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Everyday crime, criminal justice and gender in early modern Bologna

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CHAPTER 4. DENUNCIATIONS AND THE USES OF JUSTICE

On 6 March 1755 Lucia Tessori, a married spinner of stockings, was treated for a head wound at the Ospedale di Santa Maria della Morte, located nearby what is known today as Bologna's Piazza Maggiore.¹ Notified by the surgeon who treated her due to her 'suspicious wounds', as was required by law, a notary from Bologna's criminal court visited Lucia at her bedside to ask what had put her in this precarious position.² The situation she described was that of a quarrel that escalated between two neighbours: it started out with simple verbal insults and ended with Lucia receiving blows to her head with a hammer. As it turns out, Lucia had made a denunciation to the court about insults made by her neighbour Gertrude Carolini roughly a month before. Encountering each other again in the loggia of their apartment building a month later, Gertrude started insulting her once more and Lucia warned her that it would be wise to leave her alone; otherwise she would lodge a further complaint about her with the criminal court. The threat left Gertrude seemingly unfazed, replying that she feared nobody. The heated verbal exchange escalated into another attack, from which Lucia died later that month.

While Lucia's recourse to the court ended up being in vain for her personally, this example speaks to the agency of lower-class women as litigants – a latitude that has had only little attention in earlier scholarship. The previous chapter discussed the offences that came before Bologna's early modern criminal court primarily from the perspective of the prosecution policies of the authorities. Like other early modern criminal courts, however, the *Torrone* was more than an instrument for the authorities to impose top-down control on its inhabitants. Examining in detail the separately stored denunciations will demonstrate the importance of Bologna's early modern criminal court as a forum for conflict resolution, employed instrumentally and strategically by men and women to pursue their grievances.

This chapter begins with the historiography on women's use of justice in early modern Europe. Together with prescriptive literature, the relatively weak legal position that women had in Roman law has provided fuel for notions of a North-South divergence related to the access of and uses of justice. The first section will discuss recent works that call for caution and indicate that the differences may have been less extreme than such a dichotomy suggests. The next section analyses the denunciations and explains that the types of cases

¹ ASBo, *Torrone*, 8179-2, fasc. 2.

² Blastenbrei, 'Violence, arms and criminal justice', 70.

brought before the court diverge significantly from the prosecution pattern because of the court's role as a forum for conflict resolution. While this mechanism has been observed in most early modern European legal systems, it will shed light on some of the ways in which Italy's culture of peace-making stands out. It then looks at who was able to access and use justice, and stresses the importance of unmediated access to the court for women. Lastly, it examines people's objectives in employing justice, ranging from a real call for intervention by the authorities to a threat and an improvement in the litigant's extrajudicial negotiation power.

Women and the uses of justice in early modern Europe

Lucia's case against Gertrude is a good example of the way in which ordinary men and women employed the criminal court in their attempts to resolve their everyday conflicts. The notion that judicial institutions should not only be viewed as instruments of top-down control has been conceptualised by Martin Dinges' 'uses of justice'. Drawing on other studies on early modern criminal justice procedures, he argued that the role of the courts in society was equally determined by the people who made instrumental and strategic use of justice as part of a wider set of formal and informal mechanisms.³ These men and women did not employ justice solely to obtain a formal conviction from the court, but also – as Lucia's case also demonstrates – to try and negotiate other kinds of out-of-court settlements.

It has been suggested that the ways in which people made use of the courts was gendered. Dinges suggests that the judicial records mention fewer women because they were more inclined to solve conflicts through other informal or extrajudicial forms of social control, such as the family or neighbourhood. Women's economically dependent position and legally subordinate status prevented them from making optimal use of generally expensive formal legal procedures.⁴ Furthermore, there may in general have been different gender regimes that created more favourable conditions for women to access and make use of justice. Building on similar (though debated) hypotheses regarding labour force participation, residential arrangements and marriage patterns, the prevailing idea is that in Europe a north-south divergence may have existed in relation to the opportunities that the different juridical and normative systems gave to women and men to perform public roles in

³ Dinges, 'The uses of justice', 161.

⁴ Ibidem, 167-168.

society.⁵ Although such a dichotomy has not in itself remained uncontested, Italian women's relatively weak legal position within the patriarchal criminal justice system has contributed to an overall idea of a culture characterised by subordination and constraint, while opportunities for women to participate in public life in Northern Europe appear to have been more plentiful.⁶

In the past two decades, it has increasingly been shown how women were able to achieve considerable agency in the management and negotiation of their everyday lives through the instrumental use of law courts.⁷ Much of the research on women's ability to negotiate early modern legal systems has focused on examinations of ecclesiastical courts. Studies on England and Germany have shown that these ecclesiastical courts facilitated the participation of female litigants in a greater number than other courts, and that women employed them to pursue slander and defamation, and above all to strengthen their household authority in marital disputes.⁸ Despite the strong emphasis on the patriarchal orientation of early modern Italian society, a growing body of scholarship increasingly recognises Italian women from all social groups as pragmatic users of the law and the various types of courts in conducting their daily lives. Notably, similar to the works on England, several important works on ecclesiastical courts in early modern Venice and Rome by Daniela Hacke, Joanne Ferraro and Daniela Lombardi have convincingly argued that while women were undoubtedly victims of patriarchal privilege and an inferior legal status, they did have legal agency and used the court to their advantage in matrimonial disputes.⁹ The majority of matrimonial suits recorded came from women who called on the court to protect their wellbeing, manipulated neighbourhood opinion in order to forward their cause and drew on a series of tropes like violent marriages and sexual dysfunction to support their claims of separation or annulment.

⁵ For an overview of the development of the notion of a distinct 'Mediterranean model' from the 1960s onwards, see Viazzo, 'What's so special about the Mediterranean?', 111-137.

⁶ An important scholar criticizing the north-south dichotomy is Zucca Micheletto, 'Reconsidering the southern Europe model', 354-370; Viazzo, 'What's so special about the Mediterranean?', 111-137.

⁷ For a recent historiographical assessment of the legal agency of English women, see Kane and Williamson, 'Introduction', 1-16.

⁸ Kane and Williamson, 'Introduction', 7; L. Gowing, *Domestic dangers. Women, words, and sex in early modern London* (New York: Oxford University Press, 1996); Schmidt, 'Hausväter vor Gericht', 213-236.

⁹ D. Hacke, *Women, sex and marriage in early modern Venice* (Aldershot: Routledge, 2004); Ferraro, *Marriage wars*; D. Lombardi, 'Giustizia ecclesiastica e composizione dei conflitti matrimoniali (Firenze, secoli XVI-XVIII)', in S. Seidel Menchi and D. Quaglioni (eds.), *I tribunali del matrimonio (secoli XV-XVIII)* (Bologna: Mulino, 2001) 577-608; L. Ferrante, 'Marriage and women's subjectivity in a patrilineal system', in M.J. Maynes et al (eds.), *Gender, kinship, power. A comparative and interdisciplinary history* (New York & London: Routledge, 1996) 115-130.

Although ecclesiastical courts have been studied most extensively, they were by no means the only judicial forum employed by women. While women were underrepresented in serious crimes such as homicide, research on early modern Europe has indicated a much larger presence of women both as offenders and litigants among the lower criminal courts than was previously thought.¹⁰ For seventeenth- and eighteenth-century London, Jennine Hurl-Eamon has shown that, as plaintiffs, battered wives and women who fell pregnant after rape were able to gain recompense through the relatively cheap system of recognizances, making use of gendered preconceptions concerning their physical vulnerability.¹¹ In dealing with cases of petty violence Garthine Walker has furthermore shown for seventeenth-century Cheshire that these recognizances also played a crucial role for female plaintiffs who readily employed these juridical procedures of binding over their male and female assailants to peace and good behaviour to assert their authority both in and outside the household.¹² Daniel Gray's examination of London's eighteenth-century inexpensive summary courts has furthermore shown that while assaults between women were often not taken seriously by prosecutors, 'plebeian' women nevertheless regarded these courts as a useful public forum for arbitration that they could strategically utilise in the resolution of their violent conflicts with the members of their neighbourhood community.¹³

What legal leeway Italian women had outside marital disputes or extramarital sexuality and before other forums has received far less scrutiny. In general, there is a consensus in Italian historiography that early modern justice was utilised rather than merely imposed, but there are few studies that specifically examine the gender dynamics of having recourse to the law outside marital disputes.¹⁴ There is nevertheless evidence that women's use of other legal forums was not as uncommon as the historiographical silence may suggest. In a recent work on women's crimes in seventeenth- and eighteenth-century Bologna, Angelozzi and Casanova remarked that Italian women displayed a 'remarkable familiarity' with criminal justice. Without expanding the argument further, they asserted that the criminal court records reveal women demonstrating their "capability of developing effective strategies of accusation and defence."¹⁵ Elizabeth and Thomas Cohen also mention that the machinery of the law was used by ordinary Romans as an instrument of persuasion or

¹⁰ For an overview, see Van der Heijden, 'Women, violence and urban justice', 71-100.

