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CHAPTER 3. THE *TORRONE* AND ITS INVESTIGATION AND PROSECUTION OF CRIMES

On 6 June 1654 a surgeon from one of Bologna's hospitals reported Carlo Masina's severe and 'suspicious' wounds to the criminal court.¹ Upon interrogation, the dying Carlo pointed to three men (Domenico Pino and Francesco and Alessandro Lambertini) and one woman (Diamante, Domenico's wife) as the culprits. Earlier Carlo had seen Domenico talking to 'certain persons' in one of the city's many taverns and had mentioned that his behaviour did not befit a *gentiluomo* (gentleman), but a *becco fotuto* (fucking cuckold). Because of this they got into an argument, which escalated a day later when Domenico was waiting for him with a drawn sword, accompanied by his wife Diamante and the Lambertini brothers. When Carlo tried to duck the stones Diamante and the brothers were throwing at him, Domenico struck him with his sword, causing wounds which would eventually prove fatal for Carlo. Domenico was able to turn the capital punishment he received into a pardon through a peace accord and the Lambertini brothers were exiled. Although her role in the homicide was similar to that of the brothers, no sentence is recorded for Diamante.

While the criminal court records do not provide any information as to why Diamante got off so lightly compared to her male co-offenders, perceptions of gender may well have been at play. After all, differences in recorded and prosecuted crime are linked to moral and legal norms which varied over time and space. They differed according to offence category as well as the 'quality' of the offender and victim – gender being one of the constituents that the authorities took into consideration when judging a crime. This chapter examines the relationship between criminal prosecution patterns and gender in early modern urban Bologna through the lens of the authorities. By examining both some normative writings such as the city's criminal by-laws and a sample of the *Tribunale del Torrone's* investigation dossiers (*processi*), it sheds light on the legal attitudes and practices of prosecution that played a significant role in shaping women's encounters with the law in urban Bologna.

This chapter begins with an overview of the legal landscape and the organisation of the criminal justice system in early modern Bologna. It then discusses how criminal justice was administered, what procedures it followed and what prosecutorial priorities it established in the criminal by-laws. This shows that although the procedures and laws in themselves may appear relatively neutral, they provided the responsible magistrates with

¹ ASBo, Torrone, 6670, fasc. 3.

ample space for a gender-specific treatment of crime. The next section will examine to what extent this legal latitude carried through into practice. Based on the *Torrone's* formal investigation dossiers (*processi*), it scrutinises women's proportional involvement in prosecuted crime, for what crimes women and men appeared before the criminal court and lastly, the nature of gendered sentencing patterns. By doing so, it distinguishes two distinct features of women's crimes in early modern Bologna (a low share of female offenders among investigated crimes and the significant role of violence), and theorises about its causes.

The *Tribunale del Torrone* within Bologna's legal landscape

Bologna's early modern lay criminal court, the *Tribunale del Torrone*, was established in around the 1530s and was the result of both local political pursuits and broader, widespread reform efforts. From the perspective of the latter, civic and ecclesiastical authorities across northern Italy reformed their governmental and judicial structures throughout the sixteenth and seventeenth centuries.² They did so by specifying the focus of existing courts and civic institutions and secondly by rationalising and bureaucratising their methods. This entailed the creation of new bodies and the abolishment or redistribution of others, as well as changes to the cities' judicial systems. The emergence of the *Torrone* can thus be viewed from the perspective of these reforms aiming to streamline governmental, administrative and judicial systems throughout Italy.

Local interests also played a role in the emergence of the *Torrone*. Established some decades after the conquest of the city of Bologna by Pope Julius II and the expulsion of the Bentivoglio oligarchs, the establishment of a new criminal court was also intimately tied to the papal quest to consolidate and expand its power over the territory.³ Incorporated into the Papal States, the city retained a high degree of autonomy through contracts signed between the city and the pope following each new papal appointment. Within this 'republic by contract', as Angela De Benedictis has called it, the papal legate worked in cooperation with the civic Bolognese Senate, made up of local noble families.⁴ From this perspective, the establishment of the *Torrone* has been viewed as springing forth from the wish to firmly insert papal representation into the justice system through the direct operation of the criminal and civil courts.

² McCarthy, *Prostitution, community and civic regulation*, 119-120.

³ Rose, *Homicide in North Italy*, 61; M. Cavina, 'I luoghi della giustizia', in: A. Prosperi (ed.), *Bologna nell'età moderna (secoli XVI-XVIII)*. Tomo 1. Istituzioni, forme del potere, economia e società (Bologna: Bononia University Press, 2008) 380.

⁴ De Benedictis, 'Repubblica per contratto', 59-72.

The 1530s saw not only the establishment of the *Tribunale del Torrione*, which held criminal jurisdiction, but also that of two other courts: the *Tribunale di Rota* and the *Tribunale civile del Legato*. The establishment of the *Torrione* in 1530 and the *Rota* five years later meant that a separation between the administration of civil and criminal justice had been realised.⁵ The *Rota* was established as Bologna's main civil court and dealt with cases involving monetary amounts over 100 *lire*, as well as the cases that involved the Bolognese oligarchy.⁶ Despite the papal wish to assert its control, it was Bologna's Senate that remained in charge of appointing the judges adjudicating civil matters before this supreme civil court.⁷ Soon after the establishment of the *Rota*, a second civil court under the name of the *Tribunale civile del Legato* was set up. This was a court of first instance in which a judge appointed by the papal legate adjudicated in relatively 'simple' civil matters. It was ostensibly designed to render justice more quickly than the *Rota*, but Marco Cavina has argued that the legate's civil court was also installed to establish its authority over such issues and challenge the oligarchy's claim as the primary authority.⁸

The papal government did succeed in gaining control over Bologna's criminal justice apparatus. Named the Tribunal of the Great Tower after the site of its court and prison in Bologna's main square, the *Tribunale del Torrione* replaced the medieval podestarial court and gradually swallowed the jurisdiction from the medieval *Ufficiali di contado* over ca. 4,000 square kilometres of surrounding countryside villages.⁹ Claiming monopoly over criminal justice was paramount to the papal government's aim to undercut the power of the rebellious local elite. Erecting a new centralised criminal court entailed stripping away the nobles' rights to exercise justice, which had occurred in the city by influencing the operations of the podestarial court, and in its rural hinterlands through private courts.¹⁰ The consolidation of the *Torrione* in Bologna was a process that lasted almost a century and a half. According to Colin Rose, it took until the second half of the seventeenth century when, in 1664, the leading members of the rebellious nobility was expelled from Bologna's territory.¹¹ As will be argued in chapter 4, the provision of a free, efficient and relatively reliable forum for conflict resolution in the shape of the *Torrione* was an important means in this endeavour.

⁵ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 24.

⁶ McCarthy, *Prostitution, community and civic regulation*, 121; Cavina, 'I luoghi della giustizia', 381.

⁷ Cavina, 'I luoghi della giustizia', 380; Angelozzi and Casanova, *La giustizia in una città di antico regime*, 21-29.

⁸ Cavina, 'I luoghi della giustizia', 382-386.

⁹ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 111-115.

¹⁰ *Ibidem*, 21; Angelozzi and Casanova, *Donne criminali*, 59.

¹¹ Rose, *Homicide in North Italy*, 64.

Like elsewhere in the early modern period, Bologna's legal landscape was varied and complex. In general, early modern justice had a patch-work nature and was characterised by a multiplicity of courts. Bologna was no different. The aforementioned three main tribunals existed within a landscape with various other judicial institutions that sometimes held overlapping jurisdictions. Figure 4 shows the various formal institutions that had jurisdiction on criminal, civil and ecclesiastical matters in Bologna during the seventeenth and eighteenth century. While a variety of civil courts dealt with the provisioning of the city, and with trade and weights, others regulated trade disputes related to crafts, trade and bankruptcies. All aspects of prostitution were regulated by the *Ufficio delle Bollette*, and the archbishop's tribunal (*Foro Arcivescovile*) dealt with crimes of the clergy as well as marriage disputes and sexual improprieties of the laity.

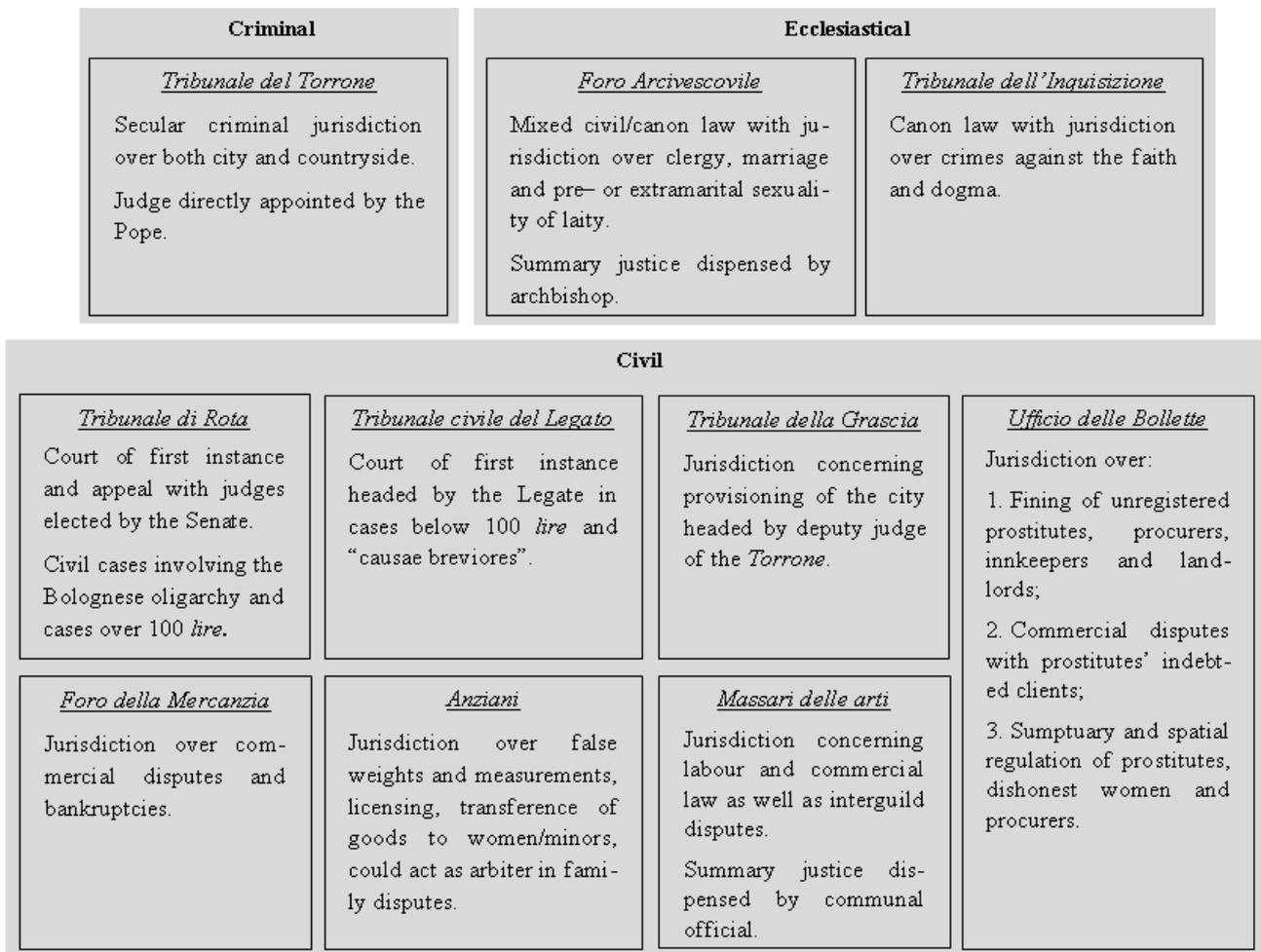
Although the competences and jurisdictions of these institutions were increasingly defined through judicial reforms, boundaries of jurisdiction between these courts remained blurred and overlapped with others. This was, for example, the case for the control of prostitution, which had in Bologna been assigned to the *Ufficio delle Bollette* (the Office of Receipts) since the second half of the sixteenth century. The *Bollette's* tribunal was responsible for fining the women who worked as prostitutes but had failed to register, for dealing with commercial disputes regarding the indebtedness of their clients and with prostitutes' transgressions of local sumptuary and spatial restrictions. In her study on prostitution in sixteenth- and seventeenth-century Bologna, Vanessa McCarthy suggests that the responsibility for this latter mandate was most likely largely reassigned to the *Torrone* and/or the archbishop's court – even though prostitution itself was not criminalized.¹² Although there is little evidence that this was actively enforced by either of these tribunals, it demonstrates the blurred boundaries of early modern judicial practice.

