

CRIMINAL JUSTICE PERSPECTIVE ON SOCIAL GROUPS: THE EIGHTEENTH-CENTURY DUBROVNIK CASE

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ABSTRACT: Various aspects of the criminal justice system of the eighteenth-century Republic of Dubrovnik (criminality, out-of-court settlements, penalties and other repressive measures, etc.) are analyzed in order to reach some conclusions about social groups, their shape, and cohesion. The village and the household in rural areas, as well as the Jewish community in the city, were groups with especially strong and multifaceted social ties. For this reason, they were not only a natural environment for violent crimes to rise, but also a suitable target of the repressive policy.

Research which considers the history of crime and criminal justice to be an important part of social history has progressed considerably over the last twenty years by introducing new questions and by focusing on unexplored topics. Analyses of court records and other legal sources have contributed considerably to our understanding of such social phenomena as social ten-

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sion, the various means of maintaining order, and their efficacy.¹ In my opinion, there would be room for yet another perspective on criminal justice data in order to reach some conclusions about the shape of social groups and their internal cohesion.

The aim of this paper is to propose some inferences about the social structure of the eighteenth-century Republic of Dubrovnik, drawing from the criminal justice system. Since complementary studies on the history of Dubrovnik in the period of the Ancien Régime are not comprehensive, some points of this paper have to be understood as provisional and partial deductions about Dubrovnik's society. Also, some phenomena present in the eighteenth-century records may be looked upon as relics of an earlier period. Nevertheless, I hope to show that the "criminal justice perspective" on social groups could be profitable and stimulative for further research.

The data used for this paper derive from different types of juridical sources. The first one consists of legal provisions. The most important laws of the Republic were collected in four consecutive law books: the Statute of 1272, the *Liber omnium reformationum* (14th c.), the *Liber viridis* (14th-15th c.), and the *Liber croceus* (15th c.-1808). Since the ideology of the Dubrovnik state was very firmly grounded on the idea of continuity and tradition, these legal collections were never derogated and all formal changes were strictly restrained. The Republic of Dubrovnik itself always exhibited them as the foundations of legal practice. Certainly, the transformations that Dubrovnik society experienced over the centuries demanded changes in the legal sphere. But, most of them were introduced into the legal system *sub rosa*. Therefore, I have taken into consideration only those ancient laws whose application in the eighteenth century can be confirmed. Actually, criminal justice was strongly shaped by the consistent practice of the court (*stylus curiae*). In order to deduce its rules and analyze some other legal and social phenomena, I have examined all the eighteenth-century Criminal Court sentences (2,307

¹ For an excellent review essay, see Xavier Rousseaux's, "Crime, justice and society in medieval and modern times: 30 years of crime and criminal justice history". *Crime, History & Societies* 1 (1997): pp. 87-118. See also the special issue of the *International Association for the History of Crime and Criminal Justice Bulletin* 14 (1991).

cases) and a sample from the Claims Register (2,857 cases), in addition to some complementary judicial sources.²

Working on such a diverse corpus of archival material, I have tried to isolate two elements: the social groups that the criminal justice system referred to, and the type of relationship that existed between these groups and the authorities (in terms of both official policy and reality). Furthermore, I tried to reach some conclusions about the cohesion and internal structure of the groups in question.

Social groups referred to in the criminal justice system

The criminal justice system of the Ancien Régime Republic of Dubrovnik approached every person as an individual with a definite social position. Both the culprit and the victim were automatically classified as individuals of certain social rank, gender, age, etc. These characteristics had important consequences upon the jurisdiction, the procedure, the penalties applied, and many other more subtle elements of the criminal justice policy. For instance, patricians were not usually submitted to ordinary court proceedings, rather an *ad hoc* tribunal was created, and only under very exceptional circumstances could they be imprisoned or tortured, females could not be condemned to certain types of penalties, and the testimony of a minor was not taken as complete proof. However, in this paper I will not refer to such examples of how one's social condition affected the administration of justice. The relationship between the individual members of these social strata or "groups" was almost non-existent or very vague, as there was very little or no cohesion among them. Hence, the repressive policy was never directed against any other member of such a random cluster, but only against the perpetrator himself. But if the

² The Criminal Court had jurisdiction over all types of crimes for the entire territory of the Republic of Dubrovnik, with three exceptions. In the first place, clerics were submitted to the jurisdiction of the ecclesiastical courts. Furthermore, patricians elected as local counts tried petty crimes in their territorial unit. Finally, in politically sensitive cases, *ad hoc* tribunals were established. The eighteenth-century criminal sentences are kept in the series *Criminalia* (hereafter cited as *C*), ser. 16, vols. 6-8. Claims and the proceedings are recorded in *Lamenta Criminalia* (hereafter cited as *Lam. Crim.*), ser. 50.3, vols. 42-213. All the documents are kept in the State Archives of Dubrovnik.

criminal justice system of Dubrovnik did address the social group to which a criminal or a victim belonged, in principle it had to be a community provided with structure.

The smallest social group that the criminal justice system took into consideration was the household.³ The fact that the penal policy focused more on the household than on the family is not surprising, since the household was a rather strong unit of people who shared many elements of everyday life, housekeeping, and farming. The household as a group of co-resident persons was involved in the criminal justice system in many ways. Some penalties or repressive measures directly affected the entire household. In some cases, we see that other members of the family/household felt very embarrassed by the disgraceful penalty of their relative/co-resident. The attitude of the domestic group towards their fellow-member who committed the crime depended not only upon the acts of the authorities, but also upon whether the committed crime was perceived by the community as abominable, or it fit into the community's internal code of honor.⁴

As I already stated above, the criminal justice system rarely referred to the family as a group of persons linked by the relation of kinship. Certainly, a family unit and a household could (and sometimes did) coincide, but this is not the point.

Besides the household and the rural community, another social group stands out in the criminal justice system. Namely, when damage was done to the crops, the owners of livestock were called to court. This kind of collective

³ In the eighteenth-century Republic of Dubrovnik different types of households co-existed, with a high presence of extended and multiple households in rural areas. See Nenad Vekarić, "The influence of demographic trends on number of undivided family households in southern Croatia". *The History of the Family* 1 (1996) 4: pp. 461-476; Niko Kapetanić and Nenad Vekarić, *Stanovništvo Konavala*, 1. Dubrovnik: Zavod za povijesne znanosti HAZU, 1998: pp. 332-337. For a typology of domestic groups in general, see Peter Laslett, "Introduction: The history of the family". In: *Household and family in past time*, ed. P. Laslett and R. Wall. Cambridge: Cambridge University Press, 1972: p. 31. Some sets of tendencies of the "Mediterranean domestic group organization" will correspond well with Dubrovnik's social structure, but not all of them (comp. Peter Laslett, "Family and household as work group and kin group: areas of traditional Europe compared". In: *Family forms in historic Europe*, ed. R. Wall, J. Robin and P. Laslett. Cambridge [etc.]: Cambridge University Press, 1983: pp. 526-527).

⁴ These arguments are elaborated below.

responsibility was based not only on the common-sense supposition of how the damage could have occurred, but also on the idea that it was the common responsibility to try to prevent any possible act of damage.

The criminal justice system referred to the rural communities frequently and in many ways. The territory of the Republic of Dubrovnik in the eighteenth century included a 180-kilometer-long strip of coastal land (which in only two sections extended farther than 10 km inland) and several islands. Some 80 percent of its approximately 30,000 inhabitants lived in the countryside.⁵ The city of Dubrovnik itself was the only larger urban center (with 6,564 inhabitants in 1807).⁶ The villages varied in size: while some had no more than a few dozen inhabitants, others were more than 300 strong. The larger villages were often divided into hamlets.⁷

Very often, the village community corresponded territorially with three other social entities: confraternity, parish, and the so-called *kaznačina*.⁸ In the city, confraternities were assembled according to different criteria (profession, social condition, residence, family tradition, etc.). In the countryside, however, a confraternity was territorially shaped and usually consisted of the inhabitants of one village (or of one hamlet of a larger village), with the parish church as its center. *Kaznačina* was a territorial unit upon which the criminal justice system relied. It could include more than one village, but this was

⁵ The complete census of the population of 1807 reports the Republic of Dubrovnik as having 31,245 inhabitants (see Vladimir Stipetić, "Brojčani pokazatelji razvoja stanovništva na teritoriju negdašnje Dubrovačke Republike u minula tri stoljeća (1673-1981)." *Anali Zavoda za povijesne znanosti JAZU u Dubrovniku* 27 (1989): pp. 96-97). Since this census was effectuated before the great migratory waves of the nineteenth century started, it can be used as an indication of the eighteenth-century level.

⁶ *Ibidem*.

⁷ The data per village are reported in the (incomplete) 1673/4 census. See Zdravko Šundrica, "Popis stanovništva Dubrovačke Republike iz 1673/74". *Arhivski vjesnik* 2 (1959): pp. 235-295.

⁸ Because village, parish, confraternity, and *kaznačina* usually coincided, the use of these terms in the sources is not strictly differentiated. Hereafter in this paper I will consistently use the terms "village" and "rural community". For more details about the shape of the confraternities, parishes, villages and *kaznačine* in the region of Konavle, see Niko Kapetanić and Nenad Vekarić, *Stanovništvo Konavala*, 2. Dubrovnik: Zavod za povijesne znanosti HAZU, 1999: pp. 20, 24-40. On the overlapping of the forms of social organization in the Castilian hamlet Valdemora, see Susan Freeman, *Neighbors: The Social Contract in a Castilian Hamlet*. Chicago [etc.]: University of Chicago Press, 1970: p. 41.

rarely the case. The inhabitants of each village would elect one man from among themselves to be its *kaznac*—i.e., the person who was to represent them before the authorities in criminal matters. The *kaznac* had to report serious crimes (which were to be prosecuted *ex officio*) to the central authorities; he represented the village in trials in which collective responsibility was invoked; he had to organize the capture of criminals or bandits; and occasionally, he had to act as the representative of the *kaznačina* at public executions.⁹ The *kaznac* was entrusted with the “vertical” communication between the village and the central authorities. The fact that he was a member of the same rural community had some obvious advantages: he knew the people and the situation better than any outsider; he could get needed information more easily; his acts in the name of the authorities were probably accepted with less reluctance than would have been the case with any other official; and he performed his duties free of charge.¹⁰

Villages were assembled into broader territorial units. In the eighteenth century, the countryside of the Republic of Dubrovnik was divided into eleven districts (*knežije*).¹¹ In each of these, a local count (usually a young patrician elected by the Great Council) had the jurisdiction to try minor civil and criminal cases, and it was his task to execute the decrees of the central authorities. *Knežije* were formed according to administrative needs and were shaped by historical circumstances. It is quite logical that these administrative boundaries were unimportant in terms of social life. The territory of the district was usually too large to promote social cohesion of any kind. In fact, the size of the districts often proved to be a hindrance to the efficiency of the state’s institutions.¹²

⁹ See examples of his functions in *Lam. Crim.*, vol. 52, f. 208; vol. 59, f. 90v; vol. 134, f. 207v; vol. 194, f. 129v; *Diplomata et Acta saec. XVIII*, ser. 76, vol. 3399, no. 15.

¹⁰ For more details see Nella Lonza, *Pod plaštem pravde: Kaznenopravni sustav Dubrovačke Republike u XVIII. stoljeću*. Dubrovnik: Zavod za povijesne znanosti HAZU, 1997: pp. 99-102.

¹¹ For a short survey of territorial units and the competencies of the local counts, see *ibid.*: pp. 58-59 and 124.

¹² N. Vekarić has shown that the changing of the seat of the local count in one of Dubrovnik’s territorial units had clear consequences on criminal justice. Because the new location required the inhabitants of several villages to travel farther, the number of their accusations for petty crimes was diminished. When the count’s seat was returned to its previous location, the number of such cases rose again (see Nenad Vekarić, “Sud Janjinske kapetanije”. *Anali Zavoda za povijesne znanosti JAZU u Dubrovniku* 27 (1989): p. 139). This is a clear example of how practical reasoning affected the functioning of state institutions.

Repressive measures directed towards the social group

In the criminal justice system of eighteenth-century Dubrovnik, certain penalties, as well as other types of repressive measures, were explicitly directed not at the individual, but at his social group. In other cases, the community of the convicted was not the immediate target of the punitive policy, yet it was indirectly affected by the social consequences of the penalty (dishonor).

Banishment was most often directed against the convicted himself. But at times, it was extended to his family, as was the case after the suppression of the insurrection in the region of Konavle in 1800, when the rebels' families were banished to remote districts of the Republic.¹³ This displacement was also thought to obstruct any attempt to instigate a new rebellion.

In cases of treason and some other major crimes against the state, the authorities not only severely punished the offender and banished his family, but they also devastated their place of dwelling:¹⁴ all the buildings had to be demolished, and the soil sterilized with salt. In this way, both literally and symbolically, the dwelling was never allowed to be restored to life. This penalty shows that the household and dwelling were conceived as a form of extended being. The destruction of the dwellings was one of the most eloquent expressions of the triumph of the state's authority. Furthermore, it was likely to have a preventive effect by inciting strong social control between the co-residents.

In other situations, collective punishment afflicted not the household, but the family. For example, when a serious crime was committed by a patrician, all of his kin could be excluded from the nobility. This sanction was applied very rarely, and the last case occurred in 1696, when a member of the Bosdari

¹³ See Stjepan Antoljak, "Konavoska buna u središtu jednog dijela evropske diplomacije". *Rad JAZU* 286 (1952): pp. 135-136. Other examples: *Acta Consilii Rogatorum* (hereafter cited as *Acta Cons. Rog.*), ser. 3, vol. 140, ff. 157v-158; vol. 145, f. 200rv; vol. 203, ff. 151v-152; vol. 205, f. 23.

¹⁴ See *Acta Cons. Rog.*, vol. 140, ff. 157v-158; vol. 145, 200rv; *Acta Consilii Maioris* (hereafter cited as *Acta Cons. Maior.*), ser. 8, vol. 54, ff. 258v-259; vol. 55, f. 28rv; Kapetanić-Vekarić, *Stanovništvo Konavala* 1: p. 72, n. 122.

¹⁵ *Acta Cons. Maior.*, vol. 52, ff. 168v-169; vol. 54, f. 45rv.

family wounded another patrician.¹⁵ In 1707 and 1718 two branches of this family succeeded in obtaining pardon and were re-established among the nobility. However, in order to understand the application of this penalty, it has to be mentioned that the Bosdaris had not received noble rank until 1676, and because of that, in public life they were always treated as second-rate patricians. Their social position could explain why, in this particular case, the authorities were less indulgent and penalized the whole family.

In the above-mentioned cases the social groups were directly punished. Still, in many other situations the penalty indirectly afflicted the family/household or the broader social group. Because the life of an individual depended upon his family/household in many ways, the consequences of his penalty also spread to his social environment. For instance, all fines had to be collected and paid in a short period of time,¹⁶ the family/household was supposed to provide food for the prisoner,¹⁷ etc.

Sentence and punishment also affected the family's honor, leaving marks on its good name. How harsh the social consequences in a particular case proved to be, depended on how the crime was evaluated by the internal code of the social environment. With some "crimes", for example, the village community was indulgent, estimating that the offender had good reasons for his behavior, in which case his family/household would not be the victim of social repulsion. But in some cases, especially when the purpose of the penalty was to degrade the condemned person, the social effects of punishment continued throughout the life of the convict's kin. For example, in a petition to the authorities, a convicted woman accepted a ten-year banishment, but asked for a pardon from pillory, arguing that otherwise her parents would be dishonored forever.¹⁸ In another case, when a girl was sentenced to prison, to be paraded through the city sitting backwards on a donkey, and to exposure at the pillory, her family asked for a pardon. They persuaded the authori-

¹⁶ In the criminal records there are no indications of how this money was collected. However, each household usually had a common budget. Furthermore, the circulation of money within the rural communities in the Republic of Dubrovnik was restricted, since many households could barely produce any goods for a market. Thus, the payment of a fine probably required an extra effort by the entire household.

¹⁷ See Lonza, *Pod plaštem pravde*: p. 175.

¹⁸ *Acta Cons. Maior.*, vol. 60, interleaf 16, ad f. 170.

ties to convert the shameful procession and the pillory into an extra year of prison. Their argument was that the original sentence would have heavily affected the honor of the entire family and therefore, severely jeopardized the future of the convict's two unmarried sisters, making their chances of finding husbands very slim.¹⁹

Passing now to other compulsory measures directed at the social group, the *porob* should also be mentioned. In the Republic of Dubrovnik this was a repressive measure by which the authorities put the offender himself, his household, or his village under heavy pressure in order to make them cooperate with the court.²⁰ The *porob* consisted of an expedition of regular soldiers (mercenaries) or, more often, from a special military unit of the inhabitants of the Republic borderline (*upisnici*).²¹ These units did not perform any specific action, but had to be accommodated at the expense of the household or village. This measure was applied in two situations. Sometimes, the Criminal Court would insert a clause in the sentence, stating that if the convict disregarded the punishment, soldiers were to be sent to stay in his house until execution of the punishment began.²² It is obvious that the whole household had to share the economic weight and the social uneasiness provoked by the presence of the soldiers, which inclined them to impel the convict to obey the court. The other scenario would occur when a criminal escaped. The authorities then proclaimed that if he were to return to the territory of the Republic, the village where he was seen would have to notify them of his presence.²³ Most often, such proclamations were directed at the criminal's own rural community, because it was expected that he would go back to his own village. However, in a number of very important cases, the proclamation was made throughout the district, or even the entire territory of the state. In a proc-

¹⁹ *Acta Cons. Maior.*, vol. 52, ff. 203v-204v.

²⁰ For more details on the *porob*, see Lonza, *Pod plaštem pravde*: pp. 132-134.

²¹ *Upisnici* lived from farming. They were exempt from some taxes, but had to perform certain military duties. On the military organization of the Republic of Dubrovnik, see Ilija Mitić, "Organizacija kopnene i pomorske obrane dubrovačke države-republike od stjecanja nezavisnosti 1358. do dolaska Francuza 1806. godine". *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 24-25 (1987): pp. 103-113.

²² For example, *C*, vol. 6, ff. 161v, 190, 191v.

²³ For example, *C*, vol. 7, ff. 14, 199v, 166, 239.

lamation of this kind it was stated that, if a village failed to notify the presence of the criminal, it would have to be punished by *porob*, which varied from a fortnight to a month. Obviously, the second form of *porob* was strictly repressive, while the first one had a more complex social significance. However, these mechanisms of pressure on the social group were not always very effective; in fact, there were numerous examples of close contact between escaped criminals and their household or village.²⁴ As for the subject of this paper, it is not only important that the authorities applied compulsory measures to the criminal's social group, but also that in many cases those groups were rather resistant to such pressures. In my opinion, both of these phenomena, which are documented in the criminal records, can be useful for conclusions about social reality.

Finally, collective responsibility was also invoked when both criminal and civil liability intertwined.²⁵ That is, in certain cases of theft and field damage when the culprit was either unknown or had escaped, the court pronounced the sentence against the village where the deed took place.²⁶ Their liability was objective, and it consisted in the joint payment of the indemnity, the fine, and the legal expenses. In the course of the trial, the sued community was given a certain time period in which it could notify the court of the identity of the actual thief or mischief-doer. If its statement was officially verified, the village would succeed in freeing itself of collective responsibility.²⁷ If only

²⁴ Interesting material has been analyzed by Vesna Miović-Perić in: *Na razmeđu: Osmansko-dubrovačka granica (1667-1806)*. Dubrovnik: Zavod za povijesne znanosti HAZU, 1997: especially pp. 137-242.

²⁵ See John Gilissen, "Étude historique comparative des communautés rurales: Essai de synthèse générale", *Recueils de la Société Jean Bodin pour l'histoire comparative des institutions*, vol. 44. Paris, 1987: p. 808. For the two types of collective responsibility in the rural areas of the Republic of Venice see Enrico Bassaglia, "Giustizia criminale e organizzazione dell'autorità centrale: la Repubblica di Venezia e la questione delle taglie in denaro (secoli XVI-XVII)". In: *Stato, società e giustizia nella Repubblica Veneta (sec. XV-XVIII)*, 2, ed. G. Cozzi. Roma: Jouvence, 1985: p. 196, n. 6.

²⁶ A sort of collective responsibility, but in cases of homicide, also existed in the Ottoman Empire. If the murderer was unknown, the blood money would have to be paid by the inhabitