receiving the approval of the majority of the assembly), but wanted to make sure that they were actually imposed on the criminals, who should be put into jail if they were not able to pay the fines ('si persona fuerit insufficiens ad solvendum penam vult quod teneat in carcere comunis quousque solvitur penam'). As suggested by Geltner, the idea of incarceration as an alternative penalty became widespread in the 13th century. However, the presence of offenders who had even fewer chances of being able to pay for their fines after being imprisoned was clearly unprofitable.[39] Despite that, it seems that the Sienese government tried hard to imprison and punish as many malefactors as possible. Not only the *berrovieri*, but also any private citizen could be rewarded for the capture of a criminal, as happened when a group of men got hold of a killer known as Santa Rosa, who had also attacked some Servite friars: the commune gave them 25 l.

'So that each and every malefactor shall be afraid and too scared to commit felonies, and so that each and every person from the *contado* and the jurisdiction of Siena shall have the desire to capture the aforesaid malefactors'.[40]

and

'so that people shall have a good example of capturing malefactors'.[41]

[39] Geltner, *The Medieval Prison,* pp. 38-44.
[40] ASS CG 51, f. 52r, 05/02/1297: 'ad hoc ut omnes et singuli malefactores timeant et terreantur maleficia committere, et ad hoc ut omnes et singuli de comitatu et iurisdictione Senarum habeant voluntatem capiendi predictos malefactores'.
[41] *Ibidem*: 'ut homines habeant exemplum capiendi malefactores'.

The financial documents of the Biccherna present more example of rewards given to citizens who brought offenders to justice.[42] Other ways to make sure that criminals were judged were the appointment of 'secret accusers' with the task of investigating crimes and suing the offenders (1271), or the decision to place in the palace of the Thirty-Six a box where people could leave notes to press anonymous charges (1277).[43] The *podestà,* however, could not imprison people based solely on the anonymous charge, but only if at least six witnesses could be found.[44]

Sienese prisons seem to have been, moreover, less liveable places than the model of Italian medieval jail described by Geltner. It was very common for Sienese prisoners to try to escape, often with the connivance of corrupted guards.[45] Until 1298 the government did not provide for the inmates, who had to pay for their own food or be supported by friends, relatives, or alms. Even this support network would often not be enough, especially since the majority of inmates belonged to the lower classes (rich criminals, as seen above, were the only ones able to pay the fines).[46] In situations of emergency the commune had to take radical measures, as when in March 1291 the General Council ordered prisoners to march around the city and beg for food because of a famine.[47] The mortality rate in the prisons was apparently very high, considering that the *Cronaca senese d'autore anonimo* (14th-century) states that in 1330 the communal jail was moved from Palazzo Cerretani (a private palace rented by the commune to be

[42] Just to offer a small selection, see ASS, Biccherna 138 (July-December 1319), ff. 95r, 104v, 107v, 114v.
[43] For the secret accusers see ASS, CG 14, f.18v, 13/3/1271; for the box see ASS, CG 21, f. 78r, 18/05/1277.
[44] *Ibidem*, f. 99v, 23/06/1277. For an example of a trial based on anonymous informing, see ASS, Podestà 8, f. 27v (1298).
[45] Kumhera, *The Benefits of Peace,* p. 117.
[46] Bowsky, *A Medieval Italian Commune*, p. 117.
[47] ASS, CG 41, f. 69, cited in Waley, *Siena and the Sienese*, p. 25.

used as a place of detention) to a new palace, known as Malcucinato, because in the course of two years more than sixty inmates had died in the overcrowded building.[48] Lists like that of *Biccherna* 740 show that many prisoners did die in jail.[49]

It therefore makes sense that, in the petitions for amnesty, people justified their contumacy 'for fear of prison' (*timore carceris*) or because they did not want to die in jail (*in carceribus mori*).[50] Another source of terror for defendants was the use of torture during the interrogation, which seems to have been relatively common in Siena. Many petitioners mention their fear of the harshness of the *podestà* (*severitas*, *crudelitas*, *ferocitas*, *asperitas*) as another reason for being contumacious. Some tell stories about having been tortured by him against the law, for days and nights and in various ways, or about having confessed despite their innocence because of torture.[51] According to them torture was used also in the interrogations for non-violent crimes, such as gambling or breaking the law banning the exportation of foodstuffs outside Siena.[52] Even if it is not possible to take these narratives at face value, the few judicial sources available to the historian of Sienese criminal justice in the Late Middle Ages show that torture was indeed an ordinary interrogation method.[53] The necessity of instilling fear of the judicial apparatus in the citizenry, in order to prevent them from committing crimes, was after all overtly stated as one of the main aims of Sienese criminal justice. In 1272, for instance, new *ordinamenta* on condemnations were issued

[48] Anonymous, 'Cronaca senese', p. 142. See also Bowsky, 'The Medieval Commune', p. 4.
[49] ASS, Biccherna 740 (1302-1304).
[50] ASS, Biccherna 731, ff. 6v, 219r.
[51] For the fear of the *podestà* see *Ibidem*, ff. 3r, 105r, 219r etc. For torturing defendants against the law see *Ibidem*, f. 41r, 'cum de iure non posset', 'pluries et pluries et variis diebus et noctibus pluribus et variis tormentavit torturis'. For confessing because of torture see f. 35r.
[52] *Ibidem*, ff. 239r (*divieto*), 242r (gambling).
[53] ASS, Podestà 10 (1305), *Liber Inquisitionum*: torture is mentioned at ff. 15r-ff, 25r-ff, 37r; ASS, Podestà 380 (1298), *Liber Processuum et Scripturarum Extraordinariorum*: torture is mentioned at ff. 1v, 2v, 4r, 5v.

'so that crimes do not go unpunished and those who want to commit felonies shall be terrified and in order to strike fear into them'. [54]

The collaboration of local elites and foreign officials was essential to achieve this aim, one which was seen as fundamental to legitimise the government as an institution capable of maintaining the *concordia civium* and public order.[55] The blame for any excesses in the use of excessive methods to obtain these goals could be placed on specific *podestà* and their judges (especially when, after only six months, they had already left the city). The merits of instilling a 'healthy' fear in the criminals would be awarded to the wise local governors.

In conclusion, even if the judicial sources for this period are scarce, it seems that Siena can be included in the list of the polities in which the innovations of the second half of the 13th century, discussed in the Introduction, had assumed a more prominent role. The penalties had become harsher in the statutes, and the efforts of the government to try and apply them in practice are visible. The *ex officio* model of trial was frequently used and many judicial cases were initiated by the *sindici* (local officers in charge of reporting crimes to the authorities) or the judges, while violent actions once seen as private matters were transposed to a public level.[56] This is not to say that the accusatorial model had disappeared in Siena, or that the inquisitorial trial could not be bent by the members of

[54] ASS, CG 15, f. 35r, 17/01/1272: 'ut maleficia non transeant impunita et ut malefacere volentes terreant et eisdem incutiatur timor'. See also note 38. For another variation on this theme see also ASS, CG 46, f. 86r, 06/12/1293.
[55] Sbriccoli, 'Vidi communiter observari', p. 236.
[56] See e.g. ASS, Podestà 8 (1298), f. 9v, a case of an *inquisitio ex officio* carried out over a fight between two people that are eventually acquitted. A similar instance can be found in ASS, Podestà 10 (1305), f. 15r, where the judge sends criers to both the offender and the victim and forces the latter to sue the man who had hit him. This seems to be a case of *compulsio ad accusandum,* that is, the possibility for the judge to force a victim to sue their offender, as theorised by jurists like Albertus Gandinus: see Sbriccoli, 'Vidi communiter observari', pp. 250 ff.

the community to express local solidarities or enmities, or to settle disputes by satisfying the contenders rather than setting as its final goal the punishment of a criminal.[57] As also noted by Sbriccoli, the two procedural forms are *Idealtypen* that in reality were often mixed together.[58] The accusatorial trial was more frequently used in the case of petty crimes or disputes on property, where the satisfaction of the parties had a more important role than the punishment of an offender; the *inquisitio ex officio*, on the other hand, could be a way of dealing with more serious crimes that could excite in the community the sentiment of 'righteous indignation' described in the previous chapter, and that thus deserved a public *ultio*.

2. The 'Politics of Forgiveness' in the Commune of Siena: The Ritual of the *Oblatio*

As seen in Chapter 3, inflexible retribution was only one of the two sides of the coin of the ideological construction that made Sienese criminal justice a reflection of the perfect righteousness of God. The Almighty was, according to Sienese sermons, more merciful than He was vengeful, and if the commune wanted to emulate Him it could not neglect this aspect. The 'politics of forgiveness' of the Italian city-states, as one could call them, have however attracted much less attention among scholars than the development of criminal justice towards a higher degree of severity. Nevertheless, the emergence of the former seems to be –at least in the case of Siena- simultaneous with the

[57] ASS Podestà 12 (1334), ff. 6r ff is a good example of this. The lawsuit concerns a case of homicide of a man by a group of people from Rapolano. The victim, Arlotto, had supposedly seriously wounded a dweller of the village and then had fled. The witnesses justified the accused by saying that they had killed Arlotto in an attempt to capture him to bring him to justice. Principles central to the 'public' development of criminal justice, such as the maxim according to which 'no crime should go unpunished' (*necesse est ne maleficia remaneant impunita*), are mentioned, but it must be noted how almost all the witnesses are related to the accused. It is therefore likely that this exhibition of civic virtue hides a different and more traditional concept of justice, more deeply rooted in local and familial solidarities. Similar examples of the strategic combination of different views of justice can be found in the petitions for amnesties, an analysis of which can be found below in the third subsection of this chapter.
[58] Sbriccoli, 'Vidi communiter observari'.

latter phenomenon. The role of mercy in the judicial system of medieval polities has generally been associated with kingship, and thus has attracted much more attention in the context of the European kingdoms or of the Italian *signorie* than in that of 'republican' polities.[59] Amnesties and other practices involving the release of prisoners in medieval communes, in the few cases in which historians have focused on them, have on the other hand been interpreted either as a way for the government to replenish its coffers in times of need (since in many cases they involved the payment of a fee to have one's condemnation remitted), or as a means to negotiate penalties (especially in the case of deviant members of the élite) and thus strengthen consensus, or as a confession of the inability of the state to punish malefactors.[60] Although all these interpretations can be valid, especially if they are not seen as mutually exclusive but instead as combinable, the moral and ideological implications of these actions cannot be neglected, and emerge clearly in the sources as very important for their medieval protagonists. In the two following sections, I will analyse two different aspects of the 'politics of forgiveness' in Siena: the *oblatio* (a ritual of release of selected prisoners), and the general amnesties that were introduced in 1302, which will be examined through the petitions written by those who wished to be pardoned by the government.

I will argue that features such as the ritual aspect of these two phenomena, and the care that Sienese politicians seemed to show when deciding which people and criminal acts deserved mercy and which did not, call for a complementary interpretation. That is, they should be also understood as a way in which communities put into practice religious ideas of mercy and justice, which, as seen, were the subject of lively discussion in this period. I argue that they were a case in point in the interaction between spirituality

[59] On the role of mercy in the ideology of medieval kingship, see at least Ganshof, 'La 'gratia' des monarques francs'; de Heusch, *Écrits sur la royauté sacrée*, p. 217; Koziol, *Begging Pardon and Favor*, pp. 29-30, Gauvard, *De grace especial*, pp. 896-ff.
[60] Zorzi, 'La pena di morte', pp. 52-53; Bowsky, *A Medieval Italian Commune*, p. 123.

and management of the public order, which created in Western Europe a 'body of legal-theological rhetoric which exercised a potent ideological function' in society.[61] Concentrating on practices of this kind is one of the possible ways of giving unity of interpretation to the findings of studies of political/legal history and of religious history, which are often kept separate in the historiography on the Italian communes.

As already implied, the term *oblatio* was used in medieval Siena to describe an amnesty of selected prisoners, chosen from among those who were the poorest and were convicted for lesser crimes, an event which occurred regularly in the city from the 1270s. The word *oblatio* (offering), in medieval Latin, also referred to any offering to God, and in Siena in particular to the wax offering to the Cathedral during the feast of the Assumption. In the same way as for the former, a solemn rite in the Cathedral accompanied the *oblatio* of prisoners.[62] The source for this practice is constituted by the minutes of the General Council, whose serial nature allow us to look diachronically at its origin, transformation, and meaning. Siena turns out to be a very good case study for its analysis because, as highlighted by a survey of prisoner offerings in Italian cities by Koenig, *oblationes* became regular occurrences of urban life almost exclusively in Emilia and Tuscany, with Siena as the centre with the earliest extant sources.[63] Koenig indicated 1279 as the date of the first Sienese *oblatio*, whereas in other cities such as Bologna or Florence the first instances belong to the 1290s, and he explained it as a 'crisis devotion' and a manifestation of 'civic religion'.[64] A closer analysis of the sources, however, reveals both precedents and examples of amnesties from at least the late 1250s, which, despite

[61] Gorringe, *God's just vengeance,* p. 6.
[62] Pellegrini, 'La norma della pubblica pietà', p. 270.
[63] Koenig, 'Prisoner Offerings', p. 254.
[64] *Ibidem*, p. 269. On crisis devotions in Siena see also *Id.*, 'Wartime Religion: The Pre-Montaperti Sienese Supplication', , and *Id.*, 'Mary, Sovereign of Siena, Jesus, King of Florence'.

their less organised character, are very important for highlighting aspects of this ritual that have not been considered previously.

A precedent for the *oblationes* is the release of prisoners of war to celebrate the end of a conflict, a practice attested in a few 12th- and 13th-century examples, all from Tuscany.[65] These, however, were not a regular occurrence, and did not always coincide with Christian feasts. For example, in 1271 the General Council decided to release five prisoners of war to celebrate the end of the conflict with the lords of Fornoli: the motion was unanimously approved, in accordance with the tradition, on the 8th of June (so there was no connection to any Christian celebration).[66] The year after, on the other hand, the executive officers of the commune proposed to organise an amnesty for common prisoners around Easter 'in honour of God and of the Blessed Virgin Mary' ('ad honorem Dei et Beate Virginis Marie'). This is, after a mention of a similar practice in 1257 (whose nature is however unclear on account of the bad state of preservation of the source) the first real case of *oblatio* as a distinct rite in Siena, and its proposal was met with some resistance by the councillors.[67] As mentioned in Chapter 1, Arrigolo Accarigi asserted that this was an unprecedented procedure and that the commune should wait until the conclusion of another war that Siena was conducting against the rural lords before releasing prisoners. Behaving differently could endanger the public order, since the prisoners who had been proposed for release could join the enemy's army. Branca Trombetti was yet more categorical, and maintained that he wanted the prisoners 'to be well guarded, so that they do not flee' ('sed vult quod bene custodiant pro comuni ita quod non aufugiant'). Although the council eventually voted in favour of the amnesty,

[65] Koenig, 'Prisoner Offerings', pp. 261-268.
[66] ASS, CG 14, f. 38r, 08/06/1271.
[67] ASS, CG 15, f. 67r, 19/04/1272. For the 1257 reference see ASS, CG 6, f. 116v.

this episode shows that *oblationes*, far from being just another case of civic religion in Italian communes –that is, a manifestation of religiosity promoted and organised by the government to create cohesion in the community– were met initially with some distrust.