Historians have noted that it was not only the court's competences that determined which cases were brought before which forum, but that the preferences of the plaintiffs were also decisive. Marco Cavina, for example, describes how domestic violence could – at least theoretically – be denounced to either the secular criminal court, for injury, or to the ecclesiastical court as a request for separation.¹³ Daniela Lombardi has made a similar argument for cases of 'non-violent rape' (*stupro*, in this case meaning broken marriage promises after having had sexual relations), which could be brought before the ecclesiastical

¹² McCarthy, *Prostitution, community and civic regulation*, 122-124, 125-127.

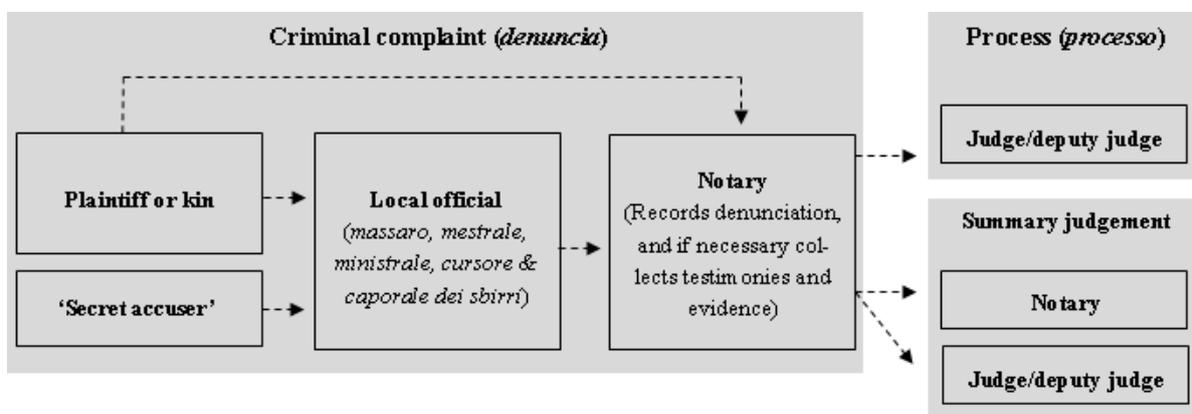
¹³ M. Cavina, *Nozze di sangue. Storia della violenza coniugale* (Rome: Laterza, 2011) 111.

FIGURE 4. BOLOGNA'S FORMAL LEGAL LANDSCAPE, CA. 1530-1796



Sources: Information derived from M. Cavina, 'I luoghi della giustizia', in: A. Prosperi (ed.), *Bologna nell'età moderna (secoli XVI-XVIII). Tomo 1. Istituzioni, forme del potere, economia e società* (Bologna: Bononia University Press, 2008) 367-412; M. Bellabarba, *La giustizia nell'Italia moderna* (Bari: Editori Laterza, 2008); V.G. McCarthy, *Prostitution, community and civic regulation in early modern Bologna* (PhD thesis University of Toronto, 2015).

FIGURE 5. ACTORS IN THE JUDICIAL PROCESS IN EARLY MODERN BOLOGNA, CA. 1530-1796



and the secular court depending on the aim of the plaintiff. From the criminal court a plaintiff could be asked to be dowered, while a marriage fulfilment could only be enforced by the ecclesiastical authorities, as marriage was considered a sacrament.¹⁴

Despite this legal pluralism and the overlap of jurisdictions in particular instances, scholars have indicated that for many types of cases there was a rough subdivision with regard to which court dealt with what kind of case. Lucia Ferrante noted that while adultery was an offence that could theoretically be adjudicated before both ecclesiastical and secular forums, the latter hardly ever did so in practice in seventeenth-century Bologna.¹⁵ With regard to the control of women's sexuality in early modern Bologna, she therefore argues for the existence of an institutional equilibrium between the *Bollette's* control of prostitutes, the archbishop's court of other miscellaneous sexual misconduct and the *Torrone's* overall non-interference with regard to these matters.¹⁶ Competences, judicial traditions and plaintiffs' preferences thus all played a role in how Bologna's early modern legal landscape was navigated by its inhabitants.

The administration of criminal justice

The administration of criminal justice relied on a range of different actors with roles in the various stages. Figure 5 reflects this process. In essence, criminal justice in early modern Bologna was administered by a single judge: the *uditore* or *auditore* of the *Torrone*. These judges were directly appointed by the Pope and their activities were only submitted to the control of the cardinal legate who was installed as city governor, or the vice-legates that substituted for him in times of his absence.¹⁷ Nevertheless, the judges are described as serving with full authority, even attracting a reputation for autocracy as their post was only limited by the judge's age and interest. Unlike their medieval Bolognese and contemporary Florentine counterparts, who were foreigners serving in rotating terms of between two and six months in a bid to guarantee impartiality, the judges of the *Torrone* could serve long terms, which gave them a wide knowledge of and deep investment in the daily matters of city and countryside.¹⁸ The judge was aided by two to four deputy judges (*sott'uditori*), who

¹⁴ Ibidem; Lombardi, 'Marriage in Italy', 107.

¹⁵ Ferrante, 'La sessualità come risorsa', 992.

¹⁶ Ibidem, 996.

¹⁷ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 43-45.

¹⁸ Rose, *Homicide in North Italy*, 68.

assisted the judge with cases outside of the city. They could dispense judgements, which were reviewed and confirmed by the judge.¹⁹

The brunt of the *Torrone's* work rested on the shoulders of eight notaries. Formally, their tasks were limited to the documentation relating to the court's investigations, from denunciation and testimonies to the sentencing, supplication and pardons. However, according to Giancarlo Angelozzi and Cesarina Casanova, the criminal court's enormous workload resulted in the notaries often also interrogating witnesses and collecting the evidence, particularly in cases of small importance and in those in the countryside, before reporting their findings to the judge, who evaluated the evidence and pronounced sentence.²⁰ One of the eight notaries was designated the *caponotaio*. This chief notary appointed the other seven notaries who shared equal competences to hear cases according to a rotating schedule.²¹ This meant that all notaries worked on cases from the city and from the countryside and that they did not specialise in certain kinds of crimes.

Information about crimes reached the *Torrone* through a 'network of information'. This network consisted of various informants who together – according to Giancarlo Angelozzi and Cesarina Casanova – formed a much more efficient system of social control and surveillance than what is often assumed for the pre-Napoleonic Papal States.²² Firstly, the criminal court was supported by a staff of rudimentary lawmen known as the *sbirri*, headed by a *baroncello* or *bargello* (a chief constable), who were tasked with keeping order in the city and arresting delinquents. This pre-modern police force is estimated to have consisted of 100 lawmen and the cost of its maintenance was subject to continuous protest by Bologna's Senate.²³ The expenses were not the only objection against the *sbirri*. According to various scholars, these lawmen were recruited from the poorest classes and were renowned for being violent and corrupt and, being paid for each successful arrest, they had "a greedy zeal that blackened their repute."²⁴ On the other hand, their contacts within the seedier side of society could also advance cases, providing knowledge about the identity and whereabouts of robbers and killers. The lawmen were responsible for a variety of tasks, such as collecting witnesses and transporting them to the *Torrone*, the delivering of citations and

¹⁹ Ibidem, 69.

²⁰ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 49.

²¹ Angelozzi and Casanova, *La giustizia criminale a Bologna nel XVIII secolo*, 11.

²² Angelozzi and Casanova, *Donne criminali*, 65.

²³ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 51-52.

²⁴ S. Hughes, 'Fear and loathing in Bologna and Rome. The papal police in perspective', *Journal of social history* 21 (1987) 98; Cohen and Cohen, *Daily life in Renaissance Italy*, 117-118.

summons and the protection of notaries and judges.²⁵ It was through them that public order offences came before the *Torrone*, since the *sbirri* were also tasked with patrolling the city streets at night to ensure compliance with weapon regulation and public ordinances.

Secondly, in their tasks the lawmen were aided by so-called 'friends of the court', i.e. informants who provided them with tips and information on crimes that were recently committed or the location of fugitives. These court informants were frequently tarred as 'spies'; an insult that was commonly heard in the Bolognese streets, also against crime victims who wanted to take their grievances to court. Examinations of court records indicate that authorities in cities such as Rome, Venice and Bologna often made use of these informants, but that they were less common in rural settings.²⁶ Some of these informants worked in the open and were known to the court, working as couriers and messengers, or were long-time contacts of the court, such as cursors. Others remained anonymous and were only referred to in the court records as 'secret friends of the court'. They either denounced crimes on their own accord, or provided information through the aforementioned lawmen. Together these informants formed a crucial link in the network of information and intelligence that allowed Bologna's early modern criminal court to operate.

Thirdly, surgeons and barbers of the city's major hospitals also formed an important source of information for the *Torrone*. The homicide case of Carlo Masina with which the chapter opened, for example, started with a report from the surgeon who treated his wounds. It was not uncommon for information about instances of serious and less serious violence to reach the court in this way. After all, from the sixteenth century onwards, Bologna's criminal by-laws dictated that physicians were required to denounce 'suspicious injuries' that they treated. There were similar obligations for barbers and other medics in Rome, Lucca, Venice and Verona.²⁷ Bologna's 1610 summation of the criminal by-laws states that medical practitioners (*medici, chirurgici, barbieri, speciali & simili*) had to report any injury suspected of having been caused feloniously to either the *Torrone's* chief-notary or to one of the local bailiffs outside of the city within a day of the incident.²⁸ These reports had to include a description of the wounds, their severity, what weapons may have caused them and, if possible, the name of the assailant. The penalty for failing to denounce was a hefty

²⁵ Rose, Homicide in North Italy', 71.

²⁶ Ibidem, 72; Cohen and Cohen, *Daily life in Renaissance Italy*, 118.

²⁷ P. Blastenbrei, 'Violence, Arms and Criminal Justice in Papal Rome, 1560-1600', *Renaissance Studies* 20 (2006) 70; A. Pastore, *Il medico in tribunale. La perizia medica nella procedura penale d'antico regime (secoli XVI-XVIII)* (Bellinzona: Edizioni Casagrande, 1998) 107-108, 150, 176 and 193; Rose, Homicide in North Italy, 77-78.

²⁸ *Bando generale dell'illustrissimo, e reverendissimo sig. Benedetto card. Giustiniano legato di Bologna, pubblicato alli 23. di Giugno, & reiterato alli 24. di Luglio 1610* (Bologna 1610) Capitolo XXXI, page 64.

fine of 50 *scudi* per case.²⁹ The purpose of this obligation was to bring the numerous acts of violence to the attention of the authorities. According to Peter Blastenbrei, who examined these physician's reports for sixteenth-century Rome, many of these "hundreds and thousands" of violent acts would otherwise have gone unnoticed, given the "notorious reluctance of the Roman population to give information to the justice."³⁰ Not only did many victims claim to have been injured as a result of an accident, an unusually high number of unknown or masked aggressors were described. Between 1560 and 1583 only 1.3 per cent of the wounded Roman patients were willing to denounce their aggressors.³¹ By the mid-seventeenth to mid-eighteenth centuries, however, such reluctance was far less apparent among the Bolognese subjects. In urban Bologna, about one-fifth of the cases of physical violence came under the court's purview because of these medical practitioners' reports. Only five victims (out of 123 reports in my sample) described their injuries as accidental and only fifteen describe not knowing the aggressor at all. In Bologna, the medical reporting on suspicious wounds therefore served as a significant instrument of criminal prosecution.

Fourthly, and importantly, the *Torrone's* network of information relied on various officials who acted as local bailiffs. For the countryside, the *Torrone's* main access point was the *massaro*. This was a local official appointed from the local ranks on an annual basis and who was responsible for relaying crimes that occurred in his jurisdiction (usually one, but sometimes two or three villages) to the *Torrone*.³² The suburban and urban counterparts of this office were that of the *mestrale* and *ministrale* and were organised at parish level. The officials served both as the *Torrone's* contact in the area and also as the source of public knowledge of and participation in justice.

While a denunciation by one of these local officials proved to be crucial to the court's decision to start an official investigation, Bolognese men and women were also able to make a denunciation to the court's notary in person. This option is rarely discussed in the historiography on criminal justice, but, as will be argued in the next chapter, was pivotal to women's ability to employ the court to their benefit. Despite the frequent occurrence and the importance of these individual denunciations in the urban setting, the existence of this knowledge network of official and semi-official informants that spanned from the city to the

²⁹ A university-trained doctor could earn up to 500 *scudi* a year. By comparison, the average eighteenth-century urban day labourer earned 1 *scudo* a month. A barber-surgeon would earn something in between. See Pastore, *Il medico in tribunale*, 192; Arru, 'The distinguishing features of domestic service in Italy', 554.

³⁰ Blastenbrei, 'Violence, arms and criminal justice', 71.

³¹ *Ibidem*, 73.

³² Rose, *Homicide in North Italy*, 72-73, 76.

far reaches of the countryside is important to the understanding of the workings of Bologna's criminal court during the early modern period.

Criminal procedures

The statutes of the *Torrone* were issued in 1541 through a Papal proclamation entitled *Reformationes Turroni Bononiae*.³³ These statutes laid out the procedures and compensation of judges and notaries in criminal cases falling under the *Torrone*. According to Colin Rose, who has examined the *Torrone's* criminal procedures in detail, various phases can be distinguished. Upon the occurrence of discovery of a crime, the victims or witnesses were obligated to inform their local officials. In this first phase, these officials denounced the crime to a notary of the criminal court. With the denunciation having been made, the notary then decided if the case warranted a summary procedure or a full investigation. For small offences such as a simple complaint about verbal aggression among commoners the notary recorded the complaint in his casebook and generally waited until the parties reached an agreement.³⁴

With more serious crimes such as homicide, assault resulting life-threatening wounds, robbery, theft and arson, the notary investigated the crime and gathered information, which he then reported to the judge. This investigation constituted the beginning of a full inquisition, which began with an investigation of the immediate facts of the crime. In the case of homicide, this entailed an inspection of the body by the notary and two locals who knew the victim. For theft this meant an inspection of the damages done to the house or shop from which items were taken.³⁵

The third phase, after the denunciation and the *in situ* investigation, was the interrogation of witnesses. The number of testimonies that were collected depended on the type of crime that was committed, the victim's status, the notary's personal preferences and the outcome of the other interrogations. In the case against Alessandro Bernardi, a barber who stabbed goldsmith Giuseppe Gualli on the street when he thought Gualli was reaching for his weapon in 1675, only one eyewitness was interrogated before the case was withdrawn and the offender absolved.³⁶ On the other hand, no fewer than 23 witnesses testified against reseller Margarita Cesare, who was eventually sentenced to public lashing and exile for

³³ ASBo, *Bandi e notificazioni*, Serie I, No. 3, fol. 95.

³⁴ Rose, *Homicide in North Italy*, 78.

³⁵ *Ibidem*, 79.

³⁶ ASBo, *Torrone*, 7028, fasc. 6.

swindle.³⁷ The initial list of witnesses was compiled based on the denunciation and the initial investigation, and these witnesses received citations with increasingly severe fines if they did not show up to give their testimonies. After this initial round of interrogations, further citations could be issued by the court officers, also summoning the accused for interrogation on penalty of a heavy fine, corporal punishment or the risk of being killed with impunity.³⁸

Defendants were questioned in a closed room and were generally without counsel and unaware of the charges, accuser and evidence.³⁹ When the aforementioned Margarita Cesare was arrested for questioning, she stated that she was not given the reason.⁴⁰ In general, the interrogator first circled around the issue, collecting clues and looking for inconsistencies and when stories did not match up they could confront the defendant with other testimonies at their discretion. Margarita's portrayal of her actions as an honest, single mistake, for example, became increasingly unconvincing when confronted with a range of testimonies revealing a chain of subsequent swindles of many different victims. As a legal proof, a conviction required strong evidence in the form of a confession or two credible witnesses. Lacking good witnesses, it remained within the *Torrone's* competency for the magistrates to decide to apply torture. However, like elsewhere in early modern Europe, its use declined significantly in Bologna during the seventeenth century.⁴¹

After the interrogations, the evidence compiled by the notary was passed on to the judge, who reviewed the case and pronounced sentence. How judges came to their sentencing has largely remained elusive to historians, as sentences lacked any explanation in the court records. At the same time judges had great *arbitrium* with which they could determine punishments according to the qualities of the crime, the victim and the criminal. Fragmented as the Italian peninsula was politically, there was no single criminal code for the region during the early modern period. It was not until the Zanardelli Code of 1889 that penal legislation was unified for Italy. Before that, various territories had started penning their own civil, criminal and commercial codes following the demise of Napoleon after 1814. Alongside Tuscany, Naples and Piedmont-Sardinia, the Papal States too promulgated a penal code in 1832.⁴² Before the introduction of these nineteenth-century penal codes, the legal system in the Italian territories was shaped by two different legal traditions. The first

³⁷ ASBo, Torrone, 7072, fasc.o 1.

³⁸ Rose, Homicide in North Italy, 82.

³⁹ Cohen and Cohen, *Daily life in Renaissance Italy*, 119.

⁴⁰ ASBo, Torrone, 7072, fasc. 1, fol. 6: "[...] e la causa per la quale sono stata presa prigioniera e che hora mi vuole esaminare io non lo so se non mi si dice."

⁴¹ Rose, Homicide in North Italy, 81; Angelozzi. and Casanova, *Donne criminali*, 230.

⁴² *I Regolamenti penali di Papa Gregorio XVI per lo Stato Pontificio* (1832).

was the *ius commune* based on the Justinianic texts of Roman civil law and texts of canon law and the second the *ius proprium*, i.e. various local, municipal or regional corpuses of legislation.⁴³ From the early thirteenth century onwards, the community of Bologna had started issuing civil and criminal statutes, laying down the city's basic legislation and customs in Latin.⁴⁴

During the early modern period, one of the best sources to gauge Bologna's norms regarding prosecution and sentencing was not the civic statutes but the collection of criminal by-laws. Throughout the papal rule over Bologna, the ruling legates provided general regulations for penal justice in the form of proclamations (*bandi*) that according to Paolo Prodi made the civic statutes redundant without formally abolishing them.⁴⁵ At the beginning of his legateship over Bologna, each papal legate issued or renewed a *Bando Generale*; a collection of proclamations that specified the definitions and sanctions of crimes for the territory of Bologna. For the seventeenth and eighteenth centuries there were two of these summations of the city's criminal by-laws that were of major importance: that of 1610 and that of 1756. Legate Benedetto Giustiniani's *Bando Generale* was issued on 23 June 1610 and remained largely unaltered until the middle of the eighteenth century. In 1756 Legate Fabrizio Serbelloni revised the criminal by-laws significantly following Pope Benedetto XIV's constitutional reforms of criminal justice a decade earlier.⁴⁶ These sought to regulate the criminal procedures within its territory, increase its transparency and curb some of its abuses.⁴⁷ It is generally assumed that this new summation of the criminal by-laws reflects changes in the attitude towards penal justice going back to the turn of the century.

Although the much more elaborate treatment of crimes and their sentences in the 1756 *Bando Generale* clarified many of the obscurities from the past century, it above all provided a normative guideline rather than a reflection of contemporary penal practice. Both the 1610 and the 1756 summations of the city's by-laws predominantly prescribed capital

⁴³ M. Bellomo, *The common legal past of Europe, 1000-1800* (Washington: The Catholic University of America Press, 1995) 1-2; T. Kuehn, 'Gender and law in Milan', 408.

⁴⁴ F. Berlan, *Statuti Italiani. Saggio bibliografico* (Venice: Tipografia del commercio, 1858) xxvi, 12-13.

⁴⁵ P. Prodi, *The papal prince. One body and two souls. The papal monarchy in early modern Europe* (Cambridge University Press, 1982) 74.

⁴⁶ Angelozzi and Casanova, *Donne criminali*, 60; Angelozzi and Casanova, *La giustizia criminale a Bologna nel XVIII secolo*, 156.

⁴⁷ Angelozzi and Casanova mention 8 ways in which Benedetto XIV's reforms sought to end the abuses of the criminal justice system: 1) the regulation of payments of the court's officials, 2) defining who can act as a legal expert, 3) obligation to first emit three citations in the presence of a bailiff before emitting a mandate for capture, 4) increasing the transparency of the process, 5) making witnesses sign their testimonies, 6) improving the rights of the criminals (for example no longer using dogs to capture fugitives), 7) no longer allowing undercover testimonies of prison infiltrators and 8) no longer pronouncing exile while the defendant was *in absentia*. See Angelozzi and Casanova, *La giustizia criminale a Bologna nel XVIII secolo*, 164-182.

punishments. Among others, a death sentence could be prescribed for various forms of theft, armed robbery, homicide, assault of officials, counterfeiting, rebellion and banditry. Punitive incarceration was rarely prescribed, as it was not only expensive but also considered to be cruel. More commonly prescribed by the by-laws were convictions to the papal galleys in the Mediterranean and corporal punishment and fines for simple infractions.

While the criminal by-laws thus prescribed capital punishment for a multitude of offences throughout the early modern period, it has been argued that the actual enforcement of the death sentence declined significantly.⁴⁸ In Bologna 917 men and women were executed between 1540 and 1600. This number dropped to 556 from 1600 to 1700, and, averaging less than 2 per year in the 1690s, continued to go down.⁴⁹ It has therefore been argued that by the end of the seventeenth century, the death penalty was not a generic, common sentence, but was instead issued only to those who represented a threat to the state and the court's hold over that state. Similarly, although *esilio* (banishment) was not mentioned as a punishment for any crime in either of the two criminal by-laws, it was one of the most common sentences for many serious crimes throughout the seventeenth and eighteenth centuries. Indeed, in Italy as elsewhere in early modern Europe, banishment was commonly used as an instrument to moderate strict laws and often replaced capital punishments or a sentence to the galleys.⁵⁰ The convicted suffered exile from the entire legal territory of Bologna for lengthy, often indeterminate periods of time, unless he or she was able to make peace with the victim or the victim's family. The *bandi* therefore once more reveal that the regulations were by no means followed to the letter.

The example of banishment illustrates how sentences did not constitute the final stage of the criminal procedure. Indeed, peace-making and pardon constituted essential and regular parts of the early modern criminal justice system. As in the rest of Europe, convicted Bolognese men and women could request grace from the state authorities (in the case of the Papal States the Papal Prince) via criminal petitions, i.e. supplications (*suppliche*).⁵¹ These supplications were written by notaries working within the judicial structures who received a set fee for their services from the culprit. Each successful supplication was furthermore taxed

⁴⁸ N. Terpstra, 'Theory into practice: Executions, comforting, and comforters in Renaissance Italy', in N. Terpstra (ed.), *The art of executing well. Rituals of execution in Renaissance Italy* (Kirkville: Truman State University Press, 2008) 123.

⁴⁹ Rose, *Homicide in North Italy*, 57, 82-83.

⁵⁰ Nubola, 'Giustizia, perdono, oblio', 14; Rose, *Homicide in North Italy*, 132.

⁵¹ Niccoli, 'Rinuncia, pace, perdono', 221; Nubola, 'Giustizia, perdono, oblio', 35; C.S. Rose, '<<To be remedied of any vendetta>>: Petitions and the avoidance of violence in early modern Parma', *Crime, history & societies* 16:2 (2012) 5-6.

a proportion of the potential judicial fine for the pardoned crime.⁵² When granted, a pardon often stipulated a period of separation between the parties, which meant that killers could for example not return to the city or village where the homicide was committed for three years.⁵³ Other than that, the offender was free to move about the *legato* and was, essentially, re-integrated into the societal fabric. Whether a pardon would be granted hinged upon certain conditions; peace having been made with the victim or his/her family was one of the most important of these conditions.⁵⁴

According to a growing body of scholarly work, composition and peace-making had a central function in early modern criminal justice all over Europe.⁵⁵ This brokering of reconciliation was a remnant of the older forms of community justice and a continuity of medieval practices. The persistence of peace-making practices is particularly relevant for the early modern Italian case because of its role in preserving older social systems centred on violent confrontations.⁵⁶ Italian governments considered peace-making the most efficient and rational instrument to ensure social peace and order. Rather than making penal repression the focal point of their endeavours, public authorities increasingly inserted themselves into the private disputes of their citizens from the sixteenth and seventeenth centuries onwards, eventually in the roles of formal arbiters.⁵⁷ This meant that peace-making practices were increasingly institutionalised in early modern Italy: to make peace was now a jurisdictional action administered by the public authorities.⁵⁸

A prime example of this institutionalisation in Bologna is to be found in a range of non-continuous government bodies established between the 1540s and 1694 to facilitate peace-making between high-ranking nobles.⁵⁹ By the 1650s, this government council was called the *Assunteria de Liti e Paci* and it has been argued to have played an important part in

⁵² Rose, 'To be remedied of any vendetta', 17; Rose, Homicide in North Italy', 11-12.

⁵³ Rose, Homicide in North Italy, 87.

⁵⁴ Rose, 'To be remedied of any vendetta', 17.