¹¹ Hurl-Eamon, *Gender and petty violence*, 49-64.

¹² Ibidem, 65-90, 130-131; Walker, *Crime, gender and social order*, 75-112.

¹³ Gray, 'The regulation of violence in the metropolis', 79-81.

¹⁴ Cummins and Kounine, 'Confronting conflict in early modern Europe', 4.

¹⁵ Angelozzi and Casanova, *Donne criminali*, 257.

chastisement. A woman's suit for rape, they assert, might have been a plot to either "snag a husband or extort a dowry."¹⁶ Another work based on sixteenth-century prostitutes' recourse to the Roman criminal court furthermore provides evidence for the extensiveness of the practice of criminal litigation that may have stretched to even the lowest, marginal reaches of society.¹⁷ These works suggest that the opportunities women had to use justice in Italy may not have been as different as a simplified north-south model suggests – an inference that merits further investigation.

Denunciations before the *Torrone*

Both in Italian scholarship and elsewhere, a common critique of the quantitative analysis of criminal trials has been that they measure not the levels of actual criminal behaviour, but rather the functioning of the criminal justice apparatus.¹⁸ It is argued that the cases that were tried by criminal courts mainly consist of a selection of the crimes that occurred based on the state's knowledge of offences as well as its interests and prosecutorial priorities. This notion that the trials only represent a small fraction of actual criminal behaviour has been linked to the so-called 'dark number'. This concept refers to those crimes that occurred but were not reported or tried by the state or did not lead to a conviction, that therefore escape historians' awareness.¹⁹ In this light English scholars have argued that examinations of verdicts and sentences only provide a partial view and an underestimation of women's participation in the legal process.²⁰ Some have therefore begun examining alternative forms of legal action, such as prosecution by a recognizance, which featured much greater numbers of women in the roles of both complainants and offenders.²¹

In the case of many Italian cities, too, it is possible to gain a broader view of legal action beyond trials by examining the denunciations, i.e. the criminal complaints. Formal statements about alleged crimes were lodged either by state officials or, much more commonly, by the aggrieved party or his or her kin. In Bologna these denunciations have been preserved in the casebooks of the eight notaries who were hired to register them, and

¹⁶ Cohen and Cohen, *Words and deeds*, 20.

¹⁷ E.S. Cohen, 'Honor and gender in the streets of early modern Rome', *Journal of interdisciplinary history* 22:4 (1992) 609.

¹⁸ E. Grendi, 'Premessa', *Quaderni Storici* 66:3 (1987) 695-700; M. Sbriccoli, 'Fonti giudiziarie e fonti giuridiche. Riflessioni sulla fase attuale degli studi di storia del crimine e della giustizia criminale', *Istituzioni giudiziarie, criminalità e storia* 29:2 (1988) 491-501. This is also reflected upon by for example Van der Heijden, *Women and crime*, 11; Kilday, *Women and violent crime*, 2.

¹⁹ Van der Heijden, *Women and crime*, 3.

²⁰ Walker, *Crime, gender and social order*, 4.

²¹ *Ibidem*, 5; Shoemaker, *Prosecution and punishment*, 207-216; Hurl-Eamon, *Gender and petty violence*, 129-130.

were stored separately from the trial dossiers. Because these denunciations represent all documented, reported crime, they were understandably much more plentiful than the *processi* (the investigation dossiers examined in the previous chapter). For seventeenth-century Bologna, Angelozzi and Casanova have estimated that there are about nine complaints for every process initiated.²² There are about 300 processes for 3,000 denunciations each year. Although these denunciations are by no means an unbiased representation of the entirety of offences that took place in the city of Bologna, they do allow us to gauge reported rather than prosecuted crime. They furthermore present an image that comes closer to the everyday reality of perceived criminality because of the absence of the state's filter of prosecutability and the sheer quantity of offences recorded.

The types of offences that were denounced to the court are shown in table 6. It indicates the distribution of offence categories among 1,358 defendants (903 men, 241 women and 214 offenders whose identity is unknown) for 1,054 criminal complaints sampled between the mid-seventeenth and mid-eighteenth centuries. The largest share of the reported offences was concerned with violence: over two-thirds of the defendants were accused of some kind of physical or verbal aggression. Property crime, mainly consisting of theft, burglary and fencing, but also (much more rarely) of pickpocketing and robbery, is the second most common offence reported to the criminal court. Unsurprisingly, the identity of over half of the property offenders was unknown at the time that the denunciation was made since many thefts and burglaries from shops and houses were discovered hours after they had occurred and were reported to the court without any knowledge of who had committed the offence. Another crime category among the denunciations is that of offences against public order (11 per cent), which included the bearing of weapons within the city walls without a licence, not having the correct licence to stay in the city, begging and vagabondage, the violation of banishment and resisting the authorities. Sexual offences, as discussed before, were rarely denounced to the criminal court.

Although the pattern of crimes denounced resembles that of the *processi* in broad strokes, there are also important differences, particularly for female defendants. As we have seen in the previous chapter, violence constituted the largest offence category among the investigation dossiers (*processi*), but featured even more prominently among the denunciations. When we examine the defendants identified in the court records, the difference between the denunciations and *processi* is amplified. In the *processi*, about 44 per

²² Angelozzi, and Casanova, *La giustizia in una città di antico regime*, 565, 643.

cent of the male defendants were accused of various violent acts compared to two-thirds in the denunciations. Interestingly, the difference is even larger for women. While a third of the female defendants in the *processi* were charged with violence, women's violent acts made up 82 per cent of their reported crimes in the denunciations. This observation counters popular assumptions regarding women's passivity in violence and constitutes a point of departure to re-evaluate women's deviant behaviour in general, as well as the way that they were able to make use of the court.

TABLE 6. REPORTED OFFENCES IN URBAN DENUNCIATIONS, CA.1655-1755									
	Female defendant		Male defendant		Total ^a		Unidentified offender		Total in <i>processi</i> ^b
Violence	197	82%	602	67%	799	70%	4	2%	43%
Property	27	11%	163	18%	190	17%	209	98%	28%
Public order	11	5%	119	13%	130	11%	0	0%	26%
Sex	2	1%	5	1%	7	1%	0	0%	3%
Misc	4	2%	14	2%	18	1%	1	0%	1%
	241	100%	903	100%	1144	100%	214	100%	100%
Source: Sample 2 (see appendix).									
^a Total excludes unidentified offenders									
^b Total from <i>processi</i> is derived from Chapter 3, table 3.									

Importantly, the examination of Bologna's denunciations suggests that the pattern of offending was not as different for male and female offenders as earlier scholarship suggested. A reappraisal of the categories of 'male' and 'female' crimes has already been provided by Garthine Walker, who argued that women participated in most categories of crime and were furthermore much more likely to participate in non-'female' offences.²³ This also holds true for urban Bologna, especially in the complaints. Here the supposedly quintessential 'male crime' of violence bore much greater proportional importance to women's palette of recorded deviancy than that of men. Although women's crimes have traditionally been likened to witchcraft and sexual deviance, this is not reflected in the *Torrone's processi* and even less in its denunciations. Instead, what brought women before the secular criminal court was roughly the same kinds of transgressions as men, particularly acts of petty violence, thefts and to a lesser degree disturbances of the public order. The main difference between the *processi* and the denunciations in this respect is that the range of offences is larger in the complaints, for both male and female defendants. This highlights the

²³ Walker, *Crime, gender and social order*, 4.

numerical and proportional importance of petty offences for both women and men, despite this not being reflected in what the *Torrone's* officials decided to investigate and take to trial.

Another aspect that stands out from the denunciation concerns the female crime shares. Women's involvement in criminality in early modern Europe has commonly been described from the perspective of their near 'absence'. The same can be said for Italy, for which the previous chapter has shown that the estimated female crime shares were even lower than in their already low Northern European counterparts. An examination of Bologna's investigation dossiers (the *processi*) has demonstrated that only five per cent of the defendants indicted in the city of Bologna were women. However, a closer look at the denunciations nuances this image. With a participation rate of 21 percent, Bolognese women formed a quantitative minority among accused offenders in the denunciations, but this rate was not dissimilar to the shares found elsewhere in early modern Europe. In many ways this is comparable to the situation of Holland and England, where research has shown that the share of female offenders was also much higher among lower criminal jurisdictions.²⁴ It is furthermore important to emphasise that the difference between the share of female offenders in the denunciations and the *processi* did not necessarily mean that making a denunciation was futile in early modern Bologna. To understand why this was the case, the following sections will delve deeper into the functioning of the criminal court and the objectives of litigation.

The *Torrone* as a forum for conflict resolution

The discrepancy between the types of cases that we find in the denunciations and the processes can be explained to a large extent by the *Torrone's* functioning as a forum for conflict resolution. In part, these criminal complaints reflect the authorities' priorities, since officials such as the police captain captured and denounced people who acted against the public order as described in the city's by-laws, such as bearing arms without the correct licences. But in the city this only constituted a small fraction of the complaints recorded by the criminal court's notaries. Rather, the large majority of cases in the city were brought to the court by those who were wronged themselves. They brought to the fore a large number of complaints, often about petty brawls, in a bid to settle their conflicts with their disgruntled former friends, acquaintances, neighbours and co-workers. Formal interventions in the form of criminal investigations or prosecution of these kinds of cases were, however, few and far

²⁴ Van der Heijden, 'Women, violence and urban justice', 71-100.

between. This is evidenced by the sheer volume of the criminal complaints: as mentioned before, some 3,000 complaints were registered annually compared to ‘only’ 300 to 400 inquisitorial trials that were started.²⁵ As will be discussed in more detail later, the denunciation was not always a request for formal state intervention, but rather a stepping stone to settle the conflict through so-called ‘infrajudicial’ means.²⁶ These include the well-known peace-making through notarised peace contracts, but also include a wide range of other types of informal settlements. The court’s officials accommodated this particular type of use of the court by the Bolognese inhabitants, and are in fact believed to have played an active role in encouraging and pressuring the victims and their kin to accept their enemies’ peace-making attempts.²⁷

The extent to which Bolognese men and women were able to employ the criminal court for their conflict resolution had historical roots in the development of the legal system. According to a growing body of scholarly work, composition and peace-making had a central function in early modern criminal justice.²⁸ It is particularly relevant for Italian history, where scholars have pointed out that the relative societal acceptance, legitimacy and comparatively higher rates of violence went hand in hand with a culture of peace-making.²⁹ This pacification aimed to re-integrate the assailant into the fabric of society. As elsewhere in early modern Europe, this was a remnant of the older forms of community justice that customarily occurred extra-judicially. In Italy during the early modern period, however, peace-making was incorporated in the state’s developing criminal justice system, encouraging arbitration among its plaintiffs and defendants, favouring social harmony over formal judicial intervention.³⁰ Although early modern Italian criminal courts had an inquisitorial system, some accusatory procedures relating to peace-making survived.³¹ Victims of a crime or their close kin had the right to lodge an accusation against assailants and also had the right to withdraw this complaint following composition. The exact regulations regarding this right to withdraw differed from city to city, and varied over time,

²⁵ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 565, 643.

²⁶ The term infrajudicial refers to practices ‘underneath’ the official court system and is most known from Benoît Garnot’s work. See B. Garnot, ‘Justice, infrajustice, parajustice et extra justice dans la France d’Ancien Régime’, *Crime, history & societies* 4:1 (2000) 103-120.

²⁷ Rose, *Homicide in North Italy*, 85-86.

²⁸ Cummins, ‘Forgiving crimes in early modern Naples’, 255; Cummins, and Kounine, ‘Confronting conflict in early modern Europe’, 9.

²⁹ Broggio and Caroll, ‘Violence and peacemaking in early modern Europe’, 5; Rose, *Homicide in North Italy*, 20; O. Niccoli, *Perdonare*, 38-39.

³⁰ Bellabarba, ‘Pace pubblica e pace privata’, 189-213.

³¹ Cummins, ‘Forgiving crimes in early modern Naples’, 260-261.

but it is clear that plaintiffs in Italy had an acknowledged basis for negotiation outside of formal judicial intervention.³²

Some scholars have furthermore pointed to additional specifically local circumstances that encouraged the development of an accessible criminal justice system promoting conflict resolution. Following the 1506 conquest of Bologna by Pope Julius II and the expulsion of the Bentivoglio oligarchs, the papal legates – cardinals installed as city governors by the Pope – established the *Torrone* as a new, professional criminal court in which papal authority was firmly represented. Rose argued that the *Torrone* served to undercut the power of the powerful, rebellious local elite by expanding the papal authority's hold on the community.³³ As a free and relatively efficient and reliable forum for conflict resolution, the *Torrone* functioned as an alternative to the capricious and now illegal feudal courts. The inhabitants' use of the criminal justice system was thus considered pivotal to the consolidation of the state's power and, indeed, they increasingly brought their conflicts to the *Torrone* for resolution.

The criminal court's accessibility was maintained throughout the seventeenth and eighteenth centuries and entailed that theoretically all crimes and conflicts could be freely brought before it. This did not mean that this was the case in practice. Firstly, as we will see in the next section, there were certain gendered impediments to accessing and employing the court. Secondly, it also did not mean that all reported offences were prosecuted. The *processi* largely dealt with theft and the more serious forms of violence that led or could potentially lead to death - an offence that only made up a very small proportion of the offences reported. The lion's share of the denunciations on the other hand concerned petty physical and verbal fights; types of offences that the *Torrone* was generally disinclined to prosecute in a full inquisitorial trial. The court's statutes even specifically instruct the judges not to pursue minor crimes such as insults, threats, non-life-threatening fights among the lower classes and family disputes.³⁴ As elsewhere in early modern Europe, these petty offences were treated very much as what we now consider a civil matter rather than a criminal concern.³⁵ Rather than crimes worthy of prosecution by the authorities, the acts were regarded as conflicts between individuals, focusing on arbitration and compensation instead of punishment and reform.

³² Niccoli, 'Rinuncia, pace, perdono', 234.

³³ Rose, Homicide in North Italy, 61.

³⁴ Angelozzi and Casanova, *La giustizia in una città di antico regime*, 391.

³⁵ Gray, 'The regulation of violence in the metropolis', 75-77; P. King, 'The summary courts and social relations in eighteenth-century England', *Past & Present*, 183 (2004) 147-150.

That law and dispute resolution mixed was a broader early modern European phenomenon. In England during the seventeenth and eighteenth centuries minor crimes were generally resolved at the lower end of the criminal justice system through the summary courts of the Justices of the Peace that were inexpensive, informal and largely lawyer-free.³⁶ On the continent, too, there were various so-called peacemaker courts that were also characterised by transparent procedures and operated practically at no cost.³⁷ In Bologna under the early modern Papal States, law and the informal practice of dispute resolution mixed all throughout the criminal justice procedure. It was a prosecutorial body, a place for summary justice procedures and a forum for peace-making. This peace-making was by no means limited to the peace accords and petitions to which so much scholarly attention has been paid.³⁸ The denunciations bear witness to manifold strategies in employing the criminal court to settle conflicts, which will be explored in more detail later on in this chapter. Bologna was, of course, no exception, as the dockets of criminal courts in other cities such as Rome functioned according to similar mechanisms.³⁹ As with the summary courts and procedures in England, Bolognese men and women experienced and employed the law above all by lodging a criminal complaint for the more petty types of offences such as petty physical or verbal fights.⁴⁰ Rather than being emblematic of the authorities' prosecution policies, a large proportion of these criminal complaints are indicative of the interests, priorities and strategies of the plaintiffs.

The urban context of women's litigation

Although the use of the criminal court to resolve disputes was publicly encouraged by the *Torrone* by presenting itself as accessible, reliable and free, there were gendered impediments to accessing it. The previous chapter described how inhabitants of even the most remote hamlets in the territory could theoretically bring conflicts to the court through an elaborate intelligence network of local officials both in the cities and the surrounding countryside. The criminal court was nevertheless more accessible in the city of Bologna itself, as complaints could also be brought to the court's notary in person. And since the court was situated in the

³⁶ King, 'The summary courts', 126-127; Gray, 'The regulation of violence in the metropolis', 76.

³⁷ G. Vermeesch, 'Reflections on the relative accessibility of law courts in early modern Europe', *Crime, history & societies* 19:2 (2015) 53-76.

³⁸ Cummins, 'Forgiving crimes in early modern Naples', 255; Cummins and Kounine, 'Confronting conflict in early modern Europe', 9.

³⁹ Cohen and Cohen, *Words and deeds in Renaissance Rome*, 16, 26.

⁴⁰ King, 'The summary courts', 128, 136.

city centre of Bologna, these individual complaints were largely an urban phenomenon. Bologna's legal territory of 4,000 square kilometres was vast and mountainous, and most people in the countryside understandably relied heavily on the official go-betweens to reach the criminal court: over 90 per cent of the cases in the countryside were brought by a *massaro*. In the city of Bologna, on the other hand, going to the court in person was much easier and therefore much more common. In the city the large majority of denunciations were made by the victims themselves. The proportion of urban female litigants was also considerably higher: compared to the countryside, women in the city were more than twice as likely to make a denunciation.

The higher share of women among urban litigators may be explained by a combination of the higher involvement of women in crime in urban areas and a different use of judicial instruments. The extent to which women were able to lodge a complaint to the criminal court impacted the share of female defendants, since many of the female plaintiffs made denunciations against other women. John Beattie was among the first to explain the urban-rural disparity in female crime shares for early modern England by arguing that compared to their rural counterparts, women in cities lived more independent and public lives.⁴¹ They had a wider range of economic opportunities and more social contacts but lacked both the support networks and the communal informal control that could keep women out of the criminal justice system. Evidence from the criminal courts in various Dutch, French and English towns has also demonstrated that it was precisely the combination of their independence and vulnerability that has contributed to the high crime shares in the urban context.⁴² Although compared to English and Dutch cities female crime shares in other European regions were less high, the 'urban freedom and vulnerability' thesis also seems to hold for Italy. In their study of early modern Bologna, Angelozzi and Casanova also found higher female crime shares in the city than in the countryside. They explained this discrepancy by pointing to the freedom of the city, the less extensive social control exerted by the male authority, the neighbourhood and the parish, as well as the greater opportunities for socialisation that led to more occasions for conflict.⁴³

⁴¹ Beattie, 'The criminality of women', 80-116.

⁴² Schmidt and Van der Heijden, 'Women alone', 21-38; Van der Heijden, 'Women, violence and urban justice', 71-100; K. Lambert, *Itinéraires féminins de la déviance. Provence 1750-1850* (Aix-en-Provence: Presses Universitaires de Provence, 2012); D.D. Gray, *Crime, prosecution and social relations. The summary courts of the city of London in the late eighteenth century* (Blasingstoke: Palgrave Macmillan, 2009); Shoemaker, *Prosecution and punishment*, 208-209.

⁴³ Angelozzi and Casanova, *Donne criminali*, 69.

The Bolognese case furthermore highlights the factor of access to justice. As discussed before, scholars generally assume that early modern women were more inclined to resolve their conflicts informally. Robert Shoemaker therefore suggested that the high share of female prosecutors in urban areas was related to the fact that they were less likely to have access to informal mediators such as local landowners and the clergy in these places.⁴⁴ The court records from Bolognese countryside villages are suggestive of the role of the *massaro* in this process. Ordered to relay crimes that occurred within their assigned territory to the *Torrone*, these local officials appeared to have played a large role as mediators in local conflicts in Bologna's surrounding villages. Angelozzi and Casanova have argued that this dependency on the local officials to register and report matters to the criminal court may have particularly restrained women's possibilities in bringing cases under the court's purview. They asserted that women's complaints were more likely to be deemed unworthy of the time investment of the *massaro*, to write down the complaint and to research the offence.⁴⁵ The idea is that women's disputes and petty crimes were possibly less likely to be relayed to the *Torrone* than men's because of their perceived unimportance. While women's disputes may have also been settled to their satisfaction through these informal means, it is important to note that not only women's preferences determined their involvement of the law. Particularly in the countryside, practical restraints also played an important role.

In the urban environment on the other hand, Bolognese women had better opportunities to formally bring their grievances before the criminal court because they did not have to rely on the assessment, judgment and intervention of a third party. It has been noted that women in the city of Bologna, for example, were much more likely to lodge a complaint against their husbands, fathers and brothers for subjecting them to violence, abuse and humiliation than in the countryside, where these matters were either dealt with without resorting to justice or were handled informally by the *massaro*.⁴⁶ The examination of the denunciations demonstrates that the same is true for other types of offences, such as fighting. Urban women's greater access to justice has left its impact on the kinds of offences that were recorded in the criminal records. For the plaintiffs, it brought with it a new set of possibilities to negotiate and manipulate the outcomes of their disputes. For women, the urban environment may not have provided only a more precarious context that may have

⁴⁴ Shoemaker, *Prosecution and punishment*, 209.

⁴⁵ Angelozzi and Casanova, *Donne criminali*, 70, 257.

⁴⁶ *Ibidem*, 118.

prompted deviant behaviour, but it also offered women who were the victims of offences better opportunities to resolve conflicts through the formal criminal justice system.

The social profile of the users of justice

Who were these women and men appearing before the court to pursue their grievances? In recent years, scholars have called attention to the need to be more specific about which sections of early modern communities made use of justice systems, to be able to better assess the developments in the accessibility and functioning of early modern law courts. Importantly, in her historiographical survey of works on both civil and criminal courts, Griet Vermeesch argued for a more socially differentiated analysis of the category of 'ordinary people' who were able to draw on formal legal infrastructures.⁴⁷ In a similar vein, Elizabeth Cohen has argued that the catch-all term of 'women' needs to be broken up into differentiating aspects that drastically affected the experiences of activities like litigation alongside gender, such as social class and life cycle.⁴⁸

It is generally assumed that in Italy 'ordinary people' were able to employ judicial instruments and courts and instruments in the resolution of their conflicts – not unlike elsewhere in Europe. To what extent these ordinary people included women and whether there were gender differences in the social composition of litigants is often not clear. In Italy, most explicit evidence on this topic comes not from criminal or civil courts, but from studies on notarial arbitration during the earlier, Renaissance period. Based on the records of one Florentine notary, Thomas Kuehn has put forward that arbitration was a rather open system used by 'all sorts of people'.⁴⁹ Both Andrea Zorzi's and Katherine Jansen's works on thirteenth- and fourteenth-century notarial peace contracts in Florence confirm this view, stating (without elaborating) that the protagonists of notarial peace settlements were generally not aristocratic magnates, but ordinary people, ranging from "humble paupers, servants and shoemakers" to wealthier artisans and merchants.⁵⁰ For fourteenth-century Reggio Emilia, Joanna Carraway Vitiello similarly argues that peace-making was used by people of every social standing, both men and women.⁵¹ That these conclusions about the broad participatory basis of private arbitration are also relevant for criminal litigation seems

⁴⁷ Vermeesch, 'Reflections on the relative accessibility of law courts', 56, 68.

⁴⁸ Cohen, 'Evolving the history of women', 326.

⁴⁹ Kuehn, 'Law and arbitration', 36.

⁵⁰ Jansen, 'Pro bono pacis', 428; Zorzi, 'Legitimation and legal sanction', 34.

⁵¹ J. Carraway Vitiello, *Public justice and criminal trial in late medieval Italy* (Leiden, Brill: 2016) 186.

plausible, since private concords could and frequently did halt prosecution before formal legal tribunals.

