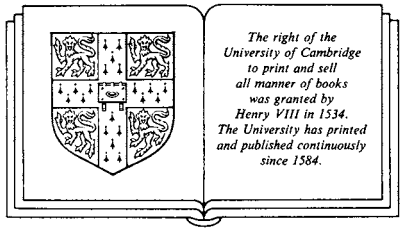
Criminal justice and crime in late Renaissance Florence, 1537–1609

JOHN K. BRACKETT



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Introduction

Among the striking features of contemporary European society, none is more important than the modern centralized state. To understand how centralization came about, one must examine the mechanisms of state power – the bureaucracies, which serve as conduits for the transfer of power from the various strata of society to the executive level.[1] This redirection of power is accomplished through the issuance and more or less effective enforcement of regulations that attempt to order relations between individuals, various collectivities, and the particular bureaucrats who head the institutions of government. Bureaucracies are thus contact points in a process of contest and compromise between competing sets of private and public interests.

Italy made some early contributions to the formation of the state during the Renaissance, when lay bureaucracies first appeared. Florence is particularly noteworthy because of the richness of its archives and the extensive literature devoted to its history. The rise of the sixteenth-century Tuscan state illustrates the transformation of a communal, traditional polity with a republican form of government into an aristocratic absolutist state.[2] Until recently, few non-Italian

[1] In this study, "bureaucracy" means government offices that are staffed by persons trained in the administration of public affairs.

[2] Through this examination of the Eight, its police, and the city prisons, I intend to test the usefulness of the term "absolutist" to characterize the kind of political power exercised by the first three Medici grand dukes during the early modern period. Traditionally, an "absolutist state" has been defined as a polity in which the highest executive authority possesses a monopoly over the use of all important forms of power, especially the means of coercion: the military, the criminal courts and the police. Bureaucracies provide the means for the exercise of administrative and coercive power, but an important dimension, particularly of coercive power, is the role reserved to the personalism of the ruler: He or she may intervene personally in a particular instance indirectly, through the system, or directly, that is, completely outside the bureaucratic apparatus of the state. One may think of modern bureaucracies as being impersonal, in operation according to sets of regulations rather than to the whims of the executive authority. The most important proponent of this bureaucratic model of state development in Italian Renaissance historiography has been Federico Chabod. See the studies collected in *Scritti Sul Rinascimento* (Torino, 1967), and his article, "Usi ed abusi nell'amministrazione dello Stato di Milano a mezzo il '500," in *Potere e società negli stati regionali italiani del '500 e '600,* edited by Elena Fasano Guarini (Bologna, 1978), pp. 99–131. Chabod's concept has most recently been challenged by Osvaldo Raggio in

scholars were interested in granducal Tuscany because they assumed that significant political development in Florence had ceased with the fall of the republic in 1530.[3] Eric Cochrane attempted to stimulate interest in this period with his book, *Florence in the Forgotten Centuries* (1973). Then, in 1986, R. Burr Litchfield's masterful study of bureaucracy in Florence between the mid-sixteenth and late eighteenth centuries, *The Emergence of a Bureaucracy,* demonstrated that Florence did indeed contribute significantly toward the creation of the modern state during this period.

A notable feature of that transitional era was the new interest in crime and criminal justice. Religious figures, princes, and capitalists perceived delinquency as a grave threat to the survival of their society. They therefore sought new ways to discipline those they considered to be uncontrolled persons, that is, those who rejected (or seemed to reject) the discipline of work and the precepts of religion. Although there was as yet no category of persons defined as "criminal," the undisciplined (wandering) poor lived a style of life that many thought would produce a criminal class, dangerous to decent society, if their problems were not addressed.[4] Of these poor people, young women and girls in particular were targeted for rehabilitation through enclosure, work, and prayer, since they were believed to be the most vulnerable to the degrading effects of poverty. Men, who could more easily help themselves, received somewhat less attention.[5]

The idea of criminality as a form of social pathology, capable of correction, was still in the developmental stage. The few who were habitual offenders were eliminated through exile or execution. The vast majority of others were restored to society's good graces through the performance of a secular form of penance: the acceptance of physical pain, the payment of fines, and work performed for the good of the state. Underlying these practices was the view that individuals were important resources of the state to be *managed* for the common good, as defined by the prince. In granducal Tuscany, this was also true for many of those convicted of crimes.

The attitudes toward criminality were complex, and they changed as Florentine society changed. New legislation was passed that made some popularly accepted forms of behavior criminal. The people showed that they did not ac-

Faide e parentele lo stato Genovese visto dalla Fontanabuona (Torino, 1990). Raggio argues convincingly the existence of a large role for personalism from the bottom up. As I hope to demonstrate in this study, the operation of the criminal justice system in late Renaissance Florence was part of a web composed of the personalism of the ruler and that of the mass of people.

[3] The most comprehensive treatment of this transitional period is to be found in R. von Albertini, *Firenze dalla repubblica al principato* (Originally in German in 1955; Italian translation, Torino, 1970).

[4] For a complete statement of this argument see, Flavio Baroncelli and Giovanni Assereto, *Sulla povertà Idee, leggi e projetti nell'Europa moderna* (Genova-Ivrea, 1983), "Introduzione," pp. 3–36.

[5] Daniela Lombaradi, *Povertà maschile povertà femminile l'ospedali dei mendicanti nella Firenze dei Medici* (Bologna, 1988).

cept the mandated changes by continuing to pursue these activities, even though in doing so they broke the law and were punished. In other instances, the community clearly supported the disciplinary efforts of the state. The first of the Medici grand dukes, Cosimo I (1537–1574), initiated centralization policies in the area of criminal justice that fully integrated the Otto di Guardia e Balìa (Eight on Public Safety), Florence's chief criminal court, its police, and the two city prisons into the developing bureaucratic structure of the granducal state. The goal was to make these agencies instruments of princely power and social control. Despite the growing European commitment to a rigid centralized system of corporal punishment, of discipline and deterrence, the Florentine system of criminal justice was quite flexible and clearly an outgrowth of the Tuscan state-building process, which was also a gestational stage of the modern state.

As the centralized state evolved, it took control of the criminal justice system and used it as an instrument of executive power. In sixteenth-century Italy, this control was largely achieved by the use of summary procedure, process *ex abrupto,* which the state's criminal courts had inherited from Roman law, passed down through the inquisitorial tribunals of the church. Summary process was more rational and efficient than medieval criminal justice procedures, since it was based on written testimony and reports that were the fruit of investigation, rather than on oath taking and the observation of superstitious rites. But its main advantage was that the inquisitorial procedure allowed the executive, through its courts, to initiate a criminal investigation and trial whenever it saw fit; there was no need to wait for a complaint to make an arrest. The prestige of Roman law in legal circles allowed the states of Italy to successfully claim this important power.

The political order of the emerging centralizing state at first had to contend with the political strength and social structure of traditional society, which proved to be particularly resilient in the early modern period. To gather the reins of authority, the princes had to dismantle the centers of power that had developed during the feudal era: the church courts and the tribunals of the landed nobility, where subjects received favors as well as punishment. Summary justice, administered through courts controlled by the executive, eroded the power of the religious institutions and the nobility, which ultimately came to depend on the prince for their position and privileges. No longer able to discipline their subjects and clients, these old elites found their well-being tied to the success of the state.