⁵⁵ S. Cummins, 'Forgiving crimes in early modern Naples', in: S. Cummins and L. Kounine (eds.), *Cultures of conflict resolution in early modern Europe* (Surrey: Ashgate, 2016) 255; Cummins and Kounine, 'Confronting conflict in early modern Europe', 9; O. Niccoli, *Perdonare. Idee, pratiche, rituali in Italia tra cinque e seicento* (Rome: Editori Laterza, 2007) 38-39.

⁵⁶ Cavarzere, 'At the crossroads of feud and law', 55, 69; D. Boschi, 'Knife fighting in Rome', 150-153, especially 152; Broggio and Carroll, 'Violence and peacemaking in early modern Europe', 5; Rose, Homicide in North Italy, 20.

⁵⁷ Cavarzere demonstrates how the evolution of this codification in the sixteenth-century Pistoiese statutes, and suggests that similar developments took place in other parts of Italy between the sixteenth and seventeenth centuries, see Cavarzere, 'At the crossroads', 64-65, 69.

⁵⁸ Ibidem, 65; M. Bellabarba, 'Pace pubblica e pace privata. Linguaggi e istituzioni processuali nell'Italia moderna', in: M. Bellabarba, A. Zorzi and G. Schwerhoff (eds.), *Criminalità e giustizia in Germania e in Italia. Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo e prima età moderna* (Bologna: Il Mulino, 2001) 189-213.

⁵⁹ Niccoli, O., *Perdonare. Idee, pratiche, rituali in Italia tra cinque e seicento* (Rome: Editori Laterza, 2007) 115.

the government's efforts to curtail the nobility's violence during those volatile years of heightened violence.⁶⁰ But the institutionalization of peace-making was also visible outside of these specific councils. Vicars, local officials (*massari, ministrali*) and even senators are known to have acted as mediators between the victim of violence and/or his kin and the imputed criminal in the pacification of conflicts.⁶¹ According to Rose and others, the court records suggest that the *Torrone's* magistrates applied a great deal of pressure on the victims and their kin to accept their enemies' peace-making attempts.⁶²

The Bolognese criminal court records clearly demonstrate that arbitration was favoured over formal judicial intervention in the case of petty offences. Drawing on Bologna's civic statutes, the statutes of the *Torrone* affirmed the plaintiff's right to withdraw a complaint.⁶³ According to Ottavia Niccoli, who studied these forms of peace-making in early modern Bologna, the *rinuncia* usually followed a financial composition between the plaintiff and defendant, even though this often remains implicit in the sources.⁶⁴ The norms dictated that in the case of *levioribus criminibus* (literally lighter crimes, used here for crimes against the person without the spilling of blood) the withdrawal of a complaint brought about the immediate suspension of any legal action. However, the Bolognese criminal court records demonstrate that the withdrawal could halt prosecutions for a broader range of crimes than the norms dictated – from verbal insults to aggressions with serious physical consequences and, more rarely, theft. The next chapter will explore this mechanism in more detail for the denunciations.

Another judicial peace-making instrument that was particularly used for the graver types of offences was the peace accord. This was an official, notarised document that brought settlement to a dispute between two quarrelling parties. With its historical roots in the medieval accusatorial procedure, it aimed to reintegrate the offender into society and was quite common in most parts of early modern Europe.⁶⁵ Theoretically, it carried greater weight than the simple juridical withdrawal of the complaint because it functioned as a social accord that was supposed to bring an end to a conflict between individuals and

⁶⁰ Rose, *Homicide in North Italy*, 87; G. Angelozzi and C. Casanova, *La nobiltà disciplinata. Violenza nobiliare, procedure di giustizia e scienza cavalleresca a Bologna nel XVII secolo* (Bologna: Patròn Editore, 2003) 57.

⁶¹ Niccoli, 'Rinuncia, pace, perdono', 228-232; Rose, *Homicide in North Italy*, 64-65.

⁶² Rose, *Homicide in North Italy*, 85-86; Cavarzere, 'At the crossroads', 65-67.

⁶³ R. Mariani, *Criminalità e controllo sociale nella Crevalcore del seicento* (Master thesis, Università degli studi di Bologna, 1991) 74.

⁶⁴ Niccoli, 'Rinuncia, pace, perdono', 226.

⁶⁵ K.L. Jansen, "'Pro bono pacis': Crime, conflict, and dispute resolution. The evidence of notarial peace contracts in late medieval Florence", *Speculum* 88:2 (2013) 446.

families once and for all.⁶⁶ It is generally assumed that the peace accords, like the *rinuncia*, generally involved a financial settlement between the plaintiff and defendant, even though these details were rarely recorded.⁶⁷ Before the criminal court, presenting a peace accord could commute a sentence to a lesser one or could halt the prosecution altogether through a pardon by the legate.⁶⁸

The peace accords and other types of reconciliation were common and are generally assumed to have been used by men and women of all social stripes.⁶⁹ The importance and frequency of its use in Italy is quantified by various studies. Rose, for example, observed that nearly a third of seventeenth-century homicide trials in Bologna were settled with a notarised peace accord granted by the victim's kin.⁷⁰ It is generally assumed that the use of these pacification instruments in the criminal justice system was increasingly restricted during the early modern period, although it has also been noted that even in the nineteenth-century Papal States it was still possible to withdraw a complaint from the judicial process.⁷¹ This highlights the formal incorporation and continued importance of peace-making in early modern Italy's criminal justice system.

Women's involvement in recorded crime

While the criminal procedures and by-laws in themselves may appear relatively gender neutral at first glance, there are important reasons to assume that there were significant differences in men's and women's experiences of the law. In a quantitative sense, European women's small proportional contribution to crime is relatively well documented. Though by no means static, data on early modern Europe shows that in England, Scotland, Holland, Germany and France women generally constituted a relative minority among offenders coming before the criminal court.⁷² However, recent studies have rendered it plausible that

⁶⁶ Niccoli, *Perdonare*, 113.

⁶⁷ Niccoli, 'Rinuncia, pace, perdono', 226.

⁶⁸ Nubola, 'Giustizia, perdono, oblio', 33.

⁶⁹ Jansen, 'Pro bono pacis', 427-456; T. Kuehn, 'Law and arbitration in Renaissance Florence', in T. Kuehn (ed.), *Law, family and women. Toward a legal anthropology of Renaissance Italy* (University of Chicago Press, 1991) 36; A. Zorzi, 'Legitimation and legal sanction of vendetta in Italian cities from the twelfth to the fourteenth centuries', in S.K. Cohn jr. and F. Ricciardelli (eds.), *The culture of violence in Renaissance Italy* (Florence: Le Lettere, 2012) 34.

⁷⁰ Rose, *Homicide in North Italy*, 86.

⁷¹ D. Edigati, 'La pace nel processo criminale. Il caso toscano in età moderna', in: P. Broglio and M.P. Paoli (eds.), *Stringere la pace. Teorie e pratiche della conciliazione nell'Europa moderna (secoli XV-XVIII)* (Rome: Viella, 2011) 408.

⁷² Farge, *Délinquance et criminalité. Le vol d'aliments à Paris au XVIIIe siècle* (Paris: Plon, 1974); Feeley and Little, 'The vanishing female'; Van der Heijden, 'Criminaliteit en sekse'; King, *Crime and Law*; Kilday, *Women and violent crime*; P. Spierenburg, *A history of murder. Personal violence in Europe from the middle ages to the present* (Cambridge: Polity, 2008) 117.

this was not necessarily because women were inherently less criminal. Rather than appearing before a high criminal court, it has been contended that women's crimes were likely more commonly solved through other informal or extrajudicial spheres of social control, such as the family or the neighbourhood.⁷³ Recent studies on towns in England and Holland have also demonstrated that the crimes of women were furthermore more commonly dealt with at the lower end and earlier stages of the criminal justice system.⁷⁴

Compared to other parts of early modern Europe, women's involvement in crime and criminal justice has received scant attention in Italian scholarship. Most scholarly attention has been devoted to the late medieval and Renaissance period. Many of these works paint a rather bleak picture for women. Samuel Cohn's notable and oft-cited study on fourteenth- and fifteenth-century Florence suggests a diminishing participation of women in crime during the Renaissance. Before Florence's *Otto di Guardia*, women comprised 22 per cent of the accused a decade before the Black Death (1347-1348) and 17 per cent two decades later (1374-1375).⁷⁵ Although the quantitative differences appear modest, Cohn argues that they represent a real decline, reflecting the newly introduced constraints on women's ability to perform public roles and access the court, among others by requiring women to be represented in court by a guardian (*mundualdus*). Although this legal requirement was by no means universally applied throughout the Italian peninsula, the notion that Italian women were increasingly worse off has readily captured the imagination. It does, however, require further scrutiny. Elizabeth and Thomas Cohen's work on the Roman Governor's Court in the sixteenth-century is for example suggestive of a wide involvement of both men and women in criminal offences, though quantitative assessment of its incidence has remained outside the scope of their work.⁷⁶

The renowned legal historian Mario Sbriccoli has attributed the (at that point still largely presumed) low level of female involvement in recorded crime in Italy to the workings of the legal system.⁷⁷ His premise is that, until the twentieth century, both the law and consequently the criminal justice system were viewed as essentially masculine. This meant that women were kept away from the law and the law was kept away from women, whether as judges, lawyers, plaintiffs or defendants. Not only was the criminal justice system based on male behaviours, it also actively categorised many of women's deviant behaviours

⁷³ Dinges, 'The uses of justice', 167-168.

⁷⁴ Van der Heijden, 'Women, violence and urban justice', 71-100; Hurl-Eamon, *Gender and petty violence*.

⁷⁵ Cohn, 'Women in the streets, women in the courts', 24, 29.

⁷⁶ Cohen and Cohen, *Words and deeds*, 14-16.

⁷⁷ Sbriccoli, 'Deterior est condicio foeminarum', 81.

(described by Sbriccoli as obscene behaviours, fornication, concubinage, as well as petty crimes) as matters of sin, disorder, irregularity or censorable anomalies rather than subject to criminal justice.⁷⁸ According to Sbriccoli, women's criminality in Italy was thus largely 'absorbed' into the mesh of extrajudicial control systems, ranging from the domestic sphere to the neighbourhood and the church.

While it may well be true that women's crimes were more likely to be handled by less formal methods of conflict resolution in the early modern period, by no means all of women's transgressions were dealt with outside the judicial system.⁷⁹ Table 1 brings together data from various Italian studies regarding the proportion of women among formally investigated criminal offenders. It also includes figures for urban Bologna, which I have collected from the *Torrone's* investigation dossiers (*processi*) for the sample years of 1655, 1675, 1705, 1725 and 1755. Among the 911 collected *processi*, there were 1,357 identified defendants; 1,287 men and 70 women.⁸⁰ This meant that in Bologna women comprised only about five per cent of those subject to a formal criminal investigation.⁸¹ The other available studies on Italian towns reveal equally low figures, suggesting that women represented a clear minority among indicted criminals.

When speaking about developments over the longer term, it is commonly assumed that the early modern period marked a peak for women's involvement in crime. Records from cities in France, England, Scotland, Germany and the Netherlands have demonstrated that female involvement in crime during the early modern period was most likely significantly higher than in the modern period.⁸² While various studies have indicated that in Western Europe until 1900 up to 50 per cent of the property crimes were committed by women, they were only responsible for between 16 per cent of these crimes in the twentieth century.⁸³ The comparatively high percentages of female crime in the seventeenth and eighteenth centuries have led to an academic debate about trends in male and female recorded crime. Based on data on cities in England and the Netherlands,

⁷⁸ Ibidem, 83-84.

⁷⁹ Dinges, 'The uses of justice', 159-175; R. Shoemaker, *Prosecution and punishment. Petty crime and the law in London and rural Middlesex, c.1660-1725* (Cambridge University Press, 1991) 292; Schwerhoff, *Köln im Kreuzverhör*.

⁸⁰ The total number of 'offenders' amounts to 1,419 if we include the 62 offenders whose identity and sex are unknown.

⁸¹ The share of female defendants among urban *processi* was 2% in 1655, 5% in 1675, 2% in 1705 and 8% in 1725 and 1755.

⁸² G. Geltner, 'No woman's land? On female crime and incarceration, past, present and future', *Justice policy journal* 7:2 (2010) 6; Feeley and Little, 'The vanishing female', 719-757; Jütte, 'Geschlechtsspezifische Kriminalität', 86-116; Van der Heijden, 'Criminaliteit en sexe', 1-36.

⁸³ *European sourcebook of crime and criminal justice statistics 2014* (Helsinki: Hakapaino Oy, 2014) 89.

criminologist Malcolm Feeley argued that female involvement in crime was much higher in Europe until the middle of the eighteenth century, allegedly dropping drastically afterwards as a result of increasing patriarchal structures pushing women out of the public sphere.⁸⁴ Various scholars have raised substantial doubts about the idea of the ‘vanishing female’, not only about why the decline occurred but also when and where. Nevertheless, there is a broad consensus regarding women’s relatively high shares among offenders during the early modern period.

TABLE 1. SHARES OF FEMALE DEFENDANTS BEFORE CRIMINAL COURTS IN VARIOUS ITALIAN CITIES, AVERAGES PER CENTURY

<i>Urban population in thousands, c.1700</i>	14 th c	15 th c	16 th c	17 th c	18 th c	19 th c
Florence (72)	20.9	14.1	-	-	-	-
Lucca (24)	14	-	-	-	-	-
Viterbo (12)	-	7.9	-	-	-	-
Rome (140)	-	-	11.5	-	-	-
Bologna (63)	-	3.3	-	4.0	5.7	11.5
Siena (16)	-	-	-	-	8.8	-
Prato (6)	-	-	-	-	4	-

Sources: **Florence**: S.K. Cohn, ‘Women in the streets, women in the courts, in early Renaissance Florence’, in *Ibidem* (ed.), *Women in the streets. Essays on sex and power in Renaissance Italy* (Baltimore: John Hopkins University Press, 1998) 16-38, **Lucca**: G. Geltner, ‘A cell of their own: The incarceration of women in late medieval Italy’, *Signs* 38:1 (2013) 31; **Viterbo**: V. Rizzo, ‘Giustizia e società a Viterbo nel XV secolo (da una ricerca sui registri dei malefici)’, *Biblioteca e società* 3-4 (1999) 49, **Bologna**: 15th century data: S.R. Blanshei and S. Cucini, ‘Criminal justice and conflict resolution’ in S.R. Blanshei (ed.), *A companion to medieval and Renaissance Bologna* (Leiden: Brill, 2018) 72; 17th and 18th century data: my own calculations based on the sampled *processi* for the years 1655, 1675, 1705, 1725 and 1755; the 19th century data: M. Pluskota, ‘Petty criminality, gender bias, and judicial practice in 19th-century Europe’, *Journal of Social History* 51:4 (2018) 723, **Rome**: C. Vasta, Criminal women. Women’s violence in sixteenth- and seventeenth-century Rome (Unpublished conference paper 61th Annual Meeting of the RSA, Berlin, 26-28 March 2015) 6, **Siena**: L.C. Sardi, ‘Analisi statistica sulla criminalità nel 1700 (reati e pene) con riguardo allo Stato senese’, in L. Berlinguer and F. Colao (eds.), *Criminalità e società in età moderna* (Milan: Giuffrè, 1991) 396, 439, **Prato**: D. Zuliani, ‘Reati e pene nel vicariato di Prato prima e dopo la <<Leopoldina>> (1781-1790)’, in L. Berlinguer and F. Colao (eds.), *Criminalità e società in età moderna* (Milan: Giuffrè, 1991) 312. **Urban population data**: P. Malanima, ‘Italian urban population 1300-1861 (The database)’.

Interestingly, however, based on current research there is so far little evidence that this general trend applies to early modern Italy. Although the aggregated data is too sparse and disparate to draw definite conclusions, there are no known examples of crime shares (based on formal indictments) remotely as high as those found in most other early modern European towns. For various towns in early modern Holland, for example, it has been

⁸⁴ Feeley and Little, ‘The vanishing female’, 750.

calculated that women made up around 30 per cent of the criminal offenders.⁸⁵ Similarly, in seventeenth- and eighteenth-century Frankfurt and Surrey, women accounted for 22 and 21 per cent of all suspects investigated.⁸⁶ Even though longer-term quantitative studies for these European towns have demonstrated that female crime shares were in constant flux, the available data suggests that they were consistently higher than those found for the Italian Peninsula, including Bologna. Although we must be cautious about making generalisations based on this limited data, it does seem to suggest that the early modern period did not constitute a peak for women's criminality everywhere in Europe. The possibly different long-term development of women's involvement in crime in early modern Italian cities provokes broader questions regarding the explanations for its historical variation over time and space. As has been argued in the previous chapter, many of the structural characteristics of women's lives in early modern Bologna such as the level of labour participation, the shares of female-heading households, and the prevalence of nuclear families were remarkably similar to those found in Northern European cities. Alongside of women's social and economic position, we should therefore also take into account the effects of other societal determinants, such as legal culture and civic institution, to understand Italian women's recorded involvement in crime.

The character of indicted crime in Bologna

Which crimes were investigated and prosecuted by the criminal courts differed significantly across time and space. Definitions of what is regarded a crime are therefore imperative. Table 2 shows the various types of offences that can be found in the early modern Bolognese criminal court records. The descriptions are largely based on the contemporary descriptions found in these sources themselves. The front cover of Bologna's *processi* – collected as bundles of dedicated dossiers – nearly always included a Latin or Italian indication of the crime the defendant had been accused of committing. These include *omicidio* for homicide, *vulnere* for wounding, *furto* for theft in related activities, *rapina* for armed robbery and *stupro* for rape or sex out of wedlock. The classification of these offences into the categories of violence, property, public order and sexual misconduct is a modern one, which I based on my reading of the criminal by-laws and classifications by other scholars. With these

⁸⁵ Between 1680 and 1811 Amsterdam, on average 35.2 percent of defendants consisted of women. Slightly lower, but still comparatively high counts have been found for towns such as Haarlem and Dordrecht. For a summary of these works on Holland, see Van der Heijden, *Women and crime*, 4-9. For an overview of the shares in Germany and some English localities, see Kamp, 'Female crime and household control', 640; Jütte, 'Geschlechtsspezifische Kriminalität', 93.

⁸⁶ Kamp, 'Female crime and household control', 536; Beattie, 'The criminality of women', 81.

categorisations in mind, we will examine the similarities and differences between prosecuted crimes of male and female offenders as well as between Bologna and other cities in early modern Europe.

Violence	Property	Public order	Sexual misconduct
Homicide	Theft & fencing	Bearing/firing arms	Rape
Infanticide	Burglary & breaking and entering	Suspicious behaviour	Sexual battery
Fighting resulting in serious injury	Pickpocketing	Begging & vagabonding	'Deviation' & adultery
Fighting without serious injury	Robbery	Disorderly behaviour	Sodomy
Threat	Arson & damage to property or animals	Resisting/insulting the authorities	
Insult, defamation & libel	Violation of seizure of goods	Perversion of justice	
		Violation of banishment	
		Fraud & forgery	

	Male defendants		Female defendants		Total known*		Unknown offenders	
	#	%	#	%	#	%	#	%
Violence	565	44	23	33	588	43	11	18
Property	323	25	27	39	350	26	50	81
Public order	350	27	17	24	367	27	1	2
Sex	42	3	3	4	45	3	0	0
Misc	7	1	0	0	7	1	0	0
	1287	100	70	100	1357	100	62	100

Source: Sample 1 (see appendix).
 * Calculated from the total of defendants whose sex is known, counted by defendant.

When we examine the composition of the seventeenth- and eighteenth-century Bolognese *processi*, it is the proportional importance of violence that catches the eye. Indeed, as is shown in table 3, the dockets of Bologna's criminal court brimmed with violent acts ranging from insults and blows to stabbings, shootings and murder. Making up 42 per cent of the cases investigated by the criminal court, these violent and aggressive offences were the most common reason for an encounter with the law, followed by offences against property (28 per cent) and those against public order (26 per cent), whereas sexual offences were much more scarce (3 per cent). With the preponderance of violent offences among its *processi*,

Bologna's 'crime pattern' resembled that of other towns in much of pre-modern Italy. Both for fourteenth- and fifteenth-century Florence and sixteenth-century Rome, scholars have found violent offences to be the most important crime before the criminal court.⁸⁷ The importance of violence before pre-modern Italian criminal courts stands out compared to the indicted crimes in Northern European cities. Criminal courts in Holland, England and Germany were as a rule far more prone to prosecuting theft and other property offences.⁸⁸ Together with data from Spain, Portugal and South-West France, the Bolognese case study thus provides further evidence for the existence of a distinct Southern European prosecution pattern in which violent offences figured much more prominently than in the northern regions of Europe.⁸⁹

The investigation dossiers suggest that there were slight differences in the prosecution patterns for male and female offenders. Table 3 shows that while violence was by far the most important offence category for men, property crimes made up the largest proportion of crimes for which women were investigated by the *Torrone*. The idea that women were naturally less violent than men has a long history. From Beccaria and Lombroso in the eighteenth and nineteenth centuries to as late as the 1960s, criminal anthropologists attributed these kinds of distinctions between the crimes by men and women to both biological and physical predispositions. These theories assume that women's lesser physical strength equates to their limited violent transgressions.⁹⁰ Although this notion has not gone without criticism, it is still prevalent in the thinking about the relationship between women and violence. More recently scholars have, however, emphasised not biology, but the profound influence of gendered norms and prosecution policies.⁹¹ In Bologna, although the criminal by-laws include instructions on how the court should deal with more minor infractions regardless of sex, it is clear that the judges had a large *arbitrium* and did not deem all offences by all offenders equally worthy of prosecution.

Which offences merited prosecution in the eyes of the authorities was both contingent on the crime itself as well as on the 'personal qualities' of the plaintiffs and defendants. With

⁸⁷ Cohn, 'Women in the streets, women in the courts', 26; Blastenbrei, *Kriminalität in Rom*, 284.

⁸⁸ Noordam, 'Strafrechtspleging en criminaliteit', 228; *Old Bailey Proceedings Online* (<https://www.oldbaileyonline.org/>, version 7.2, March 2015), Tabulating offence category, between 1674 and 1800. Counting by defendant; Schwerhoff, *Historische Kriminalitätsforschung*, 116.

⁸⁹ T.A. Mantecón, 'The patterns of violence in early modern Spain', *The journal of the historical society* 7:2 (2007) 254; D. Abreu-Ferreira, *Women, crime and forgiveness in early modern Portugal* (Surrey-Burlington: Ashgate, 2015) 17; J.R. Ruff, *Crime, justice and public order in old regime France* (London: Croom Helm, 1984), see figure 1.01 in the introduction, n.p.

⁹⁰ For an overview, see Crouzet-Pavan, 'Crimine e giustizia', 56-57; Angelozzi and Casanova, *Donne criminali*, 12.

⁹¹ For this discussion, see Van der Heijden, *Women and crime*, 9-10.

regard to the type of crime, the criminal court records indicate that the authorities' focus lay on the more serious violent offences such as homicide and violence that resulted in life-endangering wounds. Among the denunciations, however, petty acts of aggression were prevalent. Factors such as class, reputation and sex also determined how cases were perceived.⁹² There are many examples of women's crimes not being regarded as a threat and therefore deemed not worth prosecuting. Julius Ruff and others have theorised that early modern societies in general had little interest in female violence and did not feel threatened by women's transgressions, which could have translated into fewer indictments.⁹³ Similarly, in his examination of assaults in eighteenth-century London, Daniel Gray has shown that assaults by women were often not taken seriously by prosecutors and were instead dismissed as frivolous.⁹⁴ In early modern Italy too, similar mechanisms were at play. Giancarlo Angelozzi and Cesarina Casanova have argued that women's violence in early modern Bologna was disproportionately dismissed by the *Torrone's* judges.⁹⁵ This manifested itself in the clause of *non proceditur; stante qualitate facti et personae*, which they argue can be viewed as an act of clemency by the judge as well as an assessment of the irrelevancy of the case, in which their sex was a contributing factor.

That the patterns emerging from the *processi* do not allow for any straightforward generalisations about women's less violent nature is also evident from other types of sources. In Bologna the denunciations are particularly relevant in this context. Among these far more plentiful formal complaints no less than 82 per cent of the accused women and two-thirds of the accused men were denounced for physical and verbal aggression.⁹⁶ At the level of the *processi* violence made up a lower 44 per cent of men's crimes and 33 per cent of women's. Violence thus played a less important role in the investigations for both men and women, but the discrepancy is particularly striking for the female defendants. In the *processi*, women made up only four per cent of violent transgressors, whilst their share was roughly five times that among the denunciations. For the examination of women's involvement in everyday offending, it is therefore imperative to scrutinise not only those offences that the authorities deemed worth prosecuting. Similar to what Trevor Dean suggested for late medieval

⁹² Angelozzi and Casanova, *La giustizia in una città di antico regime*, 643.

⁹³ J.R. Ruff, *Violence in early modern Europe, 1500-1800* (Cambridge University Press, 2001) 117-159; K. Callahan, 'Women who kill: An analysis of cases in late eighteenth- and early nineteenth-century London', *Journal of social history* 46-4 (2013) 1015.

⁹⁴ D.D. Gray, 'The regulation of violence in the metropolis; the prosecution of assault in the summary courts, c.1780-1820', *The London journal* 32:1 (2007) 79.

⁹⁵ Angelozzi and Casanova, *Donne criminali*, 55, 259.

⁹⁶ For a closer examination and further discussion of the differences between the outcomes of the *processi* and the denunciations, also see chapter 4 in this book, particularly table 6.

Bologna, in many ways the real difference between the crimes of men and women was quantitative, rather than qualitative.⁹⁷

For property offences, another important category of crime, there was a similar discrepancy between the proportional importance in the *processi* and the denunciations. Among the accused women, it was not violence but these property offences that made up the largest proportion of the crimes investigated (39 per cent). Among the denunciations on the other hand, only 11 per cent of the female offenders were accused of these kinds of crimes. This discrepancy can also be observed for property crimes among accused men – making up 18 per cent in the denunciations and 26 per cent among the *processi* – although the difference is definitely more marked for female offenders. Contrary to the petty acts of violence so prevalent among the denunciations, property offences – even if they concerned small-value thefts – were as a rule prosecuted with zeal by the early modern authorities. Women's share among offenders was also the highest in this category of crime. With women responsible for 8 per cent of all thefts investigated it was twice the share of women among violent offenders. For property crimes, the main typological difference between men and women lay in women's near absence among pickpockets and robbers. On the other hand, thefts from homes and shops were by far the most common property crime for both sexes.

Roughly as important among the offences investigated were myriad acts against public order. About a quarter of men (27 per cent) and women (24 per cent) before the *Torrone* were accused of behaviours that disturbed the public peace, such as gambling, illegal dances and the throwing of stones, often in groups. The latter activity was predominantly carried out by young men. In early modern towns, rock-throwing battles (*sassaiole* or *sassate*) had a long tradition as a communal sport staged on festival days.⁹⁸ As the Italian towns became part of the seignory and the territorial state, the new governors of the cities outlawed these battles and pursued a programme of marginalisation in a bid for control over its urban populace. However, while the big communal encounters disappeared, the stone fighting persisted, particularly among groups of boys and young men. For seventeenth-century Rome Robert Davis observed that the police “were forever stopping” people with rocks on them; in their pockets, under their cloaks, up their sleeves, in their work aprons or even in the lining of their hats.⁹⁹ The Bolognese court records also contain many references to this stone

⁹⁷ Dean and Lowe, 'Writing the history of crime', 4; Dean, *Crime in medieval Europe*, 77-78; T. Dean, 'Theft and gender in late medieval Bologna', *Gender & History* 20:2 (2008) 405.

⁹⁸ R. Davis, 'Say it with stones. The language of rock-throwing in early modern Italy', *Ludica* 10 (2004) 116.

⁹⁹ *Ibidem*, 113.

throwing, for example because of the resulting injuries, but also because they were caught red-handed by the city's lawmen, the *sbirri*.

Another public order offence prevalent among the *Torrone's* investigation dossiers typically committed by men was that of bearing arms within the city walls. As in other early modern Italian cities such as Rome, the prevalence of arms was viewed as a cause of the endemic violence in Bologna's streets and villages. From the sixteenth century onwards, weapons therefore became the pillars of public order legislation.¹⁰⁰ This ambition was reflected in the 1610 *Bando Generale*, the summation of the criminal by-laws, which prohibited the carrying of a wide range of arms, such as swords, long-bladed weapons and firearms, in the city and countryside without a licence.¹⁰¹ To this end Bologna's gatekeepers and the city's lawmen, the *sbirri*, were given detailed instructions on how to manage the transgression of these bans and indeed they handed out fines and confiscated weapons on a daily basis from largely male offenders. The repeated issuing of weapon bans throughout the early modern period illustrates the authorities' enduring concern with this public order offence as well as its ineffectiveness. The high number of summonses given out on a daily basis by the criminal court's lawmen for unlicensed weapons demonstrated that these arms were constantly to be found among the male Bolognese populace.¹⁰²

A highly gendered public order offence was that of *vagare la notte*, i.e. wandering about at night. Concerns about public order underpinned an official curfew that restricted women's mobility after sunset's *Ave Maria* bell in many early modern Italian towns.¹⁰³ The roots of this criminalisation of women's mobility lay in the by-laws' sumptuary and spatial regulations of prostitutes. In the context of public order these by-laws sought to regulate where they lived, how they dressed, which places they could visit and finally, when they could or could not do all of these things on punishment of public lashings, ridicule or exile.¹⁰⁴ Vanessa McCarthy, who examined prostitution in sixteenth- and seventeenth-century Bologna, has argued that these regulations were poorly enforced.¹⁰⁵

Although errant prostitutes were indeed infrequently prosecuted by the *Torrone*, it is imperative to stress the implications of these restrictions for the public perception of

¹⁰⁰ Rose, *Homicide in North Italy*, 230; Blastenbrei, 'Violence, arms and criminal justice', 75; *Bando generale della legazione di Bologna e suo contado, fatto pubblicare li 12. ottobre 1756 dall'eminetiss., e reverendiss. sig. cardinale Fabrizio Serbelloni, legato a latere di detta città* (Bologna 1756) Chapter XLVI, No. 7, page 75.

¹⁰¹ *Bando generale Giustiniano 1610*, chapter XXIV, page 43-51.

¹⁰² Rose, *Homicide in North Italy*, 65, 231.

¹⁰³ Cohen, 'To pray, to work, to hear, to speak', 303.

¹⁰⁴ *Bando generale Giustiniano 1610*, 60.

¹⁰⁵ McCarthy, *Prostitution, community and civic regulation*, 125, 127.

women's presence in the urban space. According to the by-laws, respectable women could travel the streets after dark, but only when they were accompanied by their husbands or male kin.¹⁰⁶ When women ventured into the night streets alone or in the company of unrelated men, they were automatically viewed and treated with suspicion. During the night of 3 May 1652, for example, the *sbirri* arrested Anna Maria Campana, a single local woman.¹⁰⁷ She denied being in the wrong because she was merely on her way to a tavern nearby her home to drink some wine. The case against her was suspended three days later. It is important to note that the women who were brought before the court for roaming in the night were in effect not necessarily prostitutes, but aroused the lawmen's suspicion merely by walking in the street after sunset without an escort. By the seventeenth and eighteenth centuries, there was no such enforcement of restrictions on men's mobility.¹⁰⁸

Crimes of a sexual nature were relatively uncommon before Bologna's criminal court. Only 3 per cent of the defendants were accused of these kinds of crimes. In the early modern period, moral offences such as prostitution, adultery, fornication, concubinage and having illegitimate children were often considered punishable criminal offences. Historical research has pointed out that early modern European criminal courts often disproportionately sentenced women for these kinds of sexual crimes.¹⁰⁹ This was clearly not the case before the *Torrone*; Bologna's secular court of law. Here 45 men and only 3 women were accused of crimes of a sexual nature. That prostitution was not criminalised but taxed in early modern Italy may be part of the explanation for the low numbers of women among those accused of moral crimes.

Secondly, the *Torrone* did not have complete control over cases relating to marriage and sexuality. Across the Italian peninsula moral offences were dealt with by different courts and in different ways: criminal, civil, mixed, and ecclesiastical.¹¹⁰ Although it has been argued that the secular courts were increasingly empowered, both the secular and ecclesiastical courts asserted jurisdiction over sex crimes throughout the early modern period.¹¹¹ In Bologna, it was the archbishop's court, the *Tribunale Arcivescovile*, which

¹⁰⁶ Cohen, 'To pray, to work, to hear, to speak', 303.

¹⁰⁷ ASBo, *Torrone*, 6609, fol. 166.

¹⁰⁸ Gregory Roberts did still find an active policing and curfew charges against men in thirteenth century Bologna, see 'Vendetta, violence, and police power in thirteenth-century Bologna', in: S.R. Blanshei (ed.), *Violence and justice in Bologna: 1250-1700* (Lanham: Lexington Books, 2018) 6-7, 10, 21.

¹⁰⁹ Schwerhoff, 'Geslechtsspezifische Kriminalität', 91; Van der Heijden, 'Criminaliteit en sexe', 16.

¹¹⁰ Black, *Early modern Italy*, 197.

¹¹¹ For a summary of the discussion about the competition over jurisdiction between secular and ecclesiastical courts in premodern Italy, see S.E.C. Russell, *Courtship, violence and the formation of marriage in the early modern Italian novella tradition* (Unpublished PhD. thesis, University of California, Berkeley, 2010) 2.

exercised criminal jurisdiction not only over the clergy, but also over the laity in the case of matrimonial disputes or crimes against the sacraments such as pre- and extramarital sexuality.¹¹² This line of thought is captured by the 1756 *Bando Generale*, which, reflecting the changes of the prior decades, treats only a limited number of ‘crimes of the flesh’ such as abduction, bestiality, violent rape and sexual intercourse with minors. Most other sex-related crimes, like adultery, incest, sodomy, concubinage, pimping and prostitution are described as being subject to civil or canon rather than secular criminal law.¹¹³

Despite this reticence, moral crimes were occasionally brought before the *Torrone*. Recent literature emphasises the roles that the victims and their kin played in this. Because nearly all sexual offences could be brought before both the criminal and the ecclesiastical court, the decision for one court or the other ultimately depended on the plaintiffs’ choice and objectives.¹¹⁴ This is perhaps most evident in rape cases (*stupro*). This was the most common type of sexual offence in the seventeenth- and eighteenth-century *processi* from urban Bologna and concerned cases of forced intercourse as well as consensual premarital sex followed by a broken marriage promise. If the individuals concerned were unwed, rape charges could be resolved by marriage to the perpetrator. To achieve this objective, the ecclesiastical court was the appropriate forum. Through the criminal court, on the other hand, the victim and her kin could negotiate a substitute dowry, as the official penalties for the violation of women ranged from public torture with the *strappado* to being sentenced to the galleys for ten years and even the death sentence.¹¹⁵ Overall, the defendants accused of crimes of the flesh were rarely sentenced because of the importance of these infrajudicial negotiations.

Although this section has shed light on some gender-specific characteristics, the crimes of men and women in early modern Bologna were in many ways more similar than distinct. While previous literature tended to stress the different nature of ‘male’ and ‘female crimes’, the Bolognese court records do not allow for such clear-cut differentiation. Albeit a minority in statistical terms, women engaged in a wide range of deviant behaviours, from simple thefts to acts of aggression and violence, much as men did. Other scholars have argued in a similar vein. In his examination of theft in late medieval Bologna, Trevor Dean

¹¹² Lombardi, ‘Marriage in Italy’, 120, footnote 46; Angelozzi and Casanova, *Donne criminali*, 60; Ferrante, ‘La sessualità come risorsa’, 995.

¹¹³ *Bando generale Serbelloni 1756*, 92. Sodomy was still described as a criminal matter subject to hanging and being burned in the 1610 *bando*, see *Bando generale Giustiniano 1610*, 39-40.

¹¹⁴ Casanova, *Crimini nascosti*, 123.

¹¹⁵ *Bando generale Serbelloni 1756*, 91.

follows Garthine Walker in pointing out that the tendency of historians to emphasise the differences between men and women negates the many similarities that existed among them.¹¹⁶ He proposes instead that gender should be regarded as a “multi-dimensional spectrum rather than a binary divide, in which masculine and feminine forms of behaviour are present [...] but alongside a broad band of shared, similar behaviours.”¹¹⁷ It is thus important not to overstate the distinctness of the deviance demonstrated by men and women, but to also examine it from the perspective of its common ground.

Gender dynamics and the sentencing of crimes

While traditional assumptions regarding the ‘male’ or ‘female’ types of crimes have been questioned and challenged, historians and criminologists have shown that a contemporary gendering of crime influenced how and to what extent men and women were prosecuted and punished for their offences. A significant aspect of the discussion about historical patterns of prosecution and punishment has revolved around the question of whether women benefitted from a milder or harsher treatment before the court. The prevalent ‘chivalry theory’ assumes that both early modern and modern legal professionals were inclined to treat women with leniency on the assumption of their weakness and need for protection.¹¹⁸ In Roman law, this weakness was codified through the notion of the *fragilitas* or *infirmetas sexus*. In the interpretation of Renaissance jurists, this status likened a woman’s legal capacity to that of a child or handicapped person.¹¹⁹ In the role of plaintiffs, women were in theory excluded from making criminal accusations, although there were many exceptions in which they were permitted to do so, such as insults or damage done to them or in the case of a relative’s death.¹²⁰ As witnesses, women’s testimonies were theoretically regarded as less reliable than men’s.¹²¹ The prevailing ‘chivalry theory’ furthermore assumes that early modern legal professionals were generally inclined to protect these ‘weak women’

¹¹⁶ Dean, ‘Theft and gender’, 400.

¹¹⁷ *Ibidem*, 412.

¹¹⁸ Angelozzi and Casanova, *Donne criminali*, 18-19; M. Graziosi, Women and criminal law. The notion of diminished responsibility in Prospero Farinaccio (1544-1618) and other Renaissance jurists’ in: L. Panizza (ed.), *Women in Italian Renaissance culture and society* (Oxford: University of Oxford European Humanities Research Centre, 2000) 173.

¹¹⁹ Kuehn, ‘Daughters, mothers, wives and widows’, 99 and Graziosi, ‘Fragilitas sexus’, 20.

¹²⁰ M. Graziosi, ‘“Fragilitas sexus”. Alle origine della costruzione giuridica dell’inferiorità delle donne’, in: N.M. Filippini, T. Plebani and A. Scattigno (eds), *Corpi e storia. Donne e uomini dal mondo antico all’età contemporanea* (Rome: Viella, 2002) 28.

¹²¹ Kuehn, ‘Daughters, Mothers, Wives and Widows’, 99; Graziosi, M. Graziosi, ‘Women and criminal law. The notion of diminished responsibility in Prospero Farinaccio (1544-1618) and other Renaissance jurists’ in: L. Panizza (ed.), *Women in Italian Renaissance culture and society* (Oxford 2000) 172.

by treating them with leniency.¹²² This could mean that women were not prosecuted for the same kinds of crimes, but also that their sentences may have differed. Arguments like these have been made not only for Italy, but also for France, the French territories, Spain and England, despite ostensibly gender-neutral criminal codes.¹²³ Peter King and others have emphasised a possible leniency on the part of magistrates during the punishment process in other regions too: for a similar crime, women were treated less harshly.¹²⁴

The judicial leniency towards women is by no means considered to have been invariably present across early modern Europe. Various scholars have argued that the treatment of men and women differed significantly per crime category.¹²⁵ While it is believed that it applied to women's violent offences, other crimes such as infanticide and witchcraft were excluded from such a milder treatment.¹²⁶ The judicial treatment of women also differed from one legal system to another and from place to place.¹²⁷ Contrary to King's assessment based on a range of English towns, Walker, for example, argued that women were generally worse off than men in seventeenth-century Cheshire: women were disproportionately put on trial, were found guilty relatively more often than men, and were almost twice as likely to receive a death sentence.¹²⁸ Because the law embodied inherently male standards, homicides committed by men and women were not only perceived as intrinsically different, but, in addition to this, women had fewer chances of mitigating the death sentence as they could not appeal to the same exceptions as men. The Cheshire example underlines that the moral and legal norms that underlay sentencing varied across time and space. A closer contextual examination of the law and penal practice is thus pivotal to the understanding of gendered sentencing patterns in early modern Bologna.

To be able to examine gender differences in sentencing, we must first gauge sentencing patterns in general. In Italy, as elsewhere in early modern Europe, a significant proportion of the cases brought before the criminal courts were never concluded with a

¹²² Angelozzi and Casanova, *Donne criminali*, 227–54 ; M. Graziosi, 'Women and criminal law', 173.

¹²³ Angelozzi and Casanova, *Donne criminali*, 47, 227-254; Graziosi, 'Women and criminal Law', 173; L. Buttex, 'L'indulgence des juges? La femme incriminée à Genève au siècle des Lumières. Genre et répression pénale (1767-1792)', *Crime, history & societies* 19:1 (2015) 41-65.

¹²⁴ P. King, 'Gender, crime and justice in late eighteenth and early nineteenth-century England', in M. Arnot and C. Osborne (eds.), *Gender and crime in modern Europe* (London: UCL Press, 1999) 66-67; Palk, *Gender, crime, and judicial discretion*, 161, 176.

¹²⁵ Buttex, 'L'indulgence des juges?', 61; Angelozzi and Casanova, *Donne criminali*, 227-254; Sbriccoli, 'Deterior est condicio foeminarum', 85-86.

¹²⁶ Angelozzi and Casanova, *Donne criminali*, 230.

¹²⁷ R.N. Tsakiri, 'Deviance and morals. A study of sixteenth-century Crete under Venetian rule. An initial exploration', *Crimes and misdemeanors* 1:2 (2007) 166.

¹²⁸ Walker, *Crime, gender and social order*, 113, 158, 197-201.

formal sentence. This was also the case in early modern Bologna, where a large number of the *processi* did not result in a formal conviction. Indeed, in their examination of Bologna, Angelozzi and Casanova found that what they called ‘real sentences’, such as the death penalty, incarceration, banishment, a sentence to the galleys, corporal punishment or fines, were quite rare before the early modern criminal court.¹²⁹ For Bologna they estimated that the *Torrone* only investigated 1 out of every 10 criminal complaints and would furthermore only pronounce sentence in a fraction of these. In my sample of urban *processi*, we can discern the outcome of their cases for more than two-thirds of the defendants. Table 4 shows that only about one in five of the Bolognese *processi* resulted in these supposed ‘real sentences’. This was true for both male and female defendants.

	Female defendants		Male defendants		Total	
Real sentences ^a	15	21%	242	19%	257	19%
Pardoned (<i>gratia</i>)	6	9%	172	13%	178	13%
Secondary sentences ^b	12	17%	128	10%	140	10%
Cancelled ^c	22	31%	455	35%	477	35%
Unknown	15	21%	290	22%	305	22%
	70	100%	1287	100%	1357	100%

Source: Sample 1 (see appendix), counted by identified defendant
^a Include death sentence, galleys, exile, incarceration, corporal punishment, fine
^b Include *precetto criminale*, surety
^c Includes a small proportion of those found not guilty, as well as cases cancelled due to insufficient evidence and peacemaking.

While in the past these unconcluded cases were primarily viewed as the products of a highly flawed and inefficient judicial system, scholars now emphasise the importance of other mechanisms. Drawing on other studies on criminal justice procedures in early modern Europe, Martin Dinges argued that the number of unconcluded cases were also the outcome of the strategic use of juridical procedures by ordinary men and women.¹³⁰ He argued that people often did not litigate solely to achieve a formal conviction from the court, but to try and negotiate other kinds of out-of-court settlements.¹³¹ In this light, recourse to the court should be seen as part of a wider set of formal and informal means of social control. Secondly, the authorities were also not that interested in punishing each crime that came before the criminal court. Indeed, while normative writings like Bologna’s summations of

¹²⁹ Angelozzi and Casanova, *Donne criminali*, 228, 230.

¹³⁰ Dinges, ‘The uses of justice’, 159-175; Dean, *Crime and justice in late medieval Italy*, 19-20; Niccoli, ‘Rinuncia, pace, perdono’, 234.

¹³¹ Dinges, ‘The uses of justice’, 161.

criminal by-laws prescribed harsh sentences for many crimes, the criminal courts were known to regularly mitigate the rigour of the law in practice.¹³² They did so because, ultimately, their goal was to maintain peace and order, if possible by mending the inflicted societal wounds through peace-making, giving pardons and reintegrating the culprit into the community.¹³³

The importance of the objective of peace-making and reintegration can be gleaned from the outcomes of Bologna's *processi*. Overall, about 13 per cent of the defendants were pardoned for their crimes and had their original sentences overturned. This is comparable to what we know about eighteenth-century Porto, where approximately 16 per cent of prisoners in the local gaol received a pardon.¹³⁴ Defendants could especially expect to receive a pardon for acts of violence, where peace-making between the offender and the victim or his/her family could result in a significant reduction of the sentence or a general pardon as it restored the social equilibrium. In the case of homicides committed in the city of Bologna between 1650 and 1750, Rose found that nearly 40 per cent of the killers received a pardon.¹³⁵ The granting of pardons and exemptions in response to a petition was not just an Italian phenomenon, but was widespread and "fundamental to the manner of governing in early modern Europe."¹³⁶ Furthermore, the cases against another one-third of the defendants were cancelled, either because they were truly deemed not guilty, because there was insufficient evidence or, not infrequently, because the complaint had been withdrawn by the plaintiff and a peace agreement was signed. Together, the pardon and the cancellation constituted nearly half of the *processi*'s outcomes.

Another 10 per cent of all defendants were discharged with a surety or a criminal injunction (*prechetto criminale*). In their examination of criminal justice in early modern Bologna, Angelozzi and Casanova distinguished these outcomes from 'real sentences' such as banishment, corporal punishment, or a sentence to the galleys.¹³⁷ According to them, the surety and the criminal injunction cannot be seen as real sentences, since they were conditional. The surety entailed that the accused would be released by means of suretyship that he or she would represent themselves to the court at the request of the *Torrone*. This meant that the trial would be suspended until further notice, and could be reopened if new

¹³² M. Bellabarba, *La giustizia nell'Italia moderna* (Bari: Editori Laterza, 2008) 84.

¹³³ Rose, *Homicide in North Italy*, 96-97.

¹³⁴ Abreu-Ferreira, *Women, crime and forgiveness*, 3.

¹³⁵ Rose, *Homicide in North Italy*, 132.

¹³⁶ G. Hanlon, 'Violence and its control in the late Renaissance: An Italian model' in G. Ruggiero (ed.), *A companion to the worlds of the Renaissance* (Oxford: Blackwell, 2002) 147.

¹³⁷ Angelozzi and Casanova, *Donne criminali*, 230

evidence was found.¹³⁸ The *prechetto criminale* was an injunction that could be imposed for a wide variety of crimes that in one way or the other disturbed the public order. It consisted of a conditional fine or sentence that would not be forfeited if the defendant upheld the requirements defined in the injunction. Lastly, the cases of two defendants charged with moral and sexual offences were sent to the archbishop's court for further examination.

For the 70 female defendants, these figures are roughly the same as for their male counterparts. This means that once a case was investigated by the *Torrone*, accused men and women had roughly the same chances of receiving 'real punishments' or having the cases against them cancelled. The number of female defendants is too small for any real statistical analysis on individual *processi* outcomes. However, indications of larger patterns can be discerned from the samples gathered. For example, differences can be found in the shares of those who were pardoned. For women, these shares are one-third lower than for men. Addressing the question of sex ratios in pardoning in pre-modern France, Natalie Zemon-Davis argued that such a discrepancy was explained by the fact that the crimes traditionally associated with women, such as infanticide and witchcraft, were not pardonable.¹³⁹ While these were not the types of crimes for which women were investigated in seventeenth- and eighteenth-century Bologna, it does seem likely that the discrepancy was related to the types of crimes for which men and women were investigated. Indeed, investigations concerning female defendants more often, in proportional terms, concerned property offences, while pardons were predominantly requested and granted for acts of violence and aggression.

Another important difference lies in the category of the 'secondary punishment' of the *prechetto criminale*, or the criminal injunction. These were formal orders that held those who received them to the injunction on penalty of a hefty fine, corporal punishment or a sentence (such as exile, the galleys or a death sentence). While, again, the individual sentence categories are too small for any statistical examination, they may be indicative of a larger trend. Women were nearly twice as likely to receive such an injunction as men. This discrepancy could be interpreted as an outcome of the perception of the less serious nature of women's crimes, ideas regarding gender-appropriate sentences, and/or as female defendants being treated with indulgence by a judge.¹⁴⁰

¹³⁸ *Ibidem*, 229.

¹³⁹ Zemon Davis, *Fiction in the archives*, 85.

¹⁴⁰ The same can be deduced from the data provided by Angelozzi and Casanova, although they themselves have not argued this. See Angelozzi and Casanova, *Donne criminali*, 228-229.

The criminal injunctions that male and female defendants received also differed in their form. Among the denunciations, 'peace orders' (*precetto de non offendendo*) were most prominent, requiring offending parties to keep the peace. Among the *processi*, however, these peace orders made up only about one-third of the *precetti* received. Another one-third of the men receiving a criminal injunction were ordered to remain available to the court for any future interrogations (*precetto de se presentando*) when deemed necessary. The last third of the male recipients of a criminal injunction was instructed to better their lives and 'apply themselves' work-wise, i.e. get a job (*precetto de se applicando*). Occasionally, men received specific instructions, for example to treat their mother-in-law better, or not to visit the tavern at night.¹⁴¹

For female defendants, the requirement to remain available for future questioning also made up a third of the criminal injunctions. Orders to keep the peace were far less prominent outcomes for female defendants in the *processi*, as only 1 out of 12 female defendants received a *precetto de non offendendo*. Injunctions ordering women to improve their lives (*precetto de bene vivendo*) were more prominent. Unlike these orders for male defendants, this did not concern their working lives. In five cases they came with specific instructions not to wander outside at night-time (*precetto de bene vivendo e de non vagando di notte*). This was not only true for the three cases in which the women were accused of wandering about at night, but also in one case of serious assault and one of attempted rape (either in a contemporary sense or as premarital sexual relations). Norms for appropriate sentences thus clearly bore gender distinctions.