Some other scholars have disputed this notion about the broad participation of ordinary men and women in the legal process. The most explicit of these was Shona Kelly Wray, who examined private notarial arbitration in fourteenth-century Bologna. She too included peace agreements in her study, but placed them among other notarial compromises that primarily involved the transfer of property to conclude that, overall, most of the disputants actually belonged to the rather narrow societal stratum of the landed elite.⁵² Unlike the other studies, her work has provided some data about the extent to which women were involved in these notarial contracts, which appears to have been slight. Even the peace acts, which have been described as daily occurrences among all walks of life, were above all a male endeavour according to Wray, with 8.7 per cent of the disputants being female, and 1.1 per cent of the offenders.⁵³ While she posits a different perspective on the social composition of users of the law, Wray does remark that people were nevertheless probably more familiar with notarial culture than with the courts, which in her estimation remained foreign to especially women, the poor and rural residents.⁵⁴

Studies on later periods are more unanimous in their assessment that litigation in Italy was open to men and women from all walks of life. James Shaw's study on civil litigation in sixteenth- and seventeenth-century Venice shows that while women were underrepresented in the civil court, making up 6 per cent of all plaintiffs and ten per cent of all defendants, civil litigation was common among the ordinary, lower classes that sought recompense for crimes, resulting in small claims.⁵⁵ Before the ecclesiastical court during the same period, women constituted the largest proportion of litigants. In her work on marital litigation in sixteenth- and seventeenth-century Venice, Joanna Ferraro has calculated that women made up 75 per cent of petitioners before the ecclesiastical court.⁵⁶ She also mentions that while the petitioners ranged across the social spectrum, patricians were fewer than the people from the 'common orders', i.e. middle-to-lower classes, such as weavers, bricklayers, textile workers, merchants and fruit vendors. She suggests that this meant that men and women of all classes "in this urban centre thought they had a real chance to change their

⁵² S.K. Wray, 'Instruments of concord. Making peace and settling disputes through a notary in the city and contado of late medieval Bologna', *Journal of social history* 42:3 (2009) 735.

⁵³ Ibidem, 745.

⁵⁴ Ibidem, 751.

⁵⁵ J.E. Shaw, *The justices of Venice. Authorities and liberties in the urban economy, 1550-1700* (Oxford University Press, 2006) 19, 166.

⁵⁶ Ferraro, *Marriage wars*, 29.

domestic circumstances.”⁵⁷ Less is known about who came before early modern Italy’s criminal courts as defendants or plaintiffs. Nevertheless, it is increasingly acknowledged that ‘ordinary’ men and women also employed criminal justice procedures to pursue their grievances.⁵⁸ Who these commoners were has remained largely unstudied, especially as far as women are concerned. This is understandable from the perspective of the source material. As others have noted, the characteristics of wealth and status that marked social division during the early modern period were fluid, and the language of social description was imprecise.⁵⁹ Overall, an assessment of the social profile of the users of justice based on socioeconomic characteristics is difficult to give due to the nature of the sources. Although they can be systematically mined, markers of identity such as provenance and age, while meaningful and interesting, are beyond the scope of this section. What will be treated here are the occupational and marital status of the plaintiffs and defendants.

Just how scarce the information about the occupational and marital statuses is can be observed in table 7. This table shows a gendered skew in what information the sources provide. For men, it is far more common for the occupation to be listed than the marital status. For women the opposite is true. Discerning a woman’s marital status is easier than for men because of the way names were recorded in the sources. Men are always referred to as ‘sons of’, whereas women can be ‘daughter of’ (unmarried), ‘wife of’ or ‘widow of’. For the large majority (70 per cent) of the female plaintiffs such information is provided, as well as for 42 per cent of the female defendants. For men, information about marital status has to be derived from contextual information given in the denunciation and is therefore scarcer. Occupational information on the other hand is much more commonly recorded for men than for women. This information is provided for over half of the men and about a quarter of the women that appeared before the court. The following examination of the social profiles of the users of justice is inevitably only based on the cases that do provide this information and the following conclusions should therefore be approached with caution.

As opposed to information on occupation or estate, marital status is far more often recorded for women than for men in the criminal court documents. Nicole Castan, observing this phenomenon in her eighteenth-century French sources, suggested that the scarcity of this information for men was due to the fact that their social position was determined far less

⁵⁷ Ibidem.

⁵⁸ Cummins and Kounine, ‘Confronting conflict in early modern Europe’, 4; Niccoli, *Perdonare*; Cohen, ‘Honor and gender in the streets of early modern Rome’, 597-625.

⁵⁹ T. Hitchcock and R. Shoemaker, *London lives. Poverty, crime and the making of the modern city, 1690-1800* (Cambridge University Press, 2015) 4.

TABLE 7. INFORMATION ABOUT MARITAL AND OCCUPATIONAL STATUS IN THE DENUNCIATIONS, CA. 1655-1755								
	Women				Men			
	Defendant (N=241)		Plaintiff (N=331)		Defendant (N=903)		Plaintiff (N=877)	
Only marital status	76	32%	168	51%	37	4%	32	4%
Only occupation	32	13%	23	7%	453	50%	460	52%
Both	24	10%	62	19%	52	6%	16	2%
Neither	109	45%	78	24%	361	40%	369	42%
Source: Extracted from sample 2 (see appendix).								

TABLE 8. MARITAL STATUSES OF DEFENDANTS AND PLAINTIFFS IN THE DENUNCIATIONS, CA. 1655-1755								
	Women				Men			
	Defendant (N=241)		Plaintiff (N=331)		Defendant (N=903)		Plaintiff (N=877)	
Unmarried	14	6%	36	11%	17	2%	5	1%
Married	84	35%	176	53%	71	8%	42	5%
Widowed	2	1%	18	5%	1	0%	1	0%
<i>No data</i>	141	59%	101	31%	814	90%	829	94%
Source: Extracted from sample 2 (see appendix).								

by it than women's.⁶⁰ What was more decisive for men was their position in the household, the authority they exercised over the patrimony as well as their employment or habitual occupation. The roles, expectations and control of women, on the other hand, are believed to have hinged upon marital status. Scholars have argued that women, as daughters and wives, were always subordinate to male authority of some sort, be it that of the father, the husband, or someone substituting for them, although their legal agency did significantly expand through widowhood.⁶¹ These general ideas regarding women's increasing agency throughout the lifecycle does not directly translate to the plaintiffs and defendants that appeared before Bologna's criminal court. Table 8 shows the marital statuses recorded in the sampled denunciations in the *Torrone* between the mid-seventeenth and mid-eighteenth century. Although the data for men are most likely unreliable due to considerable underreporting, the coverage was broader and thus more reliable for women. There was a notable prevalence of married offenders and victims: of the plaintiffs and defendants before the *Torrone* whose marital statuses have been recorded, the married group was largest,

⁶⁰ Castan, *Les criminels de Languedoc*, 36-37.

⁶¹ Palazzi, 'Female Solitude and Patrilineage', 445.

followed by the unmarried (as in never-married) group and only lastly those who were widowed.

While judicial documents elsewhere in early modern Europe reveal a similar pattern, scholars question the extent to which this means that it was predominantly married women who sought out and encountered the law. For the recognizances in seventeenth- and eighteenth-century Middlesex, Robert Shoemaker argued that only the marital status of married women was recorded systematically. He therefore assumed that the women whose marital status was not described (71 per cent of all women in his samples) were thus predominantly unmarried men and women.⁶² This led him to conclude that it was not married but urban single women that were more likely to enter into disputes and settle their disputes in or through the court. While it is indeed important to consider the implications of this underreporting, I am unconvinced that all plaintiffs and defendants without a recorded marital status in Bologna's criminal court records were unmarried. Other explanations for why the proportion of married women may have been so large will therefore be scrutinised later on.

Married or not, it is important to stress that most of the urban women brought their own complaints to early modern Bologna's criminal court. Only in fewer than five per cent of the cases did their husbands, fathers, sons or employees make the denunciation in their name. This is a completely different account of women's scope of action than that provided by Samuel Cohn for Renaissance Florence. He identified the requirement of legal guardianship as one of the causes of women's declining position in the Renaissance period.⁶³ In Bologna during the seventeenth and eighteenth centuries, however, women were known to make denunciations for their young sons and, according to Angelozzi and Casanova, also sporadically for their husbands.⁶⁴ While *antico regime* Italy's women were normatively protected first by their fathers, husbands or legal guardians, it is clear that this did not shield them from committing an offence or being victimised, nor did it prevent them from seeking redress through a criminal court.

Occupation or information on estate was on the other hand far more commonly recorded for men than for women, with information provided for over half of the men and about a quarter of the women that appeared before the *Torrone* during the mid-seventeenth and mid-eighteenth centuries. In Florence centuries earlier, Samuel Cohn found that the *Otto*

⁶² Shoemaker, *Prosecution and punishment*, 209.

⁶³ Cohn, 'Women in the streets, women in the courts', 38.

⁶⁴ Angelozzi and Casanova, *Donne criminali*, 463.

di Guardia (a summary court according to Cohn) increasingly became the playing field of a privileged few.⁶⁵ In the fourteenth century, the crime that overwhelmingly involved lower-class urban working men and women was assault. By the fifteenth century, however, assault litigation had declined markedly while the vacuum was filled by privileged landowners, for the most part widows of patrician origin, who used the court to protect their rural propertied interests.⁶⁶ Aside from the question of whether Florence was representative for the situation in other Italian cities, there are few indications that this downward trend persevered throughout the early modern period. Cohen's work based on sixteenth-century prostitutes' recourse to the Roman criminal court for the scorning of their houses is indicative of the extensiveness of the practice of criminal litigation that may have stretched to even the lowest reaches of society.⁶⁷

The notion that common city dwellers engaged in litigation is reflected in the wide range of occupations that were recorded in the Bolognese criminal court proceeding. For their livelihood, defendants and plaintiffs of both sexes performed a wide range of professions, from servants, labourers, market sellers and struggling textile workers, to shopkeepers, skilled master artisans and some public officials such as notaries. Most of the accused *bolognesi* had offended against those of similar social status, although this image might have changed had not so many of the nocturnal burglars of workshops remained unidentified. Most of those that were identified, however, regardless of whether they were men or women, did not belong to the margins of society. Indeed, artisans, small-time market sellers, textile workers, prostitutes and even the occasional beggar found their way to the court to lodge a criminal complaint against their social equals. That a broad band of ordinary men and women appeared in the *Torrone's* records not only as defendants but also as plaintiffs was in part due to the lack of financial barriers to making a denunciation. Whereas civil litigation and notarial peace accords were costly, denunciations to the criminal court could be made free of charge.

The social profiles of plaintiffs and defendants were strongly related to the types of offences brought before the *Torrone*. Other studies on criminal women have already shown that an important difference existed in the social composition of offenders who committed violence and those accused of thefts. Scrutinizing eighteenth-century Surrey and Sussex, John Beattie has demonstrated that while single women and widows had the most important

⁶⁵ Cohn, 'Women in the streets, women in the courts', 16-38.

⁶⁶ Ibidem, 25-28, 32.

⁶⁷ Cohen, 'Honor and gender in the streets of early modern Rome', 609.

share among prosecutions of theft, more than 60 per cent of the women prosecuted for crimes against the person were in fact married.⁶⁸ He argued that the women accused of having committed some kind of violence were women in settled and established positions in the community, with a good proportion being married to “men of some substance”, rather than being part of the dispossessed and rootless sections of society. The overwhelming share of violent offences among the Bolognese denunciations (over 80 per cent for female defendants) thus helps to explain the high proportion of married women among plaintiffs and offenders, who drew on the criminal court procedures to settle their disputes. The different ways in which criminal court litigation could serve ordinary men and women in settling their everyday conflicts will be discussed in the next section.

Punishment and castigation as an object of litigation

Making a denunciation to the criminal court was a means to various possible ends. What did men and women hope to get from going to the criminal court? The court records speak to the existence of at least three objectives, which will be treated here. The first possible aim was to initiate a criminal prosecution and incite the issuing of a sentence. While this was not perceived as the sole function of the criminal court, early moderners certainly looked to the criminal courts to seek justice in the sense of a legal conviction of their adversaries. In the *Torrone's* records we can find allusions to the desired outcome of castigation by the authorities. In 1674, for example, Barbara, wife of Sabatino Barache, made a denunciation against her neighbour Francesca, who had not only insulted her with many injurious words but had also damaged two pots and the flowers in her yard by throwing stones.⁶⁹ In Barbara's eyes this was clearly retaliation for an earlier incident between their daughters. She concluded her complaint by stating that she was making this denunciation so that Francesca would be castigated (“gle ne dò la querela, per che siano castigati”). These kinds of requests were quite common among the seventeenth- and eighteenth-century denunciations. As a matter of fact, the objective of having the antagonist reprimanded occurred often and in a largely standardised form. In addition to the broad request for castigation, plaintiffs would ask for just punishment. In his denunciation, the innkeeper Giacomo Borelli, for example, describes wanting Gio Francesco Rossi punished according to what the judicial system prescribed after realising Rossi had attempted to engage a contract killer as a way to avoid

⁶⁸ Beattie, ‘The criminality of women’, 102, 106-107.

⁶⁹ ASBo, Torrione, 7028, fol. 20-21.

having to pay his debts (“gli ne do querela, et faccio instantia che il medemo Rossi venghi punito conforme vuole la giustitia”).⁷⁰

The appeal to court intervention is perhaps clearest in the case of theft. In more than half of the complaints concerning thefts, the plaintiff came to the court despite expressing having no knowledge about who the culprit was. Nevertheless, as we will see in chapter six, these kinds of crimes were taken very seriously by the authorities and if identified a thief could face a harsh sentence. Asking for prosecution and investigation by the authorities did not only mean punishing the offender for stealing, but also meant that the stolen goods retrieved from the culprit would often be returned to the injured party. Compared to violent quarrels, mentions of out-of-court settlements were significantly less common for denunciations of theft. This is shown in table 9, which reveals the outcomes of denunciations for theft and violence in the city of Bologna. A good number of denunciations were withdrawn or cancelled for both types of offences. However, among those accused of thieving only 12 of them were marked as withdrawn (*rinuncia*, 8 per cent), while in the other cases there was simply not enough evidence for an indictment. This is much lower than for other offences, such as verbal or physical aggression, for which complaints were withdrawn after a settlement much more often: the denunciations of nearly a quarter of the violent offenders are recorded as having been withdrawn (184 offenders, or 23 per cent).

TABLE 9. OUTCOMES OF DENUNCIATIONS FOR THEFT AND VIOLENCE IN URBAN BOLOGNA, CA. 1655-1755											
	Unknown outcome		Withdrawn		Cancelled		Surety or <i>precetto criminale</i>		Indicted		Total
Theft	84	56%	12	8%	15	10%	14	9%	24	16%	149
Violence ^a	337	42%	184	23%	55	7%	201	25%	22	3%	799
Source: Extracted from sample 2 (see appendix), counter per accused offender.											
^a The category of violence includes homicide, physical violence resulting in life-endangering wounds, petty physical violence, verbal aggression and the miscellaneous acts of aggression receiving a <i>precetto criminale</i> .											

At the same time, the chances of a complaint about theft leading to an indictment and formal investigation also seem to have been better. Although the administration of subsequent judicial steps was patchy at best, at least 16 per cent of the complaints were followed up by a formal investigation. These were much better odds than for many other offences such as physical violence. It is therefore understandable that the combination of the investigation of the case and search for the culprit by the authorities, the chance of a formal

⁷⁰ ASBo, Torrone, 6609, fol. 100.

investigation being initiated and the opportunity to retrieve the stolen goods provided a clear incentive to make an appeal for a prosecution of thieves.

Litigation as a negotiation and a threat

Regardless of what plaintiffs stated as their reasons for bringing their complaint before the criminal court, motives beyond formal intervention often played a role. The aforementioned Barbara, who denounced her neighbour Francesca for insult and property damage, for example, unfolded in a way that so many did: it ended up in a withdrawal of the complaint (*rinuncia*) presumably following an extrajudicial financial settlement.⁷¹ In doing so it followed an established pattern, as by far most of the complaints lodged by litigants of both genders did not result in a 'full trial'. When presented to the court's magistrates, peace agreements – official, notarised documents that brought settlement to a dispute between two quarrelling parties – could and frequently did halt criminal investigations.⁷² The simple juridical withdrawal of the complaint (the *rinuncia*) bore less social weight than the peace agreement, but was also an established part of the legal process used by men and women of all social strata. Rita Mariani's study of criminal justice in Crevalcore, a village in the Bolognese countryside also subject to the authority of the *Torrone*, between 1633 and 1642 illustrates how roughly a third of all denunciations were withdrawn by the plaintiff through a *rinuncia*.⁷³ The aspects of negotiation and conflict resolution were thus fundamentally incorporated into the functioning of the criminal justice system in early modern Italy.

Rather than a straightforward request for court prosecution, litigation must therefore also be viewed as part of a negotiation process.⁷⁴ Based on his reading of various European studies on criminal justice, Dinges argued that plaintiffs of both genders were well aware of the threat emanated by a charge, and tried to employ it as a coercive measure in conflict resolution.⁷⁵ The act of the denunciation to the criminal court added a formal dimension to the negotiation that generally was considered at the very least troublesome to the defendant, and potentially also threatening and shameful. Cohen, in her examination of criminal court proceedings concerning house-scorning in sixteenth-century Rome, has suggested that the

⁷¹ ASBo, Torrone, 7028, fol. 20-21.

⁷² Nubola, 'Giustizia, perdono, oblio', 33.

⁷³ R. Mariani, *Criminalità e controllo sociale nella Crevalcore del seicento* (Unpublished Master thesis, Università degli studi di Bologna, 1991) 71-73.

⁷⁴ Cummins and Kounine, 'Confronting conflict in early modern Europe', 6.

⁷⁵ Dinges, 'The uses of justice', 163; C. Lansing, 'Conflicts over gender in civic courts' in J.M. Bennett and R. Mazo Karrass (eds.), *The Oxford handbook for women and gender in medieval Europe* (Oxford University Press, 2013) 119.

act of litigation gave the victims a way to bring down shame on their attackers.⁷⁶ That litigation was considered a part of the negotiation process is confirmed in the Bolognese sources. In 1674, Domenica Galli tried but failed to stop a fellow market seller, Antonio di Silvestrone, making his daily insults by threatening to lodge a complaint against him.⁷⁷ Unfortunately for her, he seemed rather unconcerned with the prospect, and told her to go for it.

This ambivalent attitude towards being accused of an offence in a court of law was by no means the standard response. Many plaintiffs in fact found themselves harassed by the defendants after making a denunciation with requests to retract it and clear their name.⁷⁸ In 1705 Andrea Mascagni refers to the complaint made against him three years before by his former female employers as a heavy burden, and requested it to be retracted.⁷⁹ That this could happen even years after the fact, demonstrates that a criminal complaint was not considered a triviality. Not all defendants limited themselves to merely inquiring about a possible withdrawal. In March of 1675 Francesca Pochettini found herself chased down the street by a dagger-wielding man called Donnino, against whom she had lodged a complaint some two months earlier for unspecified 'insolences'.⁸⁰ Rather than withdrawing the complaint, she reported her assailant again. Another example comes from the complaint against Pavolino Balini, who insulted, hit and threatened to kill his fellow coachman Rafael di Negrini with a sword in his hand after he had refused to withdraw a complaint from four years earlier.⁸¹ After several troublesome encounters, Rafael lodged a new complaint, declaring that he feared for his life after Pavolino had come to his house in the middle of the night. Later that day, an agreement was apparently reached and the complaint was withdrawn. These examples illustrate how litigation was not always a clear-cut request of formal intervention by the authorities *per se*. Instead, the pressure of an official criminal denunciation was used by ordinary men and women in the negotiation of their interests within the community.

⁷⁶ Cohen, 'Honor and gender in the streets of early modern Rome', 624.

⁷⁷ ASBo, Torrione, 7028, fasc. 26.

⁷⁸ ASBo, Torrione, 7606-1, fasc. 278; 7606-1, fasc. 81.

⁷⁹ ASBo, Torrione, 7606-1, fasc. 27-30.

⁸⁰ ASBo, Torrione, 7028, fasc. 254-255.

⁸¹ ASBo, Torrione, 6653, fasc. 296-297.

Enforcing peace through peace injunctions

There were also hybrid objectives that were somewhere between hoping to achieve concrete action from the authorities and the bolstering of the plaintiff's bargaining power. The appeal to specific legal instruments such as the peace injunction is a good example of this objective. Mechanisms of negotiation, empowerment and shaming also come into play with the appeal to specific legal instruments. This is illustrated by the case of Bolognese biscuit seller Ignazia Odorici, who appeared before one of the *Torrone's* notaries to file a complaint against Francesca Tacchini, a seller of used goods, on 23 December 1755. Francesca had a way of finding Ignazia wherever she went and always insulted and threatened her. While the underlying causes of the dispute remain undisclosed, Ignazia emphasised that this was a long-lasting conflict that she had been unable to settle herself through other measures. After one particular day when Francesca had also insulted and threatened her family, Ignazia made her way to the court describing being compelled to send for an injunction (*"sono stato costretta spederle un precetto da questa tribunal"*).⁸² The phrasing here is meaningful: Ignazia did not request just any kind of formal intervention; she assumed she could go to court and get a peace injunction. The court records demonstrate that these legal instruments were not solely top-down measures of control, but that men and women were active and knowledgeable litigators steering the case towards a specific outcome that considerably enhanced their negotiating position. In some instances, they were successful.

The *precetto de non offendendo* (literally an 'injunction to not offend') was a peace injunction issued by the judge at the criminal court, most often through summary procedure in the phase of the denunciation. In its function it resembled the 'recognizances' issued by London's Justices of the Peace at the Quarter Sessions as well as so-called 'Letters of Lawburrows' in Scotland.⁸³ All of these judicial procedures bound people to keep the peace through sureties or conditional fines. The Bolognese peace injunctions forbade defendants to 'violate or harass' the plaintiff and were, like the recognizances, the most popular form of dealing with assault in Bologna during the seventeenth and eighteenth centuries.⁸⁴ An authoritative eighteenth-century judges' manual describes the instrument of the *precetto* as an easy measure suitable for a wide range of frequent but relatively minor offences (*leggieri*

⁸² ASBo, Torrone, 8171-1, fasc. 275.

⁸³ Hurl-Eamon, *Gender and petty violence*, 130; Kilday, *Women and violent crime*, 94; Shoemaker, *Prosecution and punishment*, 207.

⁸⁴ Hurl-Eamon, *Gender and petty violence*, 129.

deliquenze).⁸⁵ These could be violations of the public order such as ‘being suspicious’ and vagabondage, and could be used in a conditional release of the defendant to compel him or her to present him- or herself to the court if deemed necessary by the authorities. In Bologna between the mid-seventeenth and mid-eighteenth century, the *precetto criminale* was in practice very commonly ordered in the form of the *precetto de non offendendo* after verbal or physical (yet not life-threatening) fights.

The Bolognese peace injunctions differed from London’s recognizances in their form. As the name suggests, the recognizances entailed a sum of money that would not be forfeited in case of good behaviour. Three sureties pledged this monetary amount as a guarantee that the offender would appear in court to answer to a charge and keep the peace.⁸⁶ No such sureties seem to have been necessary for the Italian peace injunctions, as the *precetto* functioned more like a cautionary and conditional monetary punishment.⁸⁷ The penalties of a violation of the peace injunction were different for men and women but were severe for both genders: ranging from a hefty monetary fine of 25 to 200 *scudi* (a servant’s monthly wage consisted of about half a *scudo*) to public flogging for women or a sentencing to the galleys for a certain number of years (five, seven or ten years, or a lifetime) for men.⁸⁸ Another difference was that while the *precetto* had a standardised form that included the order to not violate or harass each other any longer, the exact configuration of the injunction could be tailored to the situation presented to the court, including clauses regarding specific places, times of day, or specific unsanctioned behaviour, such as drinking in public.⁸⁹ For the criminal justice system it was therefore a practical tool to achieve public order, since it relied less on active surveillance than on the community’s willingness to report violations.⁹⁰ Indeed, the *precetti* became increasingly used throughout the early modern period in question: in the Bolognese casebooks the share of the peace injunctions increased from around seven per cent of all recorded outcomes of denunciations in 1650 to around 16 per cent in the mid-eighteenth century.

⁸⁵ F. Mirogli, *Istruzioni teorico-prattiche criminali di Filippo Mirogli Romano fiscal generale dedicate alla santità di nostro signore Clemente PP.XIII. Tomo primo* (Rome 1758) 80.

⁸⁶ Dinges, ‘The uses of justice’, 162-163; Hurl-Eamon, *Gender and petty violence*, 129.

⁸⁷ There are references to the surety of the *precetto de non offendendo* in Rome: Fosi, *Papal justice*, 64 as well as in Bologna: G. Angelozzi and C. Casanova, *La nobiltà disciplinata. Violenza nobiliare, procedure di giustizia e scienza cavalleresca a Bologna nel XVII secolo* (Bologna: CLUEB, 2003) 164-189.

⁸⁸ M. Di Sivo, ‘Per via giustizia. Sul processo penale a Roma tra XVI e XIX secolo’ in M. Calzolari, M. Di Sivo and E. Grantalano (eds.), *Giustizia e criminalità nello stato pontificio* (Rome: Gangemi Editore, 2001) 30.

⁸⁹ M.A. Savelli, *Pratica universale del dottor Marc Antonio Savelli* (Parma 1717) 227.

⁹⁰ S. Hughes, *Crime, disorder and the Risorgimento. The politics of policing in Bologna* (Cambridge University Press, 2002) 72, 79, 89.

The state and the urban authorities were not the only actors who had a stake in the *precetti*; plaintiffs did too. Like London's recognizances and Scotland's Letters of Lawburrows, the seventeenth- and eighteenth-century Bolognese peace orders were especially popular among women.⁹¹ By the end of the seventeenth century the *precetto* had a distinctly urban character and seemed to have been of particular importance to female plaintiffs and defendants. For women it was relatively more common for a denunciation to result in a *precetto* than for men: 27 per cent of all denunciations brought before the *Torrone* by a female plaintiff resulted in a *precetto* against their adversary, compared to only 12 per cent of denunciations by male plaintiffs. Out of the 196 peace injunctions that were issued for violence in this sample, women were relatively over-represented both as plaintiffs (42 per cent of all plaintiffs) and as defendants (42 per cent of all defendants) compared to their proportionally lower share among violent offenders.⁹² Theoretically there was no legislative distinction between the city and the countryside, but the court proceedings clearly show that *precetti* were mainly issued to city dwellers who had made a denunciation in person.⁹³ As mentioned before, urban women were not only more likely to become involved in criminal activities compared to their rural counterparts, but also had better access to the criminal justice system to make a denunciation. Without having to rely on local officials as go-betweens, plaintiffs were apparently better able to present their grievances in such a way that they could call upon this legal instrument.

Why were women disproportionally represented among plaintiffs and recipients of peace injunctions? On the one hand, the criminal court may have been more inclined to issue a restraining order for female plaintiffs in the context of women's perceived weakness and need for protection. The aforementioned concept of women as the *infirmitas sexus* roughly translated to women being considered weak, in need of assistance and having lower culpability.⁹⁴ Although it has been questioned how this concept worked in practice, the prevailing 'chivalry theory' assumes that early modern as well as modern legal professionals were generally inclined to protect 'weak women' by treating them with leniency in sentencing.⁹⁵ It seems plausible that this motive of protection played a similar role in the disproportional adjudication of the peace injunctions to female plaintiffs and defendants.

⁹¹ Hurl-Eamon, *Gender and petty violence*, 130; Shoemaker, *Prosecution and punishment*, 207; Kilday, *Women and violent crime*, 94.

⁹² In the 684 cases concerning all kinds of violence collected for this sample of denunciations, with 919 defendants, women made up 22.3% of the defendants and 30.2% of the plaintiffs.

⁹³ My sample counts only 2 countryside *precetti* (0.6% of the cases).

⁹⁴ Graziosi, 'Women and criminal law', 166-181.

⁹⁵ Angelozzi and Casanova, *Donne criminali*, 227-254.

Even if the woman was the aggressor against a male plaintiff, the idea that women needed to be protected 'against themselves' may be viewed from this perspective. This protection motive is reinforced by the fact that Italy's ecclesiastical courts ordered comparable peace orders to husbands who mistreated their wives.⁹⁶ According to the canonical treaties, women had the right to ask for a so-called *cauzione di non offendere*, a similar kind of security deposit intended to ensure that she would not be violated again.

On the other hand, women themselves may have also preferred appealing to these means over seeking more informal community mediation methods or violent confrontation. While the court records certainly attest to women's ability and audacity in violently confronting their male and female adversaries, women, unlike men, had little honour to gain from it. Behaving in a physically violent manner was by no means an uncommon mode of behaviour, but it was nonetheless considered 'unladylike' comportment frowned upon by contemporaries.⁹⁷ Historians of the nineteenth century have also argued that while women employed violence, it did not have specific resonances for their identity as women.⁹⁸ Because the practice of asking the authorities for a forced peace had no place within the traditional masculine conventions of honour, men may have more readily opted for other responses, such as peace-making or even the challenge to a fight, as these entailed higher esteem than court-ordered sanctions.⁹⁹

In the process of conflict resolution, coercive instruments like the *precetto* provided by the authorities like the *precetto* may have afforded more bargaining power particularly to those who customarily lacked it. Cohen has expressed a similar view in her examination of prostitutes' recourse to the criminal court in sixteenth-century Rome. While she argued that established households might resolve attacks on honour via other routes, prostitutes found in the criminal tribunal a "public and socially sanctioned forum in which to air their grievances and, within the conventions of honour culture, to spread shame on their attackers."¹⁰⁰ Litigation may have been a means for women to find an alternative response to violence. It not only spared them the inconvenience and the potential further dishonour of other possible strategies but also provided them with augmented leverage. For London, it has been argued that the motive behind assault prosecution was to achieve some kind of

⁹⁶ Cavina, *Nozze di sangue*, 119.

⁹⁷ Ibidem, 616; Brackett, *Criminal justice and crime*, 133-134.

⁹⁸ S. D'Cruze, 'Unguarded passions. Violence, history and the everyday' in S. D'Cruze (ed.), *Everyday violence in Britain, 1850-1950. Gender and class* (London, Longman, 2000) 14.

⁹⁹ Dinges, 'The uses of justice', 163.

¹⁰⁰ Cohen, 'Honor and gender in the streets of early modern Rome', 624.

compensation for the injuries that were inflicted, either financial or in the form of public apologies for attacks on their characters as well as their bodies.¹⁰¹ What the litigious Bolognese women expected of the law was probably not just an effective protection from their assailants, but also encompassed the negotiation of authority and honour, with offenders whom they would not challenge to a fight.

Conclusion: Criminal litigation, gender and agency

Until recently, the involvement of Italian women – whether as plaintiffs or defendants – in criminal justice has received little scholarly attention. Overall, the dominance of the notion of women's inferior legal status derived from Roman law has contributed to the idea that women may have had limited legal agency, especially compared to Northern European societies. However, in line with studies on the ecclesiastical courts, the examination of the Bolognese criminal court in the seventeenth and eighteenth centuries provides further evidence for a more diverse practice in which women, like men, employed justice strategically to settle their conflicts. Not only does this confirm the notion proposed in other studies that women had certain legal agency within the household, it also shows that this extended to areas outside the home. Various works have already shown that women did not have to submit to mistreatment and could (and did) seek redress in ecclesiastical tribunals.¹⁰² The criminal court records shed further light on this relationship between women and their communities. In this formal legal structure of the criminal court, women found a forum through which they could wield and manipulate the power of social control and exert it over their community members.

While the authorities' disinterest in prosecuting petty offences seems non-discriminatory, the experiences of litigation were undeniably gendered. In the Bolognese case, the reliance on male local officials in the countryside to relay cases to criminal court established a very structural impediment to women's formal access to justice. It has been argued that for women more so than for men, direct access to the court was pivotal since the local officials were representative of a culture that was biased against them. Women's use of formal criminal justice was therefore largely an urban preserve. Although the criminal court officially followed the inquisitorial procedure, in practice it also accommodated arbitration and summary justice. This opened up the chances for men and women to use the court to

¹⁰¹ Gray, 'The regulation of violence in the metropolis', 81, 83.

¹⁰² Hacke, *Women, sex and marriage*; Ferraro, *Marriage wars*.

pursue relatively petty grievances within their community. Similar to the English summary courts, women, like men, above all appeared before the court for disputes revolving around various forms of non-lethal violence. Whether urban women were more violent, more subjected to formal control or simply more litigious remains an open question, but what is certain is that the urban context did provide better opportunities for women to seek redress before the criminal court.

Compared to men, women could more often (in relative terms) count on the legal instrument of the 'peace order' for violent offences. This was true for women in the roles of both plaintiff and defendant. It does not seem unlikely that the importance of this conditional punishment for women is related to a protective motive from the judicial apparatus, but to understand its function it is also crucial to emphasise that women consciously used it as part of their negotiations. The ability to negotiate legal jurisdictions depended on various factors such as socio-economic status, as well as the expectations of the law.¹⁰³ The criminal court records provide evidence that women were well aware of the existence and threatening function of the peace injunctions, and expected to have a good chance of obtaining them. The very concrete inconvenience of conditional high fines, supplemented with corporal punishment and forced labour (in the case of male defendants) or public whipping (for women), provided useful leverage in the resolution of everyday conflicts. That Italian women made these requests in the face of a patriarchal legal system suggests that they in practice had more legal agency than their legal position alone would allow us to assume. An unintentional outcome of the patriarchal system was that women's supposed 'marginality' meant not that they were powerless, but that they were in some cases able to turn their status into bargaining power instead.¹⁰⁴

¹⁰³ Kane and Williamson, 'Introduction', 3.

¹⁰⁴ A similar conclusion is drawn from rural weaver women's petitions to counter guild claims, see Dumont, 'Women and guilds', 5-25.