Sixteenth-century Italy was the scene of a great deal of concern about the justice system. The Florentine historian Francesco Guicciardini, friend and colleague of Machiavelli, mockingly compared the Italian legal system to the Turkish system. Himself a lawyer and a bureaucrat, Guicciardini concluded that the Italians were no more just than the infidels. Gaetano Cozzi states that

"his was certainly a harsh enough voice, among the many that in Italy raised themselves to cry out [about] the corruption of judges and the long and costly proceedings, the cavilling malignity of the litigants and their lawyers, the abuse of the weak and the poor for which justice made itself instrumental."[6] Donato Giannotti, another contemporary Florentine political thinker, spoke out against the length and expense of court proceedings, urging reforms modeled on the Venetian system. Although these observations referred specifically to the system of civil justice, they were equally valid for criminal justice.

Reform projects focused on the need to administer justice quickly, efficiently, inexpensively, and fairly (so as to protect the procedural rights of the accused, especially in regard to proper notification). Procedural reforms were designed to put an end to the long and costly periods of pretrial detention. The summary process was also expected to bring trials to a rapid conclusion. To end the seemingly interminable appeals process, which litigants pursued in the hope that "with the passage of time all [their cases] would finish by being thrown onto the junkheap,"[7] the Medici grand dukes began hearing supplications themselves. Another problem for the courts was that jurisdictions overlapped. It was possible to appeal a decision from one court to another, or even to arrange the transfer of a case in midprocess. Florentines partly resolved this problem beginning in the fifteenth century by expanding the jurisdiction of the Eight on Public Safety (founded in 1378) and thereby rendering the medieval criminal courts obsolete. The Executors of the Ordinances of Justice, the courts of the Podestà and of the Capitano del Popolo, were completely abolished by the first decades of the sixteenth century. By 1537 the Otto remained with perhaps the widest jurisdictional competence of any purely criminal court in Italy.

The system of laws was streamlined through a series of redactions designed to do away with repetitions and contradictions. Clarity was gained by writing laws in the vulgar language instead of in the traditional Latin. Since the new legislation was understood by all the people, they were expected to be more accountable for their actions. Consistent with medieval practice, some flexibility was allowed in interpreting these laws in recognition of the variety of circumstances in which individual crimes occurred. In Florence, flexibility was achieved by appending the power of *arbitrio* to the range of possible penalties; thus, judges were able to reduce (as was usually the case) or increase penalties, according to the circumstances of the crime and the quality of the persons involved. They could also invent punishments in cases where none was specified

[6] Gaetano Cozzi, "La giustizia e la politica agli albori dell'età moderna," in *Potere e società*, p. 49. "Era certo una voce assai dura, tra le tante che in Italia si levavano allora a lamentare, con la corruttela dei giudici e le lungaggini e la dispendiosità dei procedimenti, la malignità cavillosa dei litiganti e dei loro avvocati, le sopraffazioni contro i deboli ed i poveri di cui la giustizia si rendeva strumento."

[7] Ibid., p. 51: "col passare del tempo tutto finisse nel dimenticatorio."

by statute. No attempt was made to create a single standard of justice in the modern sense.

Reformers were also concerned with the corruption in the system. In the Tuscan state the corruptibility of judges seems to have been more of a problem in the jurisdictions outside of Florence than in the city itself. Often these poorly trained local men were the minions of native authority figures. Some judgeships were seen, along with many other offices in the early modern state, as a source of profit to the holder. Litigants therefore offered gifts to judges in the hope of influencing their decisions. These officials may also have been persuaded by members of *consorterie* (associations of families and friends united to promote the interests of the group) to which they also belonged. Other court officers often caved in to the same temptations. Judges and their *famiglia* sometimes abused their authority, using it to harass or to extort money from unprotected individuals. The problem faced by the princes was how to redirect loyalties and interests to the support of the state.

The proposed new system was touted as serving the best interests of all. Summary process served the innocent, who could quickly demonstrate their innocence and go free. The guilty, however, would be dealt a swift and, it was hoped, harsh penalty that would deter potential violators from committing delicts. Incarceration in prisons, service in galleys, and death and amputation were to be the elements of a new system of punishment. Because the fines of the old system weighed more heavily on the poor, the substitution of corporal for monetary penalties was trumpeted as promoting the equalization of punishment. To punish equally, without regard to social condition, was an ambitious goal, but the premise for its success was the growth of state sovereignty.

The state fell short of achieving this sovereignty in the period covered by this study, as reflected in the flexible application of penalties: It was not simply that the well-connected aristocrat might escape with little or no punishment, but that those closest to the grand dukes might also be punished heavily, since their behavior, too, was under the surveillance of the Medici and their police agents. The system was often forced to compromise with the poor for reasons that had little to do with the stated ideals of equality. In the first place, the grand dukes were unwilling to meet the high costs of rigid enforcement. But the poor, because of their poverty and the ease of escape, could not always be forced to appear for trial or to fulfill their sentences in any case. Compromise won from them acknowledgment of the state's power to administer justice.

To evaluate the success of the reforms discussed above, I have adopted a rather simple methodological approach. Through extensive research in the archives of the Otto di Guardia, the chief criminal court of the Tuscan state, and the study of cases along with the use of legislation, I have reconstructed the actual operation of the court, its police, and the prisons. This detailed investi-

gation suggests that the fiscal constraints under which the tribunal (and, indeed, the entire justice system) operated were the key determinant of its effectiveness. This finding sheds new light on the degree of absolutism achieved in granducal Tuscany.

This study of the Otto di Guardia focuses first on its structure and function between 1537 and 1609, a period of profound social and political change that spanned the combined reigns of the first three Medici grand dukes – Cosimo I, Francesco I, and Ferdinando I. Second, it describes how the police and prisons were used to control crime and violators. We follow the stages of the trial procedure from discovery and arrest, to the enactment of the penalties. Third, it analyzes the causes of criminality, which in many instances – especially crimes of violence – can be traced to the confluence of long- and short-term features of this society. The conclusion examines the degree to which the Florentine criminal justice system conformed with the standards set by those who called for judicial reform in the sixteenth century – and by the grand dukes themselves.

In accordance with this plan, Chapter 1 discusses the criminal and administrative duties of the major officers and minor functionaries of the Florentine court–police force. Chapter 2 examines the Otto's expenditures, especially the successful efforts to keep the costs of justice within certain limits deemed reasonable by the grand dukes (if not by the court), in the pious hope that the system would be not only self-financing but also profitable. Attention is given to the problem of policing the city and the subject territories; here it is also illuminating to examine the Florentine prisons, the Bargello and the Stinche, since incarceration was an essential element of the system of control, during the interrogation of many suspects and some witnesses, and as a form of punishment. Chapter 4 explains the trial procedure and the process from the discovery of the delict to acquittal or punishment of the delinquent. The analysis of the structure and function of the Eight covers the shifting role of the court in the centralization of criminal justice within the Tuscan state.

Criminality is a complex and variable problem in any society. Although individuals are responsible for their violations of the law, it is also true that they are caught in the grip of contemporary social, economic, and political conditions, which they may have had little part in creating but which serve to motivate their actions. Admittedly, it is commonplace to say that individuals are the product of their cultures and that no two societies are exactly alike, but we need to remind ourselves of these facts in a discussion of crime. The motivation for violations changes over time as a society changes, even though the kinds of delicts may closely resemble each other. Of course, new crimes also appear. Therefore, the last section of the study begins with a discussion of some of the important aspects of economic, political, and societal change in Tuscan society in the sixteenth and early seventeenth centuries. Next, we examine the defini-

tions of crime – that is, the laws – and the changes that occurred in the treatment of violations, which included mediation and punishment, in a context of radical social change. Who were the delinquents? Were there identifiable social groups responsible for the commission of specific crimes? The information harvested from the abundance of the Eight's records allows us to construct a topography of crime for the city of Florence. Some suggestions are also offered to explain the apparent difference in the structure of violent crime within Florence and that in the vastly different society outside its rugged walls.