Gender differences can also be found among the so-called 'real sentences'. Judges had a wide *arbitrium* for determining punishments according to the so-called qualities of the crime, the victim and the offender, but it was neither a requirement nor common practice to substantiate a sentence in the criminal records. Nevertheless, some punishments were evidently gender specific. This can be discerned both from the prescriptions of the criminal by-laws and from penal practice. The most pronounced example is being sentenced to man the oars of the papal galleys in the Mediterranean Sea. This was a common sentence as capital punishments had waned during the seventeenth century, but this sentence was never imposed on women.¹⁴² Another difference manifests itself in the types of corporal punishments administered to men and women. For men the so-called *strappado* (better known in Italy as the *corda*, i.e. the rope) was the most common type of corporal punishment.

¹⁴¹ For example see ASBo, Torrone, 7598-2, fasc. 41; 8171-2, fasc. 30.

¹⁴² Terpstra, 'Theory into practice', 123; Rose, Homicide in North Italy, 83.

It entailed a suspect being stripped down to the waist, having his hands tied behind his back and then being hoisted on a pole in the market or at the town gate, followed by a predetermined number of jerks to the cord.¹⁴³ For women corporal punishment generally entailed a public whipping through the streets instead, without being undressed. Table 5 shows that corporal punishment, as a sentence on its own, was very rare. It was more commonly used as an additional punishment before being banished or sent to the galleys and as a conditional penalty for a breach of criminal injunctions (*precetto criminale*).

TABLE 5. 'REAL SENTENCES' AMONG URBAN <i>PROCESSI</i> AGAINST MALE AND FEMALE DEFENDANTS CA. 1655-1755						
	Female defendants		Male defendants		Total	
Death penalty	0	0%	7	1%	7	1%
Banishment	11	16%	134	10%	145	11%
Galleys	0	0%	74	6%	74	5%
Incarceration	4	6%	19	1%	23	2%
Corporal punishment	0	0%	2	0%	2	0%
Fine ^a	0	0%	6	0%	6	0%
Other outcomes	55	78%	1052	83%	1107	82%
Total	70	100%	1287	100%	1357	100%
Source: Sample 1 (see appendix), counted by defendant						
^a Includes both fines and the restitution of goods or a financial substitution as a sole outcome						

Other sentences were less gender specific in their form. To be sentenced to death was very uncommon for both men and women in early modern Bologna. Although scholars have characterised the penalties from a century earlier as harsh, executions were hardly a daily event even then, and had furthermore declined significantly throughout the seventeenth century.¹⁴⁴ Indeed, out of the seven male defendants who received a death sentence, as many as five of them were convicted in the sample year of 1655. Most of them concerned homicides. While my samples for Bologna do not contain any women being sentenced to death, it was not necessarily a male preserve. Giancarlo Angelozzi and Cesarina Casanova have observed that two out of the 100 female defendants in their sample received a capital punishment for murder, one in 1587 and the other in 1728.¹⁴⁵

A much more common sentence than capital punishment was banishment. As elsewhere in early modern Italy, exile (often combined with the confiscation of goods) was the punishment most frequently imposed on defendants in Bologna.¹⁴⁶ Being convicted of

¹⁴³ Cohen and Cohen, *Daily life in Renaissance Italy*, 120 and Angelozzi and Casanova, *Donne criminali*, 231.

¹⁴⁴ Ibidem, 120, 122; Terpstra, 'Theory into practice', 123.

¹⁴⁵ Angelozzi and Casanova, *Donne criminali*, 228-229.

¹⁴⁶ Cohen and Cohen, *Daily life in Renaissance Italy*, 122.

theft was the most prevalent reason for banishment, followed by various acts of 'suspicious behaviour' associated with a mobile life (about a quarter). Incarceration was less common during the early modern period than it is today as it was regarded as unnecessarily cruel, unproductive and expensive. In Bologna during the five years sampled, 23 defendants were however either sent to perform forced labour at *Forte Urbano* (only men), a military fort at the border of Bologna and Modena built between 1628 and 1634, or at Bologna's poor house established in 1563 (mainly but not exclusively women), or were (more rarely) sentenced to a private incarceration.¹⁴⁷

The question of whether female criminals received a milder or a harsher treatment from Bologna's early modern criminal court is a difficult one to answer. Whether women benefitted from a kind of 'chivalric' attitude from the court has been a key focus in the recent work of Angelozzi and Casanova. They have contended that there was indeed a certain leniency towards women.¹⁴⁸ First, they argue that women's overall chances of receiving what they called 'real sentences' for their crimes were considerably slimmer than for men. While about five per cent of all of denunciations against men resulted in a criminal sentence, this was only the case for a little over one per cent of female offenders. Indeed, 'secondary sentences' like criminal injunctions were issued relatively more often against women than against men. The next chapter will demonstrate that this also happened at the level of the denunciations. This mechanism may be related to the notion that certain crimes were perceived as less dangerous when committed by women. Petty violence especially, as we will also see in the next chapter examining the denunciations, was a much larger part of reported than of prosecuted crime. Although there was a general hesitancy to prosecute these kinds of offences in a full inquisitorial trial, scholars have argued that cases against women were much more likely to be recipients of the judge's 'clemency' due to their assumed irrelevancy.¹⁴⁹

Second, ideas about women's criminal responsibility were contingent on the context of the crime. In particular, Angelozzi and Casanova found that female offenders were in general taken less seriously by the *Torrone's* judge if they had one or more male co-offenders. Whether the female defendants were accused of complicity or instigating the crime, in both cases the notion of a woman's weakness worked in her favour as she was then punished less

¹⁴⁷ *Le chiese parrocchiali della diocesi di Bologna, ritratte e descritte* (Bologna 1849), n.p., section 47 on 'Castelfranco'; Terpstra, *Cultures of charity*, 23, 40.

¹⁴⁸ Angelozzi and Casanova, *Donne criminali*, 230, 259.

¹⁴⁹ Gray, 'The regulation of violence in the metropolis', 79-81; Angelozzi and Casanova, *Donne criminali*, 259.

severely than her male co-offenders, or not at all.¹⁵⁰ While it is known that supposed 'typically female' crimes such as infanticide and witchcraft were excluded from a milder treatment, these crimes were also relatively uncommon before the *Torrone*.¹⁵¹ While women were certainly regarded as actors capable of criminal behaviours, ideas regarding the 'qualities' of her person resulted in a pattern of sentencing that was decidedly gendered.

Conclusion: The prosecution of Italian women in a comparative perspective

There are many indications that the criminal justice system's treatment of women was decidedly gendered. As elsewhere in early modern Europe, the Bolognese authorities had a large *arbitrium* in deciding an appropriate sentence and an offender's sex was an important determinant. Based on jurists' interpretations of the law, it is commonly believed that pre-modern women were able to benefit from judges' leniency when they committed crimes not traditionally viewed as 'typically female'.¹⁵² The early modern Bolognese *processi* support this idea, depending on the understanding of this leniency. For example, when subject to a formal investigation, there is little evidence that cases against female offenders were as a whole annulled more often. However, these female defendants did receive relatively more 'secondary sentences' compared to men. This could be interpreted as the outcome of a judge's indulgency towards women's less serious and less dangerous criminal behaviours. That women who had offended in groups were more likely to receive a lesser sentence, such as Diamante in the opening example, strengthens this argument. That men and women were treated differently before the criminal court has also been observed in many other early modern towns.

Other aspects stand out more for the early modern Bolognese case. When distilling prosecution patterns from the *Torrone's* investigation dossiers, two important features come to light. Firstly, violence plays a very large role in urban Bologna's criminal proceedings compared to its Northern European counterparts. Indeed, *antico regime* Italy has commonly been described as a particularly violent society.¹⁵³ Some scholars have therefore distinguished 'Northern' and 'Southern' European models of delinquency, in which the South distinguished itself by a sustained, much higher share of violence.¹⁵⁴ As the later

¹⁵⁰ Angelozzi and Casanova, *Donne criminali*, 239, 242.

¹⁵¹ *Ibidem*, 230; Buttex, 'L'indulgence des juges?', 61.

¹⁵² Buttex, 'L'indulgence des juges?', 61; Angelozzi and Casanova, *Donne criminali*, 230.

¹⁵³ Calzolari, 'Delitti e castighi', 55; Niccoli, 'Rinuncia, pace, perdono'. 223; Black, *Early modern Italy*, 188.

¹⁵⁴ Blastenbrei, *Kriminalität in Rom*, 284; M. Eisner, 'From swords to words. Does macro-level change in self-control predict long-term variation in levels of homicide?', *Crime and justice* 43 (2014) 68, 80-81, 84.

chapter on violence will show, throughout the early modern period even the lower estimates of homicide rates for Italian towns were higher than the mean rates for other parts of Europe. Seventeenth- and eighteenth-century Bologna is no exception.

The second distinguishing feature of the Bolognese pattern of crime prosecution is the very low share of women among the offenders investigated. Especially compared to Northern European towns, the differences appear to be significant. This raises the question of the extent to which this low share of female offenders can be attributed to the dominant 'culture of violence', which is often described as distinctly masculine.¹⁵⁵ However, the relationship between the two appears to have been more blurred than one may assume at first sight. The ethics of honour and gender norms meant that women's aggression was neither expected nor desirable.¹⁵⁶ In statistical terms women also made up only four per cent of those subject to a formal investigation for aggressive behaviour in early modern Bologna. However, the *processi* also show that violence was much more prominent among the crimes for which women were investigated than is commonly believed. It is therefore debatable whether Bologna's low female crime shares can be explained away by its culture of violence.

Two other factors seem more plausible. First, the existence of an extensive institutional web of care and control in early modern Italian cities may have influenced women's involvement in crime. Although the freedom and control of women depended on age, marital status and socio-economic class, it is generally held that the concern with women's sexual probity meant that women were nearly always subordinate to male authority of some sort.¹⁵⁷ It is generally the household that is discussed as the unit of control, since the *pater familias* had considerable means of exerting informal control over his wife, children and servants. As discussed in the previous chapter, what sets Italy apart is the important role played by a host of semi-public charitable institutions in connecting spheres of control for women at the fringes of society.¹⁵⁸ In early modern Italy, the social control of women was accomplished through 'custody' by respectable relatives, marriage, convents and asylums where women could be sheltered and, if needed, reformed, and then reinstated in society with new or old husbands, in the care of relatives or other shelters. It does not seem unlikely that the extensive web of control not only discouraged and obscured women's

¹⁵⁵ Ruff, *Violence in early modern Europe*, 75.

¹⁵⁶ Brackett, *Criminal justice and crime*, 133-134.

¹⁵⁷ Palazzi, 'Female solitude and patrilineage', 445; Kuehn, 'Daughters, mothers, wives and widows', 98; Cohen, 'Evolving the history of women', 326

¹⁵⁸ Woolf, *The poor in Western Europe*, 24.

deviant activity, but that the care that these early modern welfare institutions provided also reduced the need for many women to engage in crime as a survival strategy.

Secondly, early modern Italy's judicial culture probably played an important role in women's relative absence from the formal investigation dossiers. Indeed, the *processi* examined in this chapter represent the cases for which the criminal court was willing and able to start an inquisition. As elsewhere in early modern Europe, the Bolognese investigation dossiers demonstrate that the authorities' concern lay above all in repressing lethal and serious forms of violence that caused danger to life as well as in crimes against property. However, the *processi* only represented a fraction of the cases brought to the *Torrone's* attention. After all, there were about ten denunciations for each formal inquisitorial trial.¹⁵⁹ By far most of these far more plentiful denunciations concerned so-called 'minor crimes', such as petty acts of violence. As will be treated extensively in the next chapter, a comparison between the reported and the indicted crimes demonstrates that while the authorities by no means intended to prosecute all violent behaviour, they encouraged the use of the criminal court as a place of peace-making and conflict resolution. The category of 'petty crime' was relatively more important for women than for men, perhaps because women's crimes were more readily regarded as 'petty'. The combination of the authorities' prosecutorial filter and the reconciliatory legal culture could therefore play a significant role in obscuring the prevalence of women's involvement in certain deviant behaviours. For this reason, a broader perspective that includes recorded (rather than indicted) crime will be employed in the next chapters.

¹⁵⁹ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 565, 643.