It is likely that the reason for this hostility was the clash between this proposal, based on humanitarian considerations and the importance of mercy, and the ideology of the inflexibility of justice promoted by the *Popolo,* to which Siena eagerly adhered. Indeed, the source indicates that the impetus to organise such a release did not originally come from the political elite of the city, but from its religious strata. The notary *ser* Orlandino, during the same assembly, stated that this proposal had been originally made by some friars.[68] *Ser* Beroldo Uggieri specified their identity by mentioning the *hospitalis* (probably that of Santa Maria della Scala, the oldest in the city and the most important source of relief for the poor of Siena)[69] and brothers Orlandino and Tedaldo. Other documents reveal that Tedaldo was a Franciscan, and Orlandino the former prior of the Dominicans.[70] The idea of promoting regular amnesties on the occasion of religious feasts came therefore from the request of religious figures separate from the government. This is also true for the subsequent example of *oblatio*, held to celebrate Easter 1273.[71] In this case the appeal of the 'brethren of the Order of the Apostles and of other religious orders' ('fratres de Ordine Apostolorum et aliorum ordinum') was at the origin of the motion.

The *Ordo Apostolorum* was a pauperistic movement, also known as *Apostolici*, condemned as heretical in 1286 (the founder was burnt on the stake in 1300).[72] However, only after the Second Council of Lyon (1274), which tried to suppress all the mendicant

[68] *Ibidem.*
[69] On this hospital see Piccinni, Vigni, 'Modelli di assistenza ospedaliera tra Medioevo ed età moderna'.
[70] ASS, CG 15, f. 76v, 16/08/1272 (Tedaldo); ASS, CG 9, f. 80v, 27/02/1260 (Orlandino).
[71] ASS, CG 16, f. 45r (undated document from between the 25th of March, the date of the last dated document before it, and the 7th of April, when Good Friday, mentioned in the document as the time for the release, fell in 1273).
[72] On the *Apostolici*, see Pierce, *Poverty, Heresy and the Apocalypse: The Order of Apostles*.

orders founded after 1215, did the Order of the Apostles' position became shaky, and its persecution only started in the 1290s.[73] Its relationship with the commune of Siena is therefore not at all unusual. The 'other orders' are probably the other mendicant orders present in Siena, and the lay penitents affiliated to them.

Although in this case no councillor expressed his opposition to the amnesty, it is clear that there was as yet no standard procedure to follow when organising one. In particular, the idea of leaving the choice of the prisoners to set free to the religious orders, which was expressed in the first part of the meeting and opposed by the magnate Bernardo Saracini, was soon set aside in favour of a stricter control of the political elite over the 'politics of forgiveness'. The councillors proceeded to identify a group of prisoners that deserved particular attention, not only inasmuch as they were poor, but also because of their provenance from Montepertuso. This was a village in the lands administered by the bishop of Siena, the Vescovado, destroyed in 1271 by the Sienese because it harboured Ghibelline exiles.[74] A political strategy of the government, aiming to improve its relationship with the bishop, might underlie this choice. At the same time, humanitarian considerations could lay behind the decision to free these captives, who had spent almost two years in the terrible conditions of the prisons of Siena. It seems however that at least some of the captives from Montepertuso were eventually not liberated for Easter, because in June Bernard de Languissel, papal legate in Siena (again, an ecclesiastic), was asking again to the Council, for the love of God and in recognition of his services to the Guelf party, to release them.[75]

[73] Carniello, 'Gerardo Segarelli as the Anti-Francis'. Despite this attempt to suppress new orders, Carmelites and Augustinians were given a chance to make the case for their *utilitas*, with successful results in the long run: see Emery, 'The Second Council of Lyon and the Mendicant Orders'.
[74] Francovich (ed.), *Carta archeologica della provincia di Siena*, vol. 5, p. 124, 'Murlo'.
[75] ASS, CG 16, ff. 77r-78v, 16-18/06/1273. On Bernard see also G. Cecchini (ed.), *Il Caleffo Vecchio*, III, doc. 829, 09/08/1266.

The government's investment in this newly refashioned ritual is telling, and it brings us to the next occurrences of the *oblatio*, in 1278 and 1279.[76] From this point on, it became usual to have not one, but two *oblationes* per year, one for the Assumption of the Virgin Mary (15th of August), and one for Christmas (with some variation between Christmas itself, the Circumcision and Epiphany, probably dependent on the other items on the agenda) or Easter (sometimes Good Friday). Another remarkable aspect is the increase in the number of prisoners affected by the *oblationes*. If in 1273 the proposed number oscillates from 16 to 6, from 1279 on we witness a constant increase from four, to twelve, to 'omnes qui possunt relaxari' (all those who can be liberated) in 1289.[77] This might be connected with a growing prison population in Siena and the problems connected to it. It seems to be also a sign, though, of the growing role that the ritual had assumed in political and religious life.

The amnesty for the Assumption of the Virgin Mary, special patron of the city of Siena, on the occasion of which representatives of all the *contado* communities and all the citizens had to participate in a procession to the Cathedral, is already defined in 1279 as a tradition ('cum per vestram bonam consuetudinem solitum est'), even though it was a relatively new custom established in all likelihood the year before.[78] As noted by Koenig, it is possible that the brevity of the first volumes of the General Council could mean that some early *oblationes* were not registered.[79] However, when in 1270 the new *podestà* Palmiero di Martino of Fano asked the councillors how the Assumption was celebrated in Siena, no mention was made in the description of the festivities of a ritual release of prisoners, which seems to indicate that in that year the *oblatio* was not yet a

[76] ASS, CG 22, ff.21v, 11/08/1278; 64r, 31/12/1278; ASS, CG 23, 15r, 13/08/1279; 60v, 24/12/1279.
[77] ASS, CG 38, f. 15r, 13/08/1289, *Ibidem*, f. 67r, 28/12/1289.
[78] ASS, CG 23, f. 15r (13/08/12/1279).
[79] Koenig, 'Prisoner Offerings', p. 269.

staple of the 15th of August.[80] As shown by Giorgi and Moscadelli in their study of the procession for the same feast of the Assumption, the political elite of Siena were not unused to consciously creating or adopting new religious traditions, which would then be removed from the control of ecclesiastics.[81] It is possible that the *oblatio*, too, was a practice that was intentionally framed as 'traditional' by the ruling class as a sign of its investment in it.

The growing importance of this ritual, shown by its stabilisation and the growing number of people involved, cannot therefore be ascribed only to the overcrowding of the jails or to a moment of crisis. The *oblatio* does not appear in moments of particular hardship for the city and becomes, shortly after, a bi-yearly occurrence linked to the calendar of Christian celebrations. In the very years in which the *oblatio* emerged, on the other hand, the General Council voted to assign an extraordinary *arbitrium inquirendi et torquendi* to the *podestà*, that is, the liberty to start inquests and torture defendants without having to respect the traditional solemnities of the legal procedure. This happened in 1271 and again in 1278, when, in addition, the right of the defendants to appeal was eliminated and secret accusers were hired by the government, as mentioned above.[82] It seems that a connection may be established between the development of criminal justice, in the direction of a growing harshness, and the emergence of the *oblatio.* Whereas the wealthy citizens were only moderately affected by these reforms, the poor, who in case of inability to pay the now higher fines could be subject to physical penalties, were in all likelihood the main sufferers. Pazzaglini noted that the situation was probably perceived as an

[80] ASS, CG 13, f. 1r, 14/08/1270.
[81] Giorgi, Moscadelli, 'In vigilia Beate Marie Virginis'.
[82] ASS, CG 14, f. 33r, Allegato A (May 1271); for the secret accusers see ASS, CG 14, f.18v, 13/3/1271; for the box see ASS, CG 21, f. 78r, 18/05/1277; ASS, CG 22, ff. 15v-ff, 01/08/1278.

'injustice' by many, and proof from other geographical contexts shows that similar transformations resulted indeed in some resistance from the population.[83]

It is not a coincidence that the second half of the 13th century also registered a growing attention of religious people towards prisoners, in particular the poor (the rich were generally accommodated in a different, more comfortable part of the prison, and could even be granted the possibility of going back home if they presented *fideiussores*),[84] as is evident from hagiography. The miraculous liberation of prisoners had always been one of the traditional activities of saints, with its scriptural model in Acts, 12:3-7.[85] The commandment to visit prisoners (or, according to another interpretation, to ransom captives) could also claim a biblical reference in the seven works of corporal mercy described in Matthew, 25:34-40. These traditional attributes of saints seemed to experience a revival during the 13th century, exactly because the transformations of criminal legislation made prisons a more important social reality. Since prisons were part of the experience of poor people in particular, it does not come as a surprise that pauperistic orders and movements, such as the ones to which 13th-century Sienese saints belonged, had a particular interest in them. This is just another manifestation of a 'più chiara percezione (...) dei problemi della realtà vissuta'[86] by the poor, conceived here as a precise social category and not just as an echo of Gospel passages. In 13th-century Genoa, as shown by Rigon, housing was a pressing issue for the disadvantaged, resulting in Mendicant friars allocating the bequests received from wealthy devotees to renting rooms for poor families. In Siena, for the same reasons, penitents and religious orders

[83] Pazzaglini, *The Criminal Ban,* p. 106; for non-Sienese examples see Green, 'Societal Concepts of Criminal Liability'; Fleming, *The Cult of St Thomas Cantilupe*.
[84] ASS, Statuti 4, ff. 326r-327r, 5/02/1298, cited in Bowsky, 'The Medieval Commune', p. 2.
[85] Festugière, 'Lieux communs littéraires et thèmes de folklore', pp. 148-149.
[86] Rigon, 'I testamenti come atti di religiosità pauperistica', p. 409.

devoted their attention to another social emergency, that of poor prisoners. Ambrogio Sansedoni is described as an assiduous visitor of the local prisons, where he would bring food to the poorest inmates; Pietro Pettinaio is characterised by a special 'love for prisoners and other poor people', too.[87] Andrea Gallerani, Ambrogio Sansedoni, the Servite Gioacchino da Siena and the Augustinian Antonio Patrizi da Monticiano can all boast the liberation of captives among their miracles.

The Mendicants' attention to the dimension of incarceration is however not merely a hagiographical cliché, as is demonstrated by archival documents. In 1268, a period when the recurring *oblatio* was still not in place, Ambrogio Sansedoni presented to the assembly a request to release the inmate *Gualfredus Anglicus.*[88] No information about the crimes committed by the Englishman is given. It is however sensible to postulate, as Waley does, that he was an English pilgrim travelling on the *Via Francigena* to reach Rome, or else a foreign mercenary: in any case, a foreigner of low social standing, whose only hope of being released lay in the prestige of the Dominican.[89] A similar case of involvement of the Mendicant orders in the liberation of deserving poor prisoners can be found in 1271, when the Dominicans interceded on behalf of the rapist Vanni *Johannes*, asking the councillors to consider his indigence and the fact that he had married his victim.[90] These interventions of religious actors can be interpreted as a precedent for the *oblatio* in its mature form just like the release of war prisoners at the end of conflicts. The local ruling class, however, soon took part in the pious effort and incorporated it in its own policies. The stabilisation of the ritual very likely has to be interpreted, therefore, as a way of balancing the effects of the legitimising rhetoric of the *interest civitati* against

[87] *Vita A.S.,* col. 184; *Vita P.P.*, pp. 14, 34.
[88] ASS, CG 12, f. 63r, 1268.
[89] Waley, *Siena and the Sienese*, p. 144.
[90] ASS, CG 14, f. 51r, July 1271.

another powerful ideological construction, which saw the government as the champion of the destitute, traditionally represented by the figures of the widow and the orphan.[91]

This competing idea of *iustitia* as the defence of the oppressed, which stems from the entanglement of religious and political values, is also represented in Sienese spiritual literature of the time. A clear example is once again the *Vita* of Ambrogio Sansedoni, where it is stated that the saint often intervened in the political assemblies of the commune to convince the councillors to pass laws in defence of 'viduae et pupilli'.[92] The commune of Siena, in particular under the regime of the Nine, strongly invested in this ideology. The necessity of defending the weak and the poor is mentioned in the oath that the Nine had to take when they started their mandate,[93] and in a poem written under the *Maestà*, painted by Simone Martini in the Palazzo Comunale in 1315, the Virgin Mary warns Siena that her protection over the city will last only as long as the powerful do not oppress the weak.[94] During their regime defendants could be pardoned, or have their fines reduced, on account of their poverty and ignorance.[95]

As part of the same sensitivity, specific measures to improve the conditions of prisoners were also taken during their regime, such as the aforementioned construction of a new and better prison in 1327, and the decision to provide food for the inmates at the expense of the commune in 1298. All these actions were taken 'intuitu pietatis et misericordie' ('for the sake of piety and mercy'), the formula that is used in the *oblationes*

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[91] Van Damme, 'Siena and the Widow'.
[92] *Vita A.S.,* col. 184.
[93] Bowsky, *A Medieval Commune*, p.55
[94] 'Diletti miei, ponete nelle menti
che li divoti vostri prieghi onesti
come vorrete voi farò contenti.
Ma se i potenti a' debil fien molesti,
gravando loro o con vergogna o danni,
le vostre orazion non sien per questi
né per qualunque la mia terra inganni'
See also Jacoff, 'Diligite iustitiam: Loving Justice in Siena and in Dante's Paradiso'.
[95] Bowsky, *A Medieval Italian Commune*, p. 56.

and at any other time a charitable action towards criminals was taken. It is not a coincidence therefore that, from 1278 on, the main amnesty of the year was placed on the day of the feast of the Virgin Mary. Although this is clearly connected to the Virgin's patronage of Siena, in other cities with different patron saints, such as Florence or Milan, the records indicate that amnesties were held on the 15th of August as well: this seems to indicate that Mary's connotation as 'mother of mercy' was also taken into account in the choice of the dates[96]. A lay power like Siena, that wanted to present its justice as a reflection of that of God, as seen in Chapter 3, had to bear in mind that it had to make space for mercy as a complementary legitimising construction to *ultio/vindicta*: practices like the ones described above show how this polysemous model of justice was not only theorised in programmatic documents, but also put into practice in 13th- and 14th-century Siena.

The councillors continued to attribute great importance to the spiritual aspects of this practice. This emerges from the frequent involvement of the most charismatic religious figures of the community, including the prior of the Dominicans, the guardian of the Franciscans, and individuals characterised by a saintly or quasi-saintly local devotion such as Pietro Pettinaio, some of his companions and associates (the notary Compagno del Vescovo, also mentioned in his hagiography, and Bartolomeo di Ildebrandino Vincenzi, rector of Santa Maria della Scala), and Agnese di Affrettato, founder of an eponymous hospital.[97] A concern to make truly ethical choices in the

[96] Koenig, 'Prisoner Offerings', p. 229, 244, 254.
[97] ASS, CG 23, f. 60v, 24/12/1279 (Bartolomeo di Ildebrandino Vincenzi and the guardian of the Friars Minor); CG 26, f. 11r, 11/08/1282 (Pietro Pettinaio, the guardian of the Friars Minor and the prior of the Dominicans); CG 29, f. 24r, 06/01/1284 (Pietro, Compagno del Vescovo and Agnese); CG 29, f. 24r, 1285 (Pietro, Compagno and Agnese); CG 38, f. 15r, 13/08/1289 (Pietro and Compagno). On Agnese, see Brunetti, *Agnese e il suo ospedale*. The relationship between Pietro Pettinaio and Bartolomeo di Ildebrandino Vincenzi is made clear in the testament of the latter (ASS, Dipl, AGC, 23/04/1284), in which Pietro is mentioned as one of the executors and Compagno del Vescovo as a possible advisor on how to give back to the poor any illicit profit made by the testator.

selection of prisoners emerges often from the discussions among the councillors. Lists of prisoners were carefully vetted and there were sometimes disagreements about who to release. This is particularly interesting as a guide to understand which types of criminal behaviour were considered at least partly excusable, and which ones were on the other hand too hideous to be forgiven. Those accused of the so called *crimina enormia* (see Chapter 3, p. 193, for their definition), for instance, could not be beneficiaries of an *oblatio*. Generally, only the names of the inmates and the amount of the fines they had incurred are listed, but sometimes their crimes are also mentioned, and in some other cases it is possible to extract this information by cross checking with the lists of condemnations of the *Biccherna* collection.

The typical crimes that the released inmates had committed are first of all assaults (*insultus*), but also the carrying of illegal weapons and gambling.[98] In case of violent crimes, however, it was possible to release a prisoner only if he had obtained an *instrumentum pacis* from their victims.[99] If a criminal had been captured thanks to the *appostatores*, the fee spent by the government to pay the capturers had to be returned to the financial officers before the release.[100] According to the statutes, moreover, those who had received a condemnation of more than 100 l. could not be released before spending at least two years in prison.[101] There seems to have been, however, a certain degree of flexibility in the choice of prisoners by the councillors, that was probably meant to accommodate their personal patronage and political concerns, as well as the specific

[98] For instance, for Easter 1296, fifteen out of twenty men involved in the *oblatio* were convicted for assaults, whereas the others had carried illegal weapons, gambled, sheltered other criminals or stolen a horse: ASS, CG 49, f. 66r, 25/03/1296.
[99] Some examples in ASS, CG 23, f. 60v, 24/12/1279; CG 29, f. 24r, 1285; CG 38, f. 29r, 8/09/1289.
[100] E. g. ASS, CG 52, f. 53r, 14/08/1297.
[101] Pazzaglini, 'Comments on the Comparable Practices of Medieval Imprisonment', p. 162. The norm contained in the statutes can be found in *Costituto volgare*, I, c.539.

situation of the inmates. It is thus not so uncommon to find that people who did not strictly conform to the rules were in any case liberated.[102]

The ethical concerns councillors had to face in their choices are particularly clear in one case, in which one of the prisoners proposed by the religious counsellors was Nuto Giraldi, which we have encountered in Chapter 2.[103] He had been condemned to pay the exorbitant sum of £1000 for having been naïve enough to confess that he had come to Siena to kill an *inimicus* from his village,

'Whom he could well have killed, if he had wanted, but he decided not to: and he was condemned, as it has been said, just because of the aforementioned evil plan'.[104]

Whereas the majority of those who intervened agreed on liberating all the proposed prisoners, the notary *ser* Cacciaconte maintained that Nuto should be kept in prison, although eventually the council voted for his release. The moral implications on this episode appear particularly interesting because Nuto's story is not too different from those, narrated in hagiographies, about people renouncing retaliating against their enemies for religious reasons, such as Mino Luglioli in the life of Pietro Pettinaio.[105] Besides being another example of the concept of 'intent-based' culpability examined in Chapter 1, the disagreement between the majority of councillors, who considered Nuto's repentance and brief permanence in jail enough to reconcile him with society, and

[102] E.g. ASS, Biccherna 740, f. 1v (two men released even if they had committed highway robbery and homicide); ASS, CG 52, f. 53r, 14/08/1297 (a member of the *de Maconibus* magnate family was released). See also the examples in Pazzaglini, *The Criminal Ban,* pp. 92-93.
[103] ASS, CG 23, ff. 15r-17r, 13/08/1279.
[104] *Ibidem*: 'quem bene potuit occidere, si voluisset, sed noluit: et tantummodo propter dictum malum propositum condemnatum ut dictum est'.
[105] *Vita P.P.,* p. 61-ff.

Cacciaconte's concern for internal security shows once more there were individual differences in the attitudes towards ideas of justice among members of Sienese society.[106] This made clashes between different conceptions always possible, as in this case: however, the strength of Sienese government is shown by its ability to harmonise the contradictions through its collaboration with the main purveyors of the penitential model of criminal justice. The fact that the religious figures involved, as seen above, were so popular in Siena, and that their main connection with the government was the choice of prisoners to liberate, witnesses the importance that this activity had for the citizenry.

Another significant aspect of this harmonisation in the context of the *oblatio* is the ritual one. In some instances, the religious rite involving the released captives was described in some detail, giving us insight into the symbolic values of the practice. The description of the Circumcision amnesty of 1285 is particularly rich.[107] The report starts with a long debate on the choice of prisoners, solved by entrusting the decision to some of the most authoritative penitents of Siena: Pietro Pettinaio, Compagno del Vescovo and Agnese. The day after, the Fifteen governors of the city and the *priores* ordered the administrators of the prison to release Castroleone Belmonti, an inmate whose liberation the government had particularly at heart for reasons that will become clear. The man was taken to the Cathedral, 'ante altarem Beate Marie semper virginis', where some priests performed the ritual of the *oblatio* 'per Griffolum', –the abbot of the Cistercian monastery of San Galgano and *camerarius* of the commune, who had reminded the Council to organise the amnesty:

[106] On 'intent-based culpability' see Chapter 1 and Papp Kamali, 'Felonia Felonice Facta'.
[107] ASS, CG 29, ff. 24r-25r, January 1285.

'In the name of the commune of Siena, he swore on the Holy Gospels, with a hand on the book, to obey the rules of the Lord *podestà* of Siena and of the commune of Siena, and not to commit offences against anyone, and he made peace and ended his enmity with all his enemies'.[108]

Later, on the same day, other prisoners performed the same rite in the Cathedral. Unfortunately, no further details on the performance of this ritual can be found in Sienese sources. In particular, despite its marked para-liturgical nature, it seems that no liturgical manuscripts produced in the *ecclesia maior* of Siena in this period offer a more detailed description, so that it is not possible to compare the *oblatio* to the rituals of public penance described for the French context by Mansfield.[109] They have in common, nevertheless, the public nature of the humiliation inflicted on the former inmate in order to readmit him within the community, as well as their penitential character. Moreover, it is worth noting that the rite, albeit directed by the political elite, involved a large part of the religious landscape of the city and particularly its symbolic centre, the Cathedral and its clergy. It can be therefore hypothesised that the rest of the population also had a part in it and possibly attended. It is also worth noting that the government would normally select prisoners who had committed violent crimes, or other types of breaches of the public order, whose maintenance was central to the ideology of the commune, instead of prisoners for debts (*exbanniti in avere*), who constituted the majority of medieval inmates according to Geltner.[110]

[108] *Ibidem:* 'nomine communis Senarum, qui (Castroleone) iuravit ad sancta Evangelia, libro tacto corporaliter, mandata domini comitis potestatis Senarum et comunis Senarum [servare] et non offendere aliquem, et omnibus inimicis suis (...) pacem et finem reddidit'.
[109] Mansfield, *The Humiliation of Sinners*.
[110] Geltner, *The Medieval Prison*, p. 51.

The aim seemed indeed to be not so much that of emptying the prisons of poor people to let the government save money on their maintenance, but that of promoting a spirit of reconciliation between parties, and between individuals and public authorities. For instance, the prisoner Castroleone Belmonti, whom the councillors insisted particularly on liberating in 1285, seems to have been a former Ghibelline exile, as emerges from the documents concerning his attempt to retake possession of his confiscated properties in the city.[111] The insistence on having him publicly declare his fidelity to the Guelf commune at the altar of the Virgin, and the decision to describe this event in the minutes of the General Council, seem to hint that the Sienese politicians wanted to give a symbolic and exemplary character to his *oblatio*. The political use of religious justifications for merciful initiatives seems to have been common in Siena, as seen in the examples mentioned in Chapter 3, to which others could also be added.[112]

By making mercy one of its main characteristics, the commune of Siena could therefore not only use a powerful legitimizing tool, but also increase its flexibility by being able to conveniently pass from a retributive to a restorative model of justice, according to the circumstances, without weakening its ideological constructions. The influence of penitential theorisations on this aspect of the communal ideology appears particularly strong.

Following the spirit of the Mendicant orders in the choice of prisoners, and in choosing to liberate only those who had already spent an appropriate amount of time in

[111] ASS, Capitano del Popolo 3 (1290), f. 39v.
[112] ASS, CG 88, f. 166r, 22/04/1317: 'Cum nil pace salubrius, nil dulcius, iocundius melius vel utilius, nilque comunitatutm rectorum magis expediat quam inimicos ad viam vere pacis reducere, errantibus viam rectam ostendere et in tenebris ambulantium lucis concedere claritatem, volentibusque redire ad rectum benivolentie tramitem pietatis et misericordie gremium aperire, et pax sit donum Dei viventis, et ex ipsa res publica crescat, conservetur iustitia et cuncta bona proveniant…' The same formula is used in ASS, CG 87, f. 124v, 01/09/1316, edited in Ascheri, 'Die andere Gewalt', p. 107.

jail (it was often forbidden to release prisoners condemned during the regime of the *podestà* who was still in charge, and as noted above those who were condemned to fines over 100 l. had to spend two years in jail before being eligible), the councillors seem to have taken relatively seriously the penitential and rehabilitating character of the prisoners' experience.[113] Life in jail, just like penance, had the same function of letting individuals atone for their sin in the eyes of God and, it seems, also of communal justice. This concept was expressed very clearly by the councillors on the occasion of the Assumption *oblatio* of 1301. In this circumstance they decided to liberate all the prisoners who had been captured in the countryside, after having left the city for fear of a trial, at least five years before:

'Please also take into account with fear of God that those who have been for so long in prison have already been sufficiently purged for their contumacy, and, if being in jail and subject to torments for so long is enough to atone for a condemnation, it can be said that they have expiated and atoned for their condemnations in the eyes of God and of justice, and that for them it would be better to die than to live subject to torments'.[114]

This brings us back to the question of the reasons why the *oblatio* became a stable event in Siena: as already mentioned, the willingness to show the merciful side of urban justice, reflected in the formula 'intuitu pietatis et misericordie', was central in this process. It has to be noted, however, that in exchange for the mercy shown to poor

[113] *Vs.* Pazzaglini, 'Comments on the Comparable Practices of Medieval Imprisonment', p. 164, note 49.
[114] ASS, CG 60, f. 49r, 09/08/1301: 'Velitis etiam divino timore considerare quod qui tanto tempore steterunt in carceribus satis eorum contumaciam purgaverunt, et si stare et tormentare tanto tempore esset solutio condempnationis cum Deo et iustitia eorum condempnationes dici possent solvere et satisfieri, et quod dulcius et melius esset eis mori quam vivere in tormentis'.

inmates, the Sienese elite expected God and the Virgin to bestow their patronage on the community as a whole, as shown by the declared motivations for these acts, such as:

'In honour of God the Almighty and the Blessed Virgin Mary, his mother, so that God the Almighty protect, enhance and defend the city and the commune of Siena, and in recognition of the victory and the honour granted to the commune of Siena against its enemies'.[115]

Oblationes therefore also reflected the spiritual needs of the political elite and of the population. They were believed to have an active role in ensuring divine protection over Siena and in maintaining and improving the good and peaceful state of the city. In particular, the connection to the precedent of releasing prisoners of war at the end of conflicts was sometimes maintained. *Oblationes* happening near the end of one of them (such as the one in the previous example, which happened near the end of another war with the lords of the Maremma) expressed thanksgiving to God for the favour shown to the city. Far from being a 'crisis devotion', as suggested by Koenig, these rituals were a celebration of the power of the commune: the mercy bestowed on its poor members was at the same time a way of showing to God that Siena deserved His clemency, and also of asserting the superior power of the commune over its territory and its inhabitants. The idea that the city of Siena was powerful because it was merciful is present also in the chronicles of the city, and in particular in the narration of a crucial moment for the identity of the city, that is, the aftermath of the battle of Montaperti (1260).[116] After the battle, the

[115] ASS, CG 38, f. 67r, 28/12/1289: 'ad honorem omnipotentis Dei et Beate Marie Virginis, matris eius, et ut Deus omnipotens custodiat, augmentet et defendat civitatis et commune Senarum et ad recognitionem victorie et honoris concesse comuni Senarum contra hostes suos'.
[116] On Montaperti see Balestracci, *La battaglia di Montaperti*; in particular on the siege of Montalcino see pp. 73-76. See also the Introduction.

Sienese besieged Montalcino, a town considered guilty of having sparked the conflict between Siena and Florence.[117] The Montalcinesi, having lost all hopes, sent envoys dressed as penitents to demand mercy to Siena, since its citizens were renowned for being compassionate and would pardon them. The Sienese decided to comply to this request, but assigned them a heavy penance, that is, the task of burying the over twelve thousand casualties of the battle, in order to reflect on the bloodshed they had caused with their rebellion against Siena.[118] The image of Siena as a community favoured by God on account of its mercy towards its misguided subjects was therefore a powerful construction in the 'mythology' of the city, which the rite of the *oblatio* regularly renewed twice a year.

To conclude, the Sienese *oblatio* deserves attention as a practice introduced following the influence of the most dynamic religious communities of Siena, and then embraced by its political class as a tool of legitimisation and protection of the city. It testifies that the local elite was permeable to ideas of justice of religious origin, based on considerations about the duties of Christians towards the destitute and on the importance of mercy, while at the same time they were elaborating a system of *ex officio* justice with a strong retributive character. Although the two models were theoretically opposed, local elites strove and managed to find a balance between them: this, far from undermining the coherence of the legal system, strengthened the legitimacy of the government by grounding it in a variety of tools, and fulfilled at the same time the spiritual aspirations of its members.

[117] Anonymous, 'Cronaca senese', p. 60.
[118] The document of submission of Montalcino can be read in Cecchini (ed.), *Il Caleffo Vecchio*, vol. 2, p. 846.

3. Deviance Disavowal Strategies in Sienese Petitions for Amnesties

Unlike the rite of the *oblatio* in the Italian communes, amnesties in the kingdoms of Western Europe (and partly also in communal Italy) have received much more attention from scholars, starting from Zemon Davis' contribution on 16th-century French letters of pardon.[119] In particular, she highlighted the complex nature of this unique type of source in which, just like in the depositions of witnesses in inquisitorial trials, researchers have for some time thought they could access the 'ossified voices' of past people.[120] Zemon Davis has highlighted the 'literary quality' of such sources, in which historians can find, more than a true or a false account of events, a mixture of competing narratives and discourses meant to convince contemporaries of the narrator's trustworthiness.[121] In these sources the defendants are 'bargaining for reality', and their mode of discourse is much more strategic than factual[122]. The methodological discussion on the 'voices' in these records has lately been enriched by Johnson's contribution, which has highlighted the importance of taking into account the legal framework in which these documents were produced, in order to construct 'more legally incisive deconstructive accounts'.[123] This means, for example, that the role of legal counsellors as the co-authors has to be taken into account. At the same time, however, Johnson highlights the witnesses' (or petitioners', I would add) agency and ability to manipulate the social

[119] Zemon Davis, *Fiction in the Archives*.
[120] This was for instance the opinion of Le Roy Ladurie, *Montaillou*; this view attracted the methodological criticism of, among others, the anthropologist Rosaldo, 'From the Door of his Tent: the Fieldworker and the Inquisition'. Rosaldo criticised the lack of use of the ethnographic reflections on data collection in the seemingly anthropologically-minded work of the French historian, in that Le Roy Ladurie believed that it was possible to access the 'true voices' of the Occitan peasants whose testimonies he analysed, without considering the power dynamics reflected in the sources (gathered by an inquisitor who had the power to put heretics to death) and the fact that the original Occitan in which the testimonies were uttered was translated into Latin.
[121] Zemon Davis, *Fiction in the Archives*, p. 2-ff.
[122] Arnade, Prevenier, *Honor, Vengeance and Social Trouble*, p. 14.
[123] Johnson, 'The Preconstruction of Witness Testimony'.

ideologies circulating in their own culture, a concept that Johnson dubs as the 'preconstruction' of witness testimony. This reflection is all the more meaningful if one considers the body of research highlighting how ordinary people in the Middle Ages had a much greater familiarity with legal institutions and understanding of their logics than was presumed in the past.[124]

Using this methodological debate as my starting point, I will analyse in this section two collections of 14th-century Sienese petitions for amnesty from the volumes *Biccherna* 731 (1321) and *Biccherna* 732 (1329). These documents will be used as a way of assessing how people of different genders and classes manipulated, with the help of their counsellors, the ideologies of criminal justice circulating in Sienese society, in order to substitute the narrative of crime attached to them by the judges with a narrative of trustworthiness. The contribution of sociology and criminology seem to be particularly useful to conduct such an analysis. In particular, Sienese petitions seem to reflect the central tenet of symbolic interactionism, that is, the idea that an individual identity exists in the context of their social interaction with others, so that our self-conceptions are reflections of others' conceptions of us.[125] The individual is not a passive element in this process, but possesses the agency to negotiate their identity in their relationship with others. The criminological repercussion of this theorisation, known as 'labelling theory', postulates that every social group creates its norms and then applies them by labelling those who do not conform to them as 'deviant'.[126] Once an individual has been attributed a deviant identity, the latter becomes their most important characterisation, so that they are pushed at the margins of society as outcasts. However, it is possible to contrast the

[124] This idea has been analysed in particular in the English context: see for instance Musson, *Medieval Law in Context: the Growth of Legal Consciousness*.
[125] For an introduction to symbolic interactionism, see Sandstrom, Martin, Fine, *Symbols, Selves, and Social Reality*. See also Chapter 1, section 4.
[126] Akers, Sellers, , *Criminological Theories*, Chapter 7, 'Labelling theory'.

process of attribution of deviance through various strategies, which renegotiate the identity of the individual and the perceived motivations behind their actions.

In Siena, at least ten general amnesties were enacted between 1302 and 1354.[127] Unlike for the *oblatio*, the motivation for enacting an amnesty was clearly an economic one, as the sources make clear. In exchange for granting a pardon to an inmate or a bandit, the government would receive from them a certain amount of money, indicated in the petition: even if generally this amounted to no more than 5% of the original fine, amnesties were still an important source of revenue for the commune in times of hardship.[128] Since the fines established for many types of crimes were too high to expect most people to ever be able to pay them, amnesties were a moment in which the penalties could be renegotiated in a way that was favourable to the commune and did not lead it to lose credibility.[129] In March 1321, for instance, the enacting of a general amnesty was clearly motivated by the desire to collect money to fulfil the needs of the commune in a moment of economic stagnation and political instability. 1318 had seen the most serious revolt against the regime of the Nine before its fall in 1355 and, shortly after, the city was menaced by the expansionism of Castruccio Castracani, lord of Lucca.[130]

The requests for amnesty, however, had to be vetted by the officials of the Biccherna (the *camerarius* and the four *provisores*) and then be submitted to the General Council for the final vote. Only petitions that received at least two thirds of positive votes would eventually be accepted.[131] In previous amnesties those who were guilty of *crimina*

[127] Bowsky, 'The Medieval Commune', p. 13, note 47. See also Bowsky, *The Finance of the Commune of Siena*, p. 524.
[128] Kumhera, *The Benefits of Peace,* p. 104.
[129] *Ibidem*, p. 101: Kumhera highlighted the negotiating nature that characterised the communal system of criminal justice, but recognised also the importance of punishing (p. 96). Zorzi, 'Negoziazione penale', stressed even more the centrality of negotiation in communal justice.
[130] ASS CG 95, f. 133v, 28/03/1321. Bowsky, *Siena under the Nine*, p. 101.
[131] Kumhera, *The Benefits of Peace,* p. 104.

enormia (homicide, perjury, arson, theft, treason, violation of a peace, avoidance of military service and forgery) could not participate, but in 1321 the situation of crisis led the political elite to abandon this regulation, as well as the law stating that magnates who had committed a crime against *popolani* could not be pardoned.[132] The data from the amnesty of 1329, for which both the rejected and the accepted petitions have been preserved, show that 91,5% of the petitions were accepted (537 *vs.* 50 rejected ones)[133]. It is possible that similar ratios characterised also the 1321 amnesty, but we cannot be sure, since for the latter only the 852 accepted petitions are still extant.[134] It is not entirely clear what factors the councillors considered when rejecting a petition. Kumhera argued that timing was an important factor, since at the end of the period of amnesty the commune would have almost met its financial needs, and would therefore be stricter when assessing a petition.[135] However, the fact that on the first day of the 1329 assessment two out of nineteen petitions were rejected shows that a good story, in which the petitioner established themselves as a non-deviant individual without a potential for recidivism, was of the uttermost importance.[136]

The high level of personalisation and detail showed by the extant petitions seems to be another proof that the outlawed Sienese tried hard to present to the councillors a 'bespoke' document, which could reflect in a not too stereotypical way their identity and relationship with the community and the government. An example of this is the petition of a member of the magnate Saracini family, in which the attorney, who was the brother of the petitioner, pursued a very unusual rehabilitating strategy. The latter was based on

[132] Pazzaglini, *The Criminal Ban,* p. 95, quoting ASS, Statuti 15, f. 336v.
[133] Kumhera, *The Benefits of Peace,* p. 105.
[134] ASS, CG 95, f. 180r, 08/05/1321 shows that not all the petitions presented in 1321 were accepted, but the requests were registered in two separate volumes according to their outcomes.
[135] Kumhera, *The Benefits of Peace,* p. 109.
[136] *Ibidem*, p. 109, note 83. Kumhera intends to conduct a detailed analysis of the fifty rejected petitions of Biccherna 732 in a future contribution. It is also worth noting that it is relatively unusual to have rejected petitions available to study. Zemon Davis, for instance, did not have any for 16th-century France.

the fact that he was willing to give a considerable contribution of 500 l. to the commune in exchange for the pardon, that the councillors had readmitted to the city much worse criminals than his brother and that –most importantly– they belonged to a powerful family to which the commune should have a debt of gratitude.[137] By contrast, arguments of this type never appear in the requests made by self-proclaimed members of the lower classes. They tended on the contrary to stress their lack of resources and the fact that they needed to activate their support networks (family, friends, fellow parishioners) in order to be able to collect the small sum they offered.

The structure of the petition, which could be presented by the outlaw or criminal themselves or by an attorney (generally a relative or, more rarely, a notary), highlights very clearly the purpose of changing the perception that the councillors, as members of the community and of the government, had of the person who hoped to benefit from the amnesty. After the initial address to the *camerarius* or the *provisores* which, as will be seen, can already be an indication of the tone of the letter, the official narrative of the trial in which the supplicant was condemned is reported in detail, including the number of wounds inflicted on the victim and the parts of the body affected by them. This story is immediately challenged by another one that purports to be the 'true one', that is the version of the supplicant or the attorney. Finally, the reasons why the offender deserves to be pardoned are summarised again in a final appeal.

Three strategies are employed to challenge the official narrative. The simplest one asserts its total falsity, related to the inability of the judge to ascertain the truth because of his harshness (the *severitas* discussed in the first section of this chapter) or because of the false testimony of *inimici* against the supplicant.[138] A more common strategy consists

[137] ASS, Biccherna 731, f. 12r: 'Si non fallor illi de domo nostra debeant et merentur largitate beneficiorum communis Senarum gaudere ut alii cives Senarum; rationes et causas hic non scribo, quod note et manifeste sunt et per me recitatum non esset forte honestum'.
[138] Some examples can be found in ASS, Biccherna 731, ff. 80r, 297r, 582r.

of what the interactionist sociologists call 'neutralisation', that is, the idea of accepting the deviant nature of the actions one has committed, while at the same time challenging the appropriateness of being labelled as deviant by offering acceptable motivations for them, as also described by Zemon Davis. The narrative of the trial is therefore characterised as only partly true, but lacking the most important details necessary to have a full understanding of the offender's behaviour. The actions at the origin of their condemnation are therefore presented as non-intentional, accidental or characterised by attenuating factors that testify to the good nature of the petitioner, which should make their actions excusable in the eyes of the community. An example is the story of a man who justified his wounding of a fellow citizen as an accident which happened in a moment of rowdy celebrations by the Sienese Guelfs when the rumour was spread that Ghibelline Lucca had been reconquered by their party.[139] His identity as a respectable, non-violent man, a good Guelf and a poor father of six children is established in the text as something that should earn him the immediate compassion of the government. More rarely, but very interestingly, some petitioners do not deny at all the truth of the story told in their condemnation, but assert that the episode of deviance they committed has completely changed and sublimated their identity. It prompted them to convert to a more spiritual life, to the point that they could then propose themselves as privileged mediators between God and the community, and pray for the latter in exchange for their pardon. A good example is the petition of Tuccio of Licignano Val d'Arbia, an inmate condemned for having broken into a house to attack a man. He claims that the experience in jail had a penitential value that transformed him into a different person, and establishes himself as an almost charismatic figure whose prayers could help the urban community to undertake a penitential journey similar to his, and could have a protective effect on the city:

[139] ASS, Biccherna 731, f. 25r.

'Therefore, since Tuccio has been purified by his penance and has been repenting for his crimes for a long time (...) he asks the Lord Jesus Christ to convert in all sweetness, with his prayers, the city to that desire for salvation which becomes like our recent desire for one's own salvation, and to protect and defend and guard you from misfortunes'.[140]

This strategy, that consists in the replacement of the deviant identity with a positively evaluated, sometimes charismatic one, has also been described in interactionist theory as one of 'destigmatization'.[141]

When using one of these three strategies, the petitioners showed that they were drawing their arguments from the same three ideological reservoirs that have been described so far. Loyalty to the ideology of public order is shown by the petitioners in different ways: boasting of one's active membership in the Guelf party, as seen above; stressing one's affiliation to the *Popolo* and explaining one's problems with justice as the fault of the false testimony of a magnate;[142] proclaiming one's fidelity to the commune as shown by one's engagement in military activity or by some other type of merit;[143] justifying one's acts of violence as the actions of a good citizen who, while performing his duty as a civic guard, had to be rough in arresting a felon.[144] Even declaring that one

[140] *Ibidem,* f. 93r*:* 'Quare cum ipse Tuccius sua penitentia sit purgatus ac eundem delictorum lunge peniteat (…) rogans dominum Jesum Christum quod civitati oratione dulcissime illud salutis adibeat studium quod nostrum studium inchoatum ad sui salute deveniat, et protegat et defendat atque custodiat vel vos a malis'.
[141] Warren, 'Destigmatization of Identity'.
[142] ASS, Biccherna 731, ff. 85r (the petitioner decides to testify against some aristocrats who had a fight with the *birri,* because he feels bound by the oath he took in court; the aristocrats decide to take their revenge on him by suing him with a false accusation), 505r, 513r.
[143] *Ibidem*, f. 350r (a rapist is a hero of the battle of Montecatino, and claims that the Nine had promised to pardon him for his war merits); f. 793r (a man reminds the councillors that he has helped the Nine suppress a past revolt).
[144] *Ibidem*, ff. 22r (a man slaps a boy who was throwing stones from a balcony in order to avoid disruption of the public order); 239r (a man is accused of assault for trying to prevent someone from exporting grain against the law).

was afraid of the judicial system of the city could be considered a way of conforming to the expectations that the government had of what constituted an ideal citizen, since -as has been seen- a good Sienese was supposed to have a 'healthy' fear of the local criminal justice. Another set of justifications used by Sienese petitioners is connected to the traditional values of their society, that underlay the 'culture of revenge' described before and the sense of honour interlocking with it. When resorting to this set of principles to reframe their actions as non-deviant, the supplicants often assert that the reason why they broke a law was to protect their social status within the community. In this perspective, a man excused the insults he uttered to someone as motivated not by a desire to offend him, but by the 'moral duty' to respond to the invectives addressed to him in the first place.[145] Another one, condemned for having killed his wife who had committed adultery with a priest, mentioned in his defence the opinion of the relatives of the slaughtered woman, that recognised the necessity of this homicide.[146]

Revenge obviously fell into this set of justifications: its use in the petitions deserves particular attention, since it can add details to our understanding of how such practice was perceived in the Italian communes. As seen in Chapter 3, revenge was treated in the statutes as an illicit action that, nevertheless, was less abhorrent than other crimes such as commissioned killing or retaliating on innocent relatives of one's enemy. The petitions confirm that, in practice too, revenge was not considered legal, but it could be sometimes invoked as a mitigating factor. As seen before, in the analysis of one of the few narratives of vendetta killing known for the Sienese context, the petition of Mino di Cione Picchiati, both Waley and Kumhera have struggled to explain why, if revenge was

[145] *Ibidem*, f. 607r: 'non animo iniuriandi aliquem, sed solum ad eius defensionem de quibus verbis et omnibus aliis iniuriis inter se et predictos commissis'.
[146] *Ibidem*, f. 113r: 'Invitus et quasi necessitate coactus'.

licit within the framework of communal justice, Mino had been banned from the city for having avenged the killing of his father on the killer himself (the *principalis* mentioned in the Sienese legislation).[147] The relatively numerous cases of revenge present in *Biccherna* 731 and 732 show however that even when it was beyond any reasonable doubt that the avenger carried out his retaliation in person and in the presence of witnesses able to confirm what the motivation for his actions was, he could not count on revenge as a factor that would spare him a condemnation altogether.

The case of Francesco di Leo de Foschis is telling: he was condemned to pay a fine of 800 l. for having wounded Guidone di Toni Bonfiglioli, who had previously inflicted a 'shameful wound' on the face of Francesco's brother (in all likelihood a wound that disfigured the man's appearance).[148] The petitioner insists that a crime committed out of revenge was more forgivable that one happened without good reason. The point he seems to make is that the former constituted a lesser danger for the public order since, unlike some other people, he would not even think of violating the laws of the community if he did not have a very serious reason to do so.[149] Nevertheless, his analogy seems to imply that revenge equated with delinquency, even if it is delinquency 'with a cause' (*non sine causa*) and was, therefore, contained in its scope.

Even clearer is the story of the rich Guglielmaccio Petroni (father of the future Carthusian saint Pietro Petroni),[150] who did not avenge the offences committed against him by his enemy in person, but commanded a servant (*familiaris*) to do it on his behalf.[151] On account of the severity of Sienese legislation against commissioned crimes, the man

[147] Waley, 'A Blood Feud with a Happy Ending'; Kumhera, *The Benefits of Peace*, pp. 102-103.
[148] ASS, Biccherna 731, f. 167r.
[149] *Ibidem*: 'in predictis et similibus casis debet consilium habere discreptionem et considerationem, multo enim debet esse levior causa eius in conseguendo benefitium ordinamentorum qui receptam iniuriam vindicat, quam eius qui sine ulla causa ad delinquendum prorumpit'.
[150] Pellegrini, 'Petroni, Pietro'.
[151] ASS, Biccherna 731, f. 134r.

was condemned to death. He protested that, as everyone knew, he had a good reason to take his revenge and, had he done it personally, he would have been condemned only to a fine of 800 l.[152] It is therefore clear that, in any case, the man's actions would have earned him a condemnation, even though if he had carried them out personally that would not have necessarily entailed a corporal punishment.

Not only was revenge illegal and only a mitigating factor, but it was not even a failsafe one. The collection of rejected petitions of *Biccherna* 732 shows examples of supplicants who did not manage to convince the councillors in this way: one of them explained his double homicide and the wounding of two other people as a revenge for the death of his father and paternal uncle.[153] It seems that in this case the enormity of his crimes and his tendency to recidivism (he had been also accused of killing a friar) overcame the possible mitigating effect of using revenge as a justification.

The variety of factors that the Sienese petitioners used to renegotiate their identity seems to call for a concept of honour and reputation that goes beyond the mere display of a rivalrous male dominance, to include also other, more cooperative values. Sometimes they made reference to their professional pride, as when a weaver boasted of his contribution to Sienese industry as a reason why he should be pardoned, or a merchant denied his charge of homicide by saying that people belonging to his profession are not killers.[154] There was also the local pride of individuals and communities that claimed to have gone through hardships to preserve the liberty of Siena.[155] Even more often the solidarity links that the petitioners had with relatives, friends and fellow parishioners -

[152] *Ibidem*: 'Sicut quasi omnes Senenses bene sciunt hoc processit et factum fuit ex vindicta et non sine magna causa, et si Guglielmaccius illud propria manu fecisset, debuisset condempnari in VIIIc libras tantum secundum formam statuti'.
[153] ASS, Biccherna 732, ff. 333v-336r.
[154] ASS, Biccherna 731, f. 21r; ASS, Biccherne 732, f. 347v.
[155] ASS, Biccherna 731, f. 715r: a man from Rocca Albegna claims he want to be obedient to Siena 'ut fuit semper ipse et alii de terra sua, propter quod passi sunt et mortes et vulnera et admissionem quasi omnium bonorum suorum'; f. 729v (petition of the rural commune of Tatti).

and the ability they had to activate said networks to ask for support- are mentioned as a testimony of their good nature. The supplicants insisted that they gathered the money they were offering in exchange for the amnesty from 'consanguinei et convicini'[156] (relatives and neighbours), 'amici et boni homines in ecclesiis'[157] (friends and good people in churches) etc. In this way, they aimed to demonstrate that, even if their poverty did not allow them to pay the full fines inflicted on them, they had the trustworthiness and the 'social capital' to obtain financial and moral assistance from the community, which recognised them as valuable members and not as deviant outsiders.[158] All these examples seem to show that honourability in Siena was not only a matter of 'honour of precedence', which is defined by anthropologists as male rivalry to obtain dominance, but also a question of 'honour of virtue', a sense of reputation based much more on the norms of sociability.[159] Just like in the case of the Greek concept of *filotimo* analysed by Herzfeld, Sienese male reputation and trustworthiness consisted in living up to expectations and obligations that prompted men not always to excel over their peers, but more often to collaborate.[160]

If men could make reference to this complex set of values to show that they were deserving of an amnesty, women tended to resort to the third ideological reservoir to convince the councillors, that is, the mention of religious values. It seems that, in Siena, the principal mark of trust for a woman was her association with religious virtues. As in the case of the repentant prostitute in Chapter 2, a religious conversion was the most

[156] *Ibidem*, f. 19r,
[157] *Ibidem*, f. 77r.
[158] Todeschini, *Visibilmente crudeli*, pp. 7-13.
[159] Gilmore, 'Introduction: The Shame of Dishonor', p. 5.
[160] On this broader concept of male status see Herzfeld, 'As in your own House: Hospitality, Ethnography and the Stereotype of Mediterranean Society'; Gilmore, 'Honor, Honesty, Shame: Male Status in Contemporary Andalusia'.

effective way for a 'fallen' woman to restore her reputation. The fact that the social mission of a well-behaved woman was that of pioneering religious values and models of behaviour, as suggested by Gauvard, is shown by a later Sienese example, a judicial document in which a couple tried to establish their *bona fama* in a trial.[161] In the register, dated 1342, the grocer Pietro di Meo and his wife Bonafemmina reacted to an accusation, respectively, of rape and complicity in rape by providing witnesses of their good reputation. These individuals testified that he 'habet apotecam et exercet artem suam et eius uxor vadit ad ecclesiam' (has a workshop and practices his profession and his wife goes to church), or 'tenet apotecam et utitur cum bonis personis et eius uxor vadit ad ecclesiam' (he has a workshop and associates with good people and his wife goes to church).[162] If Pietro's non-deviant identity revolved around his professional pride and association with other respected members of the community, Bonafemmina was first and foremost a good woman because she was a good Christian. Another example of how the church was conceived as a particularly fitting place for women is a petition in which a youth tried to obtain amnesty for a sacrilegious action committed in the cathedral. He had entered the church at night and started offending the faithful gathered there to participate in the liturgy who, according to the narration, were all women.[163] As shown by this and other examples, and as noticed also by ethnologists of the Mediterranean, whereas it was almost excusable for men to have an irreverent attitude towards religion because of the 'feminising' values of meekness and humility it promoted, the good name of women was profoundly linked to devotion.[164]

[161] Gauvard, *De grace especial*, p. 342.
[162] Mucciarelli, 'Bisogna essere molto prudenti con le voci', p. 45, note 60.
[163] ASS, Biccherna 731, f. 65r: 'proiecisse ventricellos (?) mulieribus stantis in ipsa ecclesia et ipsas mulieres cepisse personaliter et austulisse velectos de capite et bussasse in dicta ecclesia cum bastonis per banchas et aliter'.
[164] See also Chapter 2 for virtues as 'feminizing' characteristics. For an ethnographic example from modern Crete see Herzfeld, *The Poetics of Manhood*, p. 66.

It is not surprising, therefore, that in the petitions women often resorted to deeply religious formulae to convince the councillors that they, or the relatives they represented, deserved to be pardoned. Similar arguments can however be found also in men's supplications. The petitions which are mostly influenced by religious values generally show their character from the very first line, which, instead of addressing the *provisores* by calling them 'prudentes et honesti viri' (prudent and honest men), focus on the *camerarius*, who –as usual in Siena and other Italian communes- was affiliated to a religious order. This feature is highlighted by calling him 'religiosus et honestus vir' (pious and honest man).[165] The language used by this type of petitions often reflects that of the *oblationes,* since the supplicants asked the political elite to use the same mercy on them that they would employ with released inmates. These acts, therefore, ought to be accomplished 'intuitu pietatis et misericordie', 'amore Dei et Beate Marie Virginis' and in this case, too, the performance of such as merciful deed is connected with the protection of the divinity on the commune, something which is expressed using almost the same words that can be found in *oblationes.*[166]

While the petitions that rely on the ideology of the public order or the traditional values of honour often mention truth and justice (*veritas et iustitia*) as their guiding principles, in this last type mercy is stressed as the core value.[167] The petitioners sometimes go as far as quoting biblical excerpts or spiritual texts to convince the

[165] Andrews, 'Regular Observance and Communal Life', and more recently Andrews, Pincelli (eds.), *Churchmen and Urban Government.*
[166] For instance ASS, Biccherna 731, f. 644v: 'ut Deus custodiat civitatem Senarum et cives et de bono in statu (sic) in melius sua pietate deducat'-
[167] Contrast e.g. ASS, Biccherna 731, f. 3r ('supplicat amore iustitie et veritatis') and 41r (the supplicant claims to have been condemned 'contra veritatem et iustitiam') with *Ibidem*, f. 7r ('humiliter supplicat et devote quatinus pietatis et misericordie intuit') and f. 982r ('ius et iustitia ordinamentorum predictorum sibi cum misericordia postulat observari').

councillors of their duties towards the poor and the weak. 'Feneratur Domino qui miseretur pauperis' (Proverbs 19,17: 'he who has pity on the poor lends to the Lord'), concludes a petitioner, to motivate why the commune should accept the little money he could offer with the expectation of earning also spiritual privileges.[168] 'Qui culpis alienis ignoscit suis frustra non sperat parcendum' (he who forgives the faults of the others does not hope in vain to have his pardoned), assert others, paraphrasing Prosper of Aquitaine's comment to the Psalms.[169]

'He begs humbly and devoutly Your Paternity that for the love of Jesus Christ and his mother the Virgin Mary, for the sake of whom what is given is rewarded in double measure, you cancel the condemnation',

says another, making reference to the biblical concept of the double measure awarded by God to those who suffer for Him.[170] This underlines the high degree of acquaintance of the Sienese with religious texts and concepts, as proven previously also by Pietro Pettinaio's debate on free will with a theologian in his *Vita*.[171] The penitential tone used by hagiographies and sermons when dealing with episodes of violence was indeed something that common people could decide to adopt as a guideline for their own actions, as shown by cases of the use of a 'destigmatisation' strategy. Violent crimes could be for some a watershed that marked a radical change in their lifestyle: there are at least two cases of men who decided to enter a religious order after fights with an enemy, and they

[168] ASS, Biccherna 731, f. 251r.
[169] ASS, Biccherna 732, ff. 278v, 286r, 317r. The reference is to 'nec frustra sperat parcendum peccatis suis, qui ignoscit alienis', in Prosper of Aquitaine, *Sancti Prosperi Aquitani Expositio Psalmorum*, Ps. CXXIX,4; see also *Id., Sancti Prosperi Aquitani Liber Sententiarum*, Sent. 38.
[170] ASS, Biccherna 732, f. 281r: 'humiliter et devote suplicat paternitati vestre quatenus amore Jesu Christi et sue matris Viriginis Marie, ob quorum amore quod datur dupliciter ab eisdem remuneratur, dictam condempnationem cancelletis' . See Deut 21, 17; 1Sam 1, 5; 2Kings 2,9; Is 61,7; Job 52,10.
[171] *Vita P.P.,* pp. 86-94.

declare explicitly that their violent past was at the origin of this penitential choice.[172] The example of distant figures such as St Giovanni Gualberto, who in the 11th century became a monk after renouncing the chance to take his revenge on his brother's killer, or closer ones such as the Sienese saints who started their religious life after a turbulent past, were therefore not entirely confined to the hagiographical works but could have a real influence on people (even though this was certainly a tiny percentage of the population).[173]

Others decided to embark on penitential pilgrimages to the Holy Land, Santiago de Compostela or Assisi in order to atone for their sins.[174] The case of a man who had killed an enemy in a revenge-motivated aggression and had consequently repented and decided to go twice to Santiago and many times to Assisi 'ut penitentiam ageret de peccatis' (to do penance for his sins) is particularly interesting on account of the commingling of ideologies it shows.[175] The petitioner's attorney, his sister, declares that the man should not have been punished, since 'secundum iura parcendum est ei qui provocatus se ulciscitur' (according to the laws he who takes his revenge after a provocation should be forgiven), although her claim contradicted Sienese law. The woman is probably expressing a concept she had learned in her family education, and that was undoubtedly shared by her brother, since it is conceivable that he attacked his enemy thinking that he was in the right, according to the dictates of the 'culture of revenge'. However, the homicide of his rival (possibly unintentional) caused an internal turmoil in the man and made him think that his religious education as a Christian was in opposition to the act he had just committed. He therefore declared –even if through the mediation of

[172] ASS, Biccherna 731, ff. 153r ('frater Jacobus qui elapsis temporibus vocabatur Minus olim Bencivienis Barocci' 'mundo et mundano se immiscere non intendens Deo servire proponit pro remedio suorum peccatorum penitentiam facere' 'de predictis que misericorditer petit se dignum non reputat, quia vere se peccatorem cognoscit'), 185r ('frater effectus est').
[173] For Giovanni Gualberto see Andrea of Strumi, *Vita Iohannis Gualberti*, cc. 2-5. The episode is discussed also in Wickham, *Legge, pratiche e conflitti,* p. 358. On Giacomo of Montieri see the 16th-century version of his life in Siena, BCI, Ms. K.VII.24, *Legenda Beati Jacopi de Monterio*.
[174] ASS, Biccherna 731, ff. 324r, 851r ('pro remissione peccatorum').
[175] *Ibidem*, f. 324r.

his sister, and in contrast to the principle she invokes to excuse him- that 'suam culpam recognovit et eam procuravit coram Domino excusare' (he recognised his guilt and tried to atone for it in the eyes of the Lord) by undertaking a series of penitential pilgrimages.[176]

This narrative highlights at least two important aspects that have to be taken into account in the analysis of these petitions. Firstly, it shows that, when negotiating one's own identity, the supplicants and their attorney also negotiated the coexistence of different systems of values, which were all present in society, and were shared and often promoted by the same institutions, or by equally fundamental institutions, such as family, Church, and commune. The citizens of Siena and its *contado* did not passively internalise the claims made by such institutions, but seemed to be able to manipulate them and mix them together strategically, deciding to interpret each of them as a fixed moral verity, a simple mitigating factor or an argument overcome by more important considerations, according to their personal inclinations.[177] It is therefore very common to see arguments belonging to different systems of values in the same petition, as when a supplicant excuses a homicide by explaining it as an action carried out against a malefactor while a civic guard 'in servitio pro honore Senarum' (in service for the honour of Siena), but at the same invoking the mercy of the commune for the love of God and of the Virgin Mary.[178] The homicidal husband of the adulteress, mentioned above for his reference to the code of honour of his community, recognised at the same time that his action constituted a crime against the government and begged for mercy with a great display of religious references.[179] These examples lead us to think that, notwithstanding the personal preferences of individuals, people were generally able to let these discrepant conceptions

[176] ASS, Biccherna 731, f. 324r.
[177] Herzfeld, *The Poetics of Manhood,* p. 76. On the different stress placed on various status markers throughout the centuries see also Strange, Cribb, 'Historical Perspectives on Honour, Violence and Emotion', p. 2.
[178] ASS, Biccherna 731, f. 95r.
[179] *Ibidem*, f. 113r (see also note 143).

of violence and crime coexist. Only in situations of individual crisis, such as the ones described in the hagiographical miracles analysed in Chapter 1, or as the examples of people so shocked by their experience of violent confrontation as to decide to reorient their life according to non-violent values, the actors were called on to definitively pick an ideology and refuse all the others.

The other question raised by this example is that of the 'voices' we can discern behind the document. As seen above, it must be reminded that the petitions were crafted with the help of attorneys, who in some cases were legal professionals, and possibly sometimes with the consultation of other experts. The examples analysed above show however, in agreement with Johnson's concept of 'preconstruction' described above, that it is often possible to discern the voice of the petitioners themselves in these documents. Other cases from *Biccherna* 731 contribute to strengthen this point. At ff. 680r and 681r we find the petitions of two different individuals who used the same attorney to excuse themselves for the same crime, which they had committed together. Whereas the first man presents a petition rich in religious references, the second one omits these type of considerations, but stresses instead his fear for the severity of the *podestà* as the reason why he did not appear in court even though he was innocent.[180] Similar differences in the petitions of people condemned for the same crime and who used the same attorney, in this case the notary Noso di Orlando, can be found in *Biccherna* 732.[181] The fact that these documents were crafted with the help of a legal professional is the proof that differences between them cannot be ascribed to the author's inexperience of formulae, but reflect the precise will of the supplicants to use the strategy that they considered more appropriate to their personal cases and worldviews.

[180] *Ibidem*, ff. 680r, 681r.
[181] ASS, Biccherna 732, ff. 334r-v.

Some petitions show that the ideology of the merciful commune that appropriates the characteristics of God and the religious sphere (just like the kings in the European kingdoms) had penetrated among the population.[182] Faithful to it, some petitioners attributed to the commune the characteristics of Sbriccoli's 'soggetto giuridico maiestatico', that was at the same time 'pater pauperum' (father of the poor).[183] The commune is defined as 'pius' (pious),[184] its councillors 'semper (...) pietatis et misericordie atque innocentie difensores' (always upholders of piety, mercy and innocence)[185] and are even given the title of 'paternitas vestra' (Your Paternity).[186] Siena is described as a community of citizens characterised by the attribute of mercy ('civ[es] civitatis Senarum, qui misericordiam nulli denegant'), whose exercise is however reserved to its institutions, in front of which the outlaws present themselves as *humiles* (humble) and *pauperes*.[187] By claiming a state of poverty, the supplicants did not mean only that they lacked material resources but, in a broader sense, that they were weak and unable to obtain justice on their own, and needed therefore the patronage of a higher authority.[188]

Such petitions mirror the characteristics described by Vallerani for the supplications addressed to Taddeo Pepoli, *signore* of Bologna from 1337 to 1345.[189] Vallerani portrays the Bolognese development of a vocabulary expressing the affection

[182] Gauvard, 'Le roi de France et le gouvernement par la grâce'.
[183] Sbriccoli, 'Vidi communiter observari', p. 262; ASS, Biccherna 731, f. 67r.
[184] *Ibidem.*
[185] *Ibidem*, f. 771r.
[186] *Ibidem*, f. 691r; ASS, Biccherna 732, f. 278v: 'appetens comunis Senarum benivolentiam et paternitatem'.
[187] For another example of how petitions ascribe distinct sets of virtues to lords and supplicants see Koziol, *Begging Pardon and Favor*, p. 26.
[188] Vallerani, 'La pauvreté et la citoyenneté dans les suppliques du XIVe siècle'.
[189] M. Vallerani, 'La supplica al signore e il potere della misericordia', translated into English in Vallerani, *Medieval Public Justice*, Ch. 7: 'The Petition to the Signore and the Power of Mercy'; Vallerani, 'La pauvreté et la citoyenneté'.

of the lord for the destitute as something relatively new for the 14th century, and something which derived from the model of papal supplications. In Siena, however, this can be traced back well into the 13th century, to the reception and manipulation of religious ideas, propagated mainly by religious actors, enacted by the communal political elite. Still the fact that the language of poverty used by the supplicants gave them the moral power to pressure the lord (in the case of Siena a collective *signoria*) to protect them, as highlighted by Vallerani, acquires in the Tuscan examples a much greater strength.[190] The Sienese petitioners and their attorneys reminded the councillors that they had to be merciful if they wanted God to have the same mercy towards them, and that the Almighty would not maintain the peaceful state of the city if its governors did not 'please Him' by taking care of the poor.[191] Ambrogio Sansedoni's remarks about the tyrannical nature of those governments that do not use mercy towards their citizens, and that will be subject for this reason to a divine punishment, seem to be echoed in such statements. Moreover, those petitioners who did not rely mainly on religious arguments to excuse themselves often criticised openly the invasiveness of Sienese criminal justice. The critique is implicit in stories such as that of two friends who insulted and hit each other in the *ludus batallie* ('occasione ludi').[192] After the fight, they had eaten and drunk together, which constituted in the accusatorial trial a renunciation of the possibility of starting a judicial action against someone.[193] A common enemy of the two, however, had decided to denounce the incident to the authorities, who started a lawsuit against them. Too poor to bear the costs of defending themselves, they were found guilty. A matter that

[190] *Ibidem*.
[191] Examples in ASS, Biccherna 731, f. 713v: 'Deus per suam gratiam vobis concedat in predictis et aliis facere per quod Deo placeatis et pauperes adiuvetis posse vestro, ut Deus conservet civitatem Senarum in bono statu'; f. 920r: 'Rogamus vos pro Deo et pro Beata Virgine Maria eius matre quod quod (sic) intuit pietatos quod de nobis misericordiam habere ad hoc ut misericordiam consequamini in terminum'; ASS, Biccherne 732, f. 275r: 'opera pietatis sectantes, de quibus precipue humana condition est rationem in extremo iudicio redditura'.
[192] ASS, Biccherna 731, f. 80r. On violent games in medieval Italy see Chapter 2, section 3.
[193] Sbriccoli, 'Vidi communiter observari', p. 266.

was considered eminently private like a playful brawl between friends could become, thanks to the keenness of the commune not to let go any crime unpunished, something of public interest. The result –according to the petitioners- was only that of providing enemies with yet another forum where they could pursue their malevolent intentions against innocent people, and of impoverishing even more the members of the community that were already poor.[194]

More explicit are the critiques of those who mentioned not only a generic *severitas* of the *podestà* as a cause of their fear of the judicial system, but the tendency of communal legislation to allow an excessive use of torture in the interrogations. Torture made even the innocent confess crimes they had not committed ('cuius metus dicuntur multoties ea que vera non sunt'), according to a petitioner,[195] and was applied too often, even to people interrogated for petty crimes ('de facili et ut plurimum homines levi causa tormentant'), in the opinion of another one.[196] The cases of people seeking to be pardoned for having protested against the Cacciaconti, lords of Trequanda, who had allowed the commune of Siena to send their *berrovieri* in the village, mentioned also in Chapter 1, are a perfect example of this category.[197]

The discontent of many citizens, especially the poor, with the enhanced public character and severity of criminal justice in Siena, hypothesised by Pazzaglini, can therefore be substantiated by these petitions. At the same time, they show that, if the complementary ideology of the commune as the 'father of the poor' and a source of mercy for repentant criminals was received by the citizenry and internalised by some, other ways

[194] A similar case is in ASS, Biccherna 731, f. 575r. For cases in which the intervention of public officers such as *birri* and *milites* of the *podestà* in familiar fights is felt as equally invasive see *Ibidem*, ff. 1004r, 1011r.
[195] *Ibidem*, f. 728r.
[196] *Ibidem*, f. 556r.
[197] *Ibidem*, ff. 236r, 618r. See Chapter 1, section 5.

of conceiving of violence and crime and of the best way of dealing with them were never completely supplanted in this period.

In conclusion, the analysis of the rite of the *oblatio* in Siena has shown how the commune was able to put into practice at the same time both the theoretical elaborations on justice and those on mercy expressed in its programmatic documents, and that religious actors intervened directly in political life to achieve this aim. The study of the *Biccherna* petitions, on the other hand, highlights how ordinary people, too, were influenced by such abstract concepts and were able to manipulate the different systems of values that derived from them, in order to find a compromise between them or to privilege one to the detriment of the others. Furthermore, the people of Siena and its *contado* were not passive recipients of the ideology of Sienese justice as a reflection of a divine justice elaborated by the elite.

4. Siena, Italy, Western Europe: Modelling Problems

Is the situation described so far, entailing the coexistence of three models of criminal justice whose power relations changed in the period around 1260-1330, without, however, this producing the obliteration of any of them, a Sienese peculiarity? Or could this framework be extended to a wider context, encompassing possibly the Italian communes, and maybe even other areas of Western Europe? The vitality of ideas connected to the culture of revenge in Europe is well documented for this period, as is the tendency of many political regimes to extend public intervention in the sphere of criminal prosecution. The analysis of the doctrine of penance conducted so far has shown that theologians and preachers from various areas of Europe contributed to its definition and

diffusion among the laity, even though central Italy appears to be a focal point for the action of penitential movements. If, however, it could be argued that forms of the three models described in this chapter existed in other European contexts and other communes of northern and central Italy, it cannot be denied that, based on present scholarship, the configuration of criminal justice was different in other Italian city-states, in particular in Siena's neighbour and rival Florence. The strength of the models based on public order and penance was remarkable in Siena. To add one more example to what my findings have shown so far, according to Bowsky in the 1330s the city had a ratio of policemen per inhabitants higher than modern New York, and almost eight times higher than Florence, thus reflecting how the problem of crimefighting was central to the political identity of its elite.[198] Florentine preachers touched on some of the same problems as the Sienese, such as the importance of penance and the relationship between individual and collective obligations in view of the common good. It seems however that in their sermons ideas inspired by Aristotelian political theory, recently rediscovered in Western Europe, often prevailed over penitential considerations, unlike in Siena.[199] Moreover, the precocity of political initiatives inspired by religious conceptions of criminal justice in Siena seems to indicate that there was a more fruitful exchange on these themes between the government and the spiritual leaders of the city. Answering the question of diversity in the systems of criminal prosecution of the Italian communes would require a detailed analysis of many case studies, in which variables such as society, economy, politics and religious life were taken into account. This is not possible here for reasons of space, but also because more specific studies on the different cities would be indispensable. What follows is by necessity a series of explanatory hypotheses motivated by the willingness

[198] Bowsky, 'The Medieval Commune and Internal Violence', p. 7; see also Grillo, *L'ordine della città*, p. 30.
[199] Panella, 'Dal bene comune al bene del Comune'.

not to leave this question, whose solution would constitute a great advancement in our understanding of late medieval Italy, completely unproblematised.

Siena and Florence clearly presented two different pictures from the point of view of criminal justice, something which has been the subject of substantial discussion in the previous chapters. In the context of communal Italy, however, could one of the two represent the dominant model towards which all the cities tended, leaving the role of outlier to the other? In certain respects, I would argue that, in the period 1260-1330, Siena was more representative of the communal trends in criminal justice than Florence. Bologna, in particular, but also other Italian cities (such as Pisa, Perugia, Lucca, and possibly minor centres whose documentation for this period is scantier) show that the tendency of local governments to incorporate religious views of virtues and vices related to conflict in their legislation (see Chapter 2), to reform definitions of the legitimate use of private violence (Chapter 3), and to introduce policies based on mercy and forgiveness in their cities (Chapter 4) became widespread in this period, even though the chronology varies. Examples from France, England and Flanders seem to indicate the existence of similar trends, although in this case the similarities were obviously weaker on account of the difference in political regimes, the role of religious institutions and historical transformations. Jansen's study suggests that even in Florence penitential spirituality had a growing influence in the settlement of conflicts, despite less invasive intervention by the government.[200] More than establishing distinct roles for cities as models or exceptions, it might be helpful to conceptualize the variety of crimefighting policies displayed by the city as a range in which Florence and Siena were close to the opposite

[200] Jansen, *Penance and Peace*.

poles, and the other communes were unevenly distributed across it, but moving over time closer to the point where Siena was.

If we accept such a picture, however, the question of the precocity of Siena arises. Why did Siena move so fast and enthusiastically in the direction of embracing new discourses of criminal justice? In this case, too, a series of hypotheses that would require further studies to be confirmed can be formulated. The Nine, as highlighted by many specialists of Sienese history, were quite a unique case in communal history. Their regime heavily relied on an ideology based on seeing themselves as members of a specific class, the 'mezzana gente' as they put it, which on account of their middling position in society could represent themselves as the mediators between all other citizens and, consequently, their patrons and benefactors.[201] The price the Sienese had to pay to participate in this protection appears to have been not so much loyalty to a faction (the *Popolo,* the Guelfs or the Ghibellines, or a family faction), as was the case elsewhere, but rather respect of the 'bonus et pacificus status' of the city. The 'obsession' of the government with criminal legislation, also reflected in the choice of topics highlighted in their works by local religious thinkers, who were often members of the same elites, and the decision to hire such a considerable number of policemen to preserve peace would all fit well in this explanation. As in the most famous work of art from medieval Siena, the *Buongoverno* frescoes by Ambrogio Lorenzetti*,* for the Nine the good government was one in which a combination of mercy and harsh justice preserved order in the city and its *contado*.[202] This construction could serve Siena well in a historical phase in which the city could not

[201] On mediation and protection the classic work is still Brown, 'The Rise and Function of the Holy Man'.
[202] These frescoes, painted in the years 1338-1339, have been the subject of a vast number of studies. For reasons of chronology and limitations of space I have decided not to include their analysis in this work; even just accounting for the variety of interpretations presented on their meaning would require a chapter of its own, and subtract space from the discussion of less famous sources that constitute in my opinion the most pertinent ones for the specific focus of the thesis. Among the most recent work on them is Dessì, *Les spectres du Bon Gouvernement*, to which I refer for additional bibliography.

aspire anymore to regional hegemony, as was the case in the early 13th century, but wanted to maintain local importance as a centre whose innovative ideology of public order could legitimize it to act as a mediator between other Tuscan communes.[203] At the same time, such a construction could be helpful for the internal affairs of the city, still characterised by a frequent state of conflict with the great lords of the Maremma such as the Aldobrandeschi, and attempts to seize control of the Maremman port of Talamone, which the Sienese considered vital for their commercial interests since their territory did not otherwise possess a port of its own.[204] Stressing the role of the public in the legitimate use of violence could promote an 'us *vs.* them' attitude, pitting the local population against lordly powers that adhered to more traditional models of criminal justice. The durability of the Nine and, more broadly, of the popular republican regime in Siena could be a sign that this policy was effective.

However, the Nine ascended to power in a context that was already inclined to take problems of crime and interpersonal conflict seriously. This is shown both by the 1270s sources mentioned in this thesis and by the fact that, when they inaugurated their regime in 1287, they immediately proceeded to reform the city's criminal legislation without encountering any significant opposition (as seen in Chapters 3 and 4). Therefore, it is necessary to look for explanations that precede this phase of Sienese history, too. The strong identification of Siena with ancient Rome and Roman law is necessarily an element to consider. While Florence maintained Lombard law at the core of its legal system throughout this period, Siena formally adopted Roman law at a date prior to 1176.[205] Even

[203] As seems the case from Dino Compagni's comment on the attitude of Siena in the fights between the Neri and the Bianchi in Tuscany: 'la lupa puttaneggia', 'the she-wolf (=Siena, whose symbol was a she-wolf) acts like a whore (=tries to mingle with everyone's affairs): Dino Compagni, *Istoria fiorentina*, pp. 79, 87 (l. II, 28 and 36).
[204] Cristoferi, 'I conflitti per il controllo delle risorse collettive'.
[205] Zdekauer, *Il constituto del comune di Siena dell' anno 1262*, pp. liv-lvi; Nardi, 'Gli ordinamenti medievali di Siena e Pisa in una recente pubblicazione', pp. 455-456; Ascheri, 'Legislazione, statuti e sovranità', pp. 1-7; Wickham, *Legge, pratiche e conflitti*, pp. 287-288.

though at the beginning this might have been little more than a programmatic statement, in the 13th century Siena was a flourishing centre for the study of Roman law.[206] The city even adopted the Roman she-wolf as its symbol, on the basis of a spurious tradition that attributed its foundation to Senio, son of Remus.[207] The extraneity of Roman law to the institution of feud and its higher level of legalism are likely to have influenced the Sienese elite. Although judges were not always regarded positively in Siena on account of their magnate origins, Roman law was part of the political culture of Sienese politicians of popular roots, too. Moreover, many other cities that followed Siena on the path of innovation also had a legal system based on Roman law, for instance Bologna and Perugia. In these communes vendetta seems to have been forbidden and the government appears to also have precociously elaborated a more effective punitive apparatus.[208] With a slight modification to Sarah Rubin Blanshei's hypothesis, then, it could be argued that it was not so much the active inclusion of individuals trained in Roman law in the government of a city, but the strong influence that this type of cultural tradition had within a commune, that made it more receptive to ideas of reform of criminal justice.[209] However, two problems arise with this interpretation of Roman law as the most important element in the explanation of the Sienese configuration of models of criminal justice. First of all, cities like Pisa and Bologna could claim an earlier meaningful connection with it, and a longer tradition of self-representation as heirs to the Roman heritage.[210] Secondly, the common law system, which the Italian city-states had developed on the basis of the retrieval of ancient Roman legislation, included principles which, despite

[206] Nardi, *L'insegnamento superiore a Siena nei secoli XI-XIV*.
[207] Beneš, *Urban Legends. Civic Identity and the Classical Past*, ch. 4.
[208] Menzinger, *Giuristi e politica*; Vallerani, *Il sistema giudiziario del comune di Perugia*, p. 216.
[209] Rubin Blanshei, 'Criminal Justice in Medieval Perugia and Bologna'; see Introduction, note 34.
[210] Giansante, *Retorica e politica nel duecento,* pp. 11-12 (Bologna); Wickham, *Legge, pratiche e conflitti*, ch. 4 (Pisa). To my knowledge, there are no specific studies of criminal justice in Pisa for this period, so that it is not easy to gauge where its system stood in this classification.

issuing originally from Canon Law, seemed to clash with penitential ideas about crime. A case in point is the principle of criminal presumption known as 'semel malus, semper malus' (once evil, always evil), which originated in Canon Law but was popular in Romanistic jurisprudence, which argued for the regularity of human behaviour, invalidating the potential for change represented by repentance.[211] Specific connections to Justinianic law, furthermore, seem to have been avoided by all these *comuni di Popolo,* either because of the technical monopoly of the *magnati* over this type of knowledge, or because of its connection to the Empire in opposition with their often Guelf allegiance.[212]

There is however a peculiarity that set Siena apart from the other cities mentioned so far, and that could explain its proneness to incorporate ideas of mercy and repentance in its system of criminal justice. That is the role of the Virgin as the patron saint and 'head, commander, protector and defender' of Siena. The Marian cult was of course not an exclusive feature of Siena: its popularity, limited in Western Europe in the early Middle Ages, increased considerably from the 12th century.[213] However, Siena's precocious and profound identification with the Virgin is unique among the Italian communes and was possibly even stronger than its connection to ancient Rome. Coins bearing the motto 'Sena vetus civitas Virginis' (Siena ancient city of the Virgin) were minted in Siena from the 1280s, and it has been convincingly argued that the devotion preceded the city's dedication to the Virgin on the eve of the battle of Montaperti (1260).[214] This feature is explanatory because the attribute with which the Virgin was

[211] Vallerani, 'La fama nel processo tra costruzioni giuridiche e modelli sociali', p. 104.
[212] Giansante, *Retorica e politica nel duecento,* pp. 11-12; Maire-Vigueur, 'Justice et politique dans l'Italie communale', pp. 312-330. See also Introduction, note 34, and Chapter 3, section 3.
[213] Boss, 'The Development of the Virgin's Cult in the High Middle Ages'.
[214] Heal, 'Civitas Virginis? The Significance of Civic Dedication to the Virgin'; Parsons, *Siena, Civil Religion and the Sienese*, p. 1. Although the Marian cult was also diffused in many other cities, including Florence, in none of them was the connection with civic identity as strong as in Siena. In Florence a similar role can be ascribed to the cult of the patron St John the Baptist, which again connected the city to a fictitious Roman past, since his church was said to be built on the ruins of a temple of Mars: Benvenuti, 'I culti patronali', p. 101.

increasingly associated in this phase of her cult, in both pictorial and textual sources, was indeed mercy. Our Lady of Mercy, who with her cloak shelters the faithful, became a popular European iconography, diffused in particular by the Dominican order.[215] In Chapter 3 I analysed the 13th-century diffusion of Marian miracles in which the Virgin helped repented sinners who had invoked her help escape God's condemnation, and the implications they had for ideas about justice and the function of punishment in communal Italy. As much as the regime of the Nine and the influence of Roman law, therefore, devotion to the Virgin and the concepts of mercy she came to stand for should be taken into account as an element that made Siena a forerunner in the implementation of new models of criminal justice in communal Italy.

[215] Perdrizet, *La Vierge de la Miséricorde.*

Conclusion

The reasons for my decision to analyse models of criminal justice in late 13th and early 14th century have been twofold. The first and most obvious aspect has been a desire to contribute to the scholarly understanding of how Italian communal society worked by focusing on a well-documented context, Siena, and on a specific topic, criminal justice, that exerted and still exerts a special fascination on people of all ages and social classes. Contemporary examples may be found in the persistent success of crime novels and TV series, and the ongoing popular debates about what should be the appropriate aims of punishment.[1] The desire to engage with current issues and produce something relevant to understand not only past, but also present societies has been equally central. The fruitful interaction between Humanities and Social Sciences has in the last decades paved the way to new research questions, which have contributed to bringing back to the forefront the relevance of *humanae litterae* in the investigation of what it means to be humans, and what makes us such.

When it comes to the topics of crime and violence, a challenging contribution has come from evolutionary psychology. Its exponents have argued that human responses to such situations have stayed the same since prehistoric times, when human beings developed a set of emotional and behavioural patterns that helped them survive harsh environmental conditions; patterns that we have inherited nowadays despite the different life context of our modern societies.[2] This view is opposed to social constructionism, a theory often supported by social anthropologists, which on the contrary maintains that our reactions to crime and violence are overwhelmingly a product of the specific culture

[1] This feature has given rise to an autonomous area of research within the field of cultural studies. For an introduction see Young, *The Scene of Violence. Cinema, Crime, Affect*.
[2] Rosenwein, 'Histoire de l'émotion: méthodes et approches', pp. 46-48.

in which we are raised, and do not depend on biology and evolution.[3] Both perspectives pose problems to the scholars who think it is their responsibility not only to describe and analyse human societies, but also (and possibly more importantly) to contribute to the improvement of the world. As suggested by Reddy for the specific field of the study of emotions, both fully evolutionist and fully constructivist approaches deprive scholars of the possibility of voicing social criticism, referred either to the past or to the present.[4] Reddy's observation can be transposed to other realms of human experience, including that of violence and crime. If our responses to them are the immutable fruit of evolution, not much can be done to alter them. The same holds true if we postulate that we are totally immersed in the culture in which we were born and from which we cannot detach ourselves. In this case we have to acknowledge the existence of an irreducible variety of culturally determined modes of action and speaking that cannot be improved on or judged, since for doing so one would have to observe things from a point of view detached from a total immersion in one's culture, which would be impossible.

This thesis obviously does not aim to offer conclusive answers to this fundamental question, but only to present another contribution in the rich landscape of studies on disputes and their settlement across cultures. It offers answers only in the specific context of Siena in the period 1260-1330, and also in this case the theories formulated here are open to debate and revision. The theorisation of three models or discourses of criminal justice in communal Italy (possibly expandable to other areas of Western Europe, as suggested in Chapter 1) deserves however a brief discussion from the point of view of the wider 'evolutionism *vs.* constructivism' debate I have described, to assess whether it could yield any valuable contribution to it. This thesis is in fact not the first piece of

[3] The model is described (and criticized) in Spiro, 'Cultural Relativism and the Future of Anthropology'.
[4] Reddy, *The Navigation of Feelings*, pp. 43-ff.

historical research that has suggested a reconstruction of systems of criminal justice or dispute resolution in pre-modern Europe based on a ternary model, despite differences between my formulation and previous ones. An example is Cohen's work on late medieval France, in which she argued that

'By the end of the Middle Ages, three different symbolic vocabularies – governmental, popular and religious – were used in punitive rituals.'[5]

The similarity of this statement with the central argument of my thesis is clear, but what is worth highlighting here are the differences. The 'culture of revenge' model described for Siena could be hardly defined as 'popular' or even less, as Cohen said elsewhere in the book, 'folkloric'. This thesis confirms Zorzi's assertion that it was a shared patrimony of all social classes and, what is more, often presented as an attribute of the aristocracy (this seems to also be true for England and France itself).[6] Moreover, Cohen argued that the three vocabularies did not clash, whereas Sienese discourses often seemed to be in competition with each other, and sometimes were openly presented as opposed to each other.[7] More substantially, Cohen postulated a deliberate exclusion of the folkloric and religious elements from the courthouse, resulting in an eventual triumph of the authority-based governmental element associated with royal justice.[8] Again, this does not seem to be the case for Siena in the period 1260-1330, where petitions for amnesty and the few extant court cases offer examples of a vocabulary in which references to vendetta, honour, mercy and the Devil's treachery never ceased to be frequent. Furthermore, other sources show that this variety existed in all other contexts connected with criminal justice, which

[5] Cohen, *The Crossroads of Justice*, p. 206.
[6] See Chapter 1, section 2.
[7] Cohen, *The Crossroads of Justice*, p. 206.
[8] *Ibidem*, p. 208.

were not limited to the courthouse but included prisons, the scaffold, civic assemblies and in some ways even the confessional, the pulpit and the main square where religious preaching happened.The framework described here for Siena is one in which cultural change is tentatively accounted for in the form of changes in the power relationships between models, but no evolution towards the fatal triumph of the State can be seen as the conclusion of any historical process.

In this respect the thesis seems to present a deeper affinity with another ternary theorisation, that of Bossy, described in his own words as follows:

'(...) Three extremely powerful images have governed the resolution of disputes in the West since the disintegration of Roman authority: the image of feud; the image of charity; and the image of law (or the state).'[9]

Bossy formulated this model in the final remarks of a seminal collection of essays, which aimed to analyse the history of human relationships in Western Europe from the fall of Rome to the 19th century, a historical moment for which the historiographical consensus has tended to underline the pervasiveness of the nation-State model. Despite this, he argued that the contributions to the volume positively demonstrated the permanence of the images of love and feud, which he defined as deeply rooted aspects of the human character. This was true even for periods when the image of law, derived in his opinion mostly from Rome and the Old Testament, experienced its 'golden age', which in different areas of Europe generally corresponded either to the 15th-16th centuries or to the 18th-19th.[10] In the context of late medieval Siena the equivalent of what Bossy defined as the 'image of love' was more specifically connected, as I hope to have

[9] Bossy, 'Postscript', in *Disputes and Settlements*, p. 287.
[10] Bossy, 'Postscript', pp. 289-291.

demonstrated, with the sacrament of penance. Moreover, it was not associated only with arbitrations, which were the focus of Bossy's synthesis, but also and possibly above all with amnesties and other circumstances related to the administration of criminal justice. Religious ideas of divine justice, derived from the discussion of judicial metaphors in the context of auricular confession, deeply influenced concepts of public order and in particular, as seen in Chapter 3, of the role of the government in maintaining it. The 'sanctity' and 'moral force' that, according to Bossy, the idea of state acquired over time derived also from the feelings of righteous indignation that came to be associated with the necessity of punishing criminals not only in order to reconcile conflicting parties, or to prevent more crimes from happening, but specifically because wrongdoers deserved a moral retribution already in the course of their lives.[11]

The idea I have just described was not entirely an invention of the late 13th century, as proven by the quotations from Peter Damian, Anselm of Canterbury and, to an extent, Isidore of Seville that I have examined. In his book devoted specifically to the analysis of this idea, Gorringe offered more examples from various geographical and chronological contexts within Christian Europe, but at the same time argued that at no point was it unchallenged by theologians.[12] Models of moral retribution in the area of criminal justice had long been supported only by a minority of either clerics or laymen, and only in the late 13th century were there signs, in Siena as elsewhere, of an implementation of measures based on this approach. They were however met with a certain degree of criticism, as the analysis of Sienese sermons implied. Arguments (for instance, 'criminals deserve no mercy') and legal practices informed by this conception are still current nowadays, but since at least the work of Cesare Beccaria (1738-1794) ideas of reform and rehabilitation of criminals have gained more and more space in

[11] Bossy, 'Postscript', p. 291.
[12] Gorringe, *God's just Vengeance.*

punitive systems. The penitential model, which attributed a 'medicinal value' to certain forms of punishment (generally imprisonment, in the Christian tradition) on account of the transformation in the identity of the sinner they produce, has modern heirs that take explicit inspiration from it. An example is Braithwaite and the criminological school that proposes 'restorative justice' as the most effective way of reducing crime.[13] The contribution of this thesis to the debate about the natural or cultural origins of our reactions to violence and crime seems therefore to be a partial confirmation and a partial variation of Bossy's paradigm. Vengefulness, ideas of just desert, inclinations towards empathy and forgiveness might indeed be universal among human beings; but the construction of models and organising concepts based on them happens within history and depends on a great number of socio-economic, political and cultural variables. Models go through phases of resurgence, obsolescence and change that can create totally different theorisations and practical applications, and even make them hardly recognisable. The latter can limit or strengthen the power and legitimacy of states, but also create cohesion or friction in stateless societies (so that, in accordance with the attempt to use local categories specified in Chapter 1, the definition 'idea of the state' might better be expressed as an 'idea of public order').

In addition to this small contribution to such a wide debate, with this thesis I hope to have achieved a clarification of some specific open questions in the study of conflict, crime and violence in communal Italy. First of all, this research has confirmed the fruitfulness, for the study of these themes, of comparisons between secular and religious sources. Its productivity goes beyond the paradigm of a 'civic religion' in which the theme of harmony of the *Kultverband* often overshadows phenomena of conflict and

[13] On imprisonment and penance see Beaulande-Barreau, 'Au pain de la douleur et à l'eau de la tristesse'; on restorative justice see Braithwaite, Ahmed, Braithwaite, 'Restorative justice'.

competition within the cities, and which generally focuses on cults more than on political practices.[14] In particular, this approach has highlighted how the use of religious concepts in programmatic statements to support reforms of criminal justice seems to have transcended pure instrumentality, since friars and pious laypeople acted as effective propagators of, and pressure groups for, the penitential discourse on crime and violence. The analysis of the attitude of different social categories towards the three models of criminal justice, in Chapter 1, has corroborated the hypothesis that it is not possible to reduce the complexity of views and policies in this field to a simple dichotomy between *magnati* and *popolani*. However, the acceleration of reforms in Siena associated with the rise of the Nine in the late 1280s demonstrates that popular regimes could indeed have a special interest in the implementation of measures based on ideas of public order. The would strengthen their legitimacy and consensus and allow them to co-opt members of other social classes by presenting these measures as beneficial to maintain the 'good and peaceful state' of the whole community.

Chapter 2 focused on the importance of filling the gaps in the study of the history of emotions and the virtues associated with them in contexts of violent conflict. In this case, too, the focus has been on the importance of penitential spirituality for the shift in the way male individuals conceived of certain emotions and their physical manifestations as appropriate responses to distressing situations, which had been previously identified by Lansing. The analysis of Sienese court cases and statutes has shown that the government took seriously the challenge posed by religious people to traditional

[14] On civic religion, which remains an important paradigm in the study of medieval urban religion, the bibliography is vast, but the classic formulation is Vauchez (ed.), *La religion civique à l'époque médiévale et moderne*; its origins can be found earlier, in Peyer, *Stadt und Stadtpatron im Mittelalterlichen Italien*. For a recent reprise of the paradigm in the context of the Italian communes see Thompson, *Cities of God.* For a criticism of civic religion see Boucheron, 'Religion civique, religion civile, religion séculière. L'ombre d'un doute'.

emotional responses to violence and conflict, by changing certain aspects of local criminal law. A cursory analysis of documents from other communes has hinted that this might have been a more widespread tendency. Particularly interesting has been the observation that, alongside external influences (based for instance on religious and political ideologies) on the changing of emotional patterns within a society, at an individual level the performance of certain emotions and virtues, either enacted personally or simply experienced through observation, could transform short-term or long-term preferences for specific emotional patterns, a transformation seen in Albertanus' *Liber consolationis* and Sienese hagiographies and chronicles.[15]

The analysis of the concepts of justice, revenge and mercy conducted in Chapter 3 has had as its main achievement the attribution of a polysemic nature to the word 'justice' in medieval communes. The characterization of communal justice as a spectrum ranging from symmetrical retribution to asymmetrical forgiveness, which owes much to the definitions of divine justice elaborated by contemporary theologians and preachers, has presented arguments against the idea of communal justice as essentially a form of public revenge. Revenge, too, has been the subject of a redefinition based on the different values the word assumed when it referred to the action of God, the government or individuals and families. Whereas human revenge was associated by religious people with the enactment of the capital sin of wrath, in the case of divine justice God's anger when punishing sinners was a manifestation of His perfect justice that shared many similarities with Aquinas' idea of *zelum* as righteous indignation. The commune of Siena clearly tried to present its justice as a mirror of the divine by presenting the collective feelings of indignation, and subsequently joy, that the community experienced when

[15] As suggested by Reddy, *The Navigation of Feelings*, with his definition of 'emotives' as perfomative acts.

punishing criminals not as a manifestation of sinfulness, but also in this case of justice. It was possible to do so on account of the anthropomorphised, yet impersonal nature of the community as a collective entity, which did not partake in the same emotional fallibility that characterised individual human beings. Attention has been paid to the extraneity of the Mendicants' reflection on crime and violence from a legitimisation of the commune's retaliatory practices, to counteract the idea, seen here as simplistic, that religious orders always functioned as the ideologues of communal governments. A vision in which friction was considered as a possible outcome of their interaction, as well as harmony, is instead been promoted. The main scope of this chapter, however, is a revision of the paradigm according to which vendetta –intended as personal revenge– was legal in medieval Italian communes, and a clarification of the conditions that made the practice acceptable. The choice of Siena as a case study has been particularly appropriate to dispel notions of vendetta as a Tuscan or republican phenomenon, and redirect the research on the reasons why *competens vindicta* was clearly still legal in late medieval Florence, and not in Siena or in other Italian communes. Other factors, first of all the retention of Lombard law as the basis of the Florentine legal system as opposed to Roman law in Siena, will have to be given priority in further studies.

The necessity of comparing programmatic sources with documents of practice – thus combining normative and processual approaches– has informed the choice of themes investigated in Chapter 4, in which the day-to-day functioning of Sienese criminal justice has been examined. The 'politics of forgiveness', as I have defined them, of the commune has played a central role, as a topic that has not yet attracted enough attention from the scholars of medieval Italy, especially within non-monarchical contexts. Again, despite its staunchly republican nature, the commune of Siena proved to be a strikingly precocious

regime in the implementation of amnesties and other measures showcasing the mercy of the commune towards its weakest members. In the case of the *oblationes*, the explicit request of the religious leaders of the community has shown their importance as influencers of local lay elites with regards to the creation of wider spaces for mercy in the judicial system. The study of the rich collections of Sienese petitions for amnesty from the early 14th century, which would deserve a whole thesis of its own, has highlighted the variety of strategies used by Sienese citizens of all social classes to present themselves as trustworthy and restore their legal and social credibility. They also offered a perfect example of how the coexistence of the three discourses on criminal justice worked in practice. It has shown that not only were the petitioners competent users of the models, but also that those involved in crafting a petition actively manipulated them in creative and innovative ways, for instance by using them to remind the commune to its duties toward the *pauperes*. In the case of this chapter, too, I have followed the suggestion advanced by recent scholarship of not drawing excessively rigid distinctions between republican and monarchical regimes, be they urban *signorie* or transalpine kingdoms. Applied to the specific context of amnesties and letters of remission, this approach has had as its outcome that of underlining how concepts of mercy, derived at least partly from the ubiquity of the penitential discourse in this historical phase, could offer legitimisation to all types of governments.

The whole research leading to the redaction of this thesis has been conducted in the spirit of interdisciplinarity. Not only have I tried to combine strands of historical research too often kept separate, but I have also been as open as possible to the use of other disciplines, including Theology, Literary Criticism and the Social Sciences. In particular, an interactionist perspective has constituted an underlying thread throughout

all the chapters. The complex and original categories that medieval Italians used to describe phenomena such as the essence of emotions and the relationship between guilt and shame has however convinced me that it is not only Medieval History that would benefit from a relaxation of disciplinary boundaries. Contemporary anthropologists and sociologists would also find in studies devoted to the medieval period, despite its reputation as an era of cultural backwardness, an insightful inspiration in their quest for the description and understanding of cultural and social phenomena. Highlighting how much medieval studies has to offer to other disciplines is one of the avenues for further research that this thesis aims to offer.

Another need for further research emerging from this work is, as stated from the start, that of expanding the number of case studies in the area of communal justice. The end goal would be that of eventually producing a new synthesis that will update current conceptions regarding the functioning of systems of criminal justice in the Italian city-states and give an answer to some open questions. In particular, it is at present very hard to offer general explanations for differences and similarities between communes, as noted in the Introduction and Chapter 4. This thesis argues that Siena can offer a good model for some widespread tendencies in late medieval Italy, such as the legitimation of a more generalised use of corporal punishments based on feelings of righteous indignation connected to religious ideas, or the greater use of a vocabulary based on penitential spirituality in the area of criminal justice, including among lay elites. That said, it will not be possible to make a reliable assessment of the extent to which Siena represents a model for Italian city-states until further research on more cities has been done.

Moreover, this thesis has focused mostly on issues of interpersonal violence, leaving crimes against property, and theft in particular, in the background. The analysis

of Sienese statutes and lists of condemnations has however unearthed the relative leniency of the legislators towards simple theft, if not aggravated by the use of violence or by recidivism, which seems to indicate that it was not seen as one of the main concerns of the Sienese. This contrasts with research on other areas of medieval Europe, for instance Anglo-Saxon England, in which theft emerged as an overriding concern of legislation, because its secret nature neutralised the possibility of provoking a feud as a deterrent for committing it.[16] It can be hypothesised that the prevalence of minor larceny among poor women in late medieval Siena was a reason for this relative unconcern. The willingness displayed by Sienese political regimes, the Nine in particular, to present themselves as 'fathers of the poor' would make the marginal nature of most of the perpetrators a mitigating factor in the eyes of the courts.[17] This could be coupled with a possible influence of the canon law principle 'necessitas non habet legem', which was understood to excuse theft in circumstances of extreme deprivation.[18] However, only a more detailed study could confirm or refute the veracity of these hypotheses. Such research would be particularly interesting in the light of studies suggesting that, after the economic crisis of the 14th century, social attitudes towards economic crimes became much harsher on account of an increased fear of destitute masses.[19]

Finally, the picture presented in this thesis seems to undergo considerable change as early as the second half of the 14th century. St Catherine of Siena is a case in point of a different model of peace-making sanctity in comparison with Ambrogio Sansedoni and Pietro Pettinaio: in one episode of her life she reconciles a murderer with the family of

[16] Lambert, *Law and Order*, p. 350.
[17] As noted in Chapter 4, poverty and ignorance could constitute the ground for immediate pardon by the General Council.
[18] Green, 'Nede ne Hath no Lawe: The Plea of Necessity in Medieval Literature and Law'.
[19] For instance Hanawalt, 'Economic Influences on the Pattern of Crime in England, 1300-1348'; Geremek, *Poverty: A History*; Misraki, 'Criminalité et pauvreté'.

the enemy he had killed, but despite the public nature of this reconciliation he is still taken to the scaffold and executed, and his repentance does not look so much a precondition for a new phase of his life as for his more peaceful elimination from the social body.[20] Preachers and theologians from the late 14th and early 15th century, such as Bernardino of Siena, and the French Jean Courtecuisse and Jean Gerson, tended to caution against the dangers of mercy more than extol its benefits unlike the protagonists of this thesis.[21] The greatest area of involvement of religious people in criminal justice became spiritual assistance to those condemned to death (access to sacraments on the scaffold, creation of confraternities to organise the burials etc.).

According to Cohen, the 15th century saw a 're-humanisation' of criminals by the Church, since only then was access to the sacraments systematically granted on the scaffold.[22] Although late medieval religious attitudes towards the death penalty have not been the subject of a systematic study so far, in the light of my research I suspect that what changed in the 15th century was more the fact that churchmen eventually put aside its objections to the growing use of the death penalty, and focused its attention on assisting those condemned to death rather than trying to save them from their corporal punishment, as had been the case hitherto.[23] This would suggest in turn a new shift in the balance of power between the different models of criminal justice described here. The ideology of public order might have grown so much at the expense of the penitential model, and more generally of Bossy's 'image of love', that it deeply influenced the religious leaders of the community, reinverting the role of influencers of the governments that they had had so far. These impressionistic considerations would obviously need to be supported by much

[20] Caffarini, *Sanctae Catherinae senensis legenda minor*, pp. 91-92; see also Paton, *Preaching Friars,* p. 140.
[21] Paton, *Preaching Friars,* pp. 139-141; Gauvard, 'Le roi de France', p. 393.
[22] Cohen, *The Crossroads of Justice*, p. 198.
[23] As suggested also by Gauvard, 'Pendre et dépendre à la fin du Moyen Âge', p. 192.

more detailed research to be considered acceptable. My thesis and the model it offers for the study of criminal justice in medieval societies would, however, hopefully be a useful starting point for such a study, which would once more get us one step closer to a better understanding of how seemingly universal aspects of the human character become prominent or secondary in our reactions to violent crime. The ultimate hope would be that one day this knowledge could be used to promote empathy towards the difference that we now classify exclusively as deviance.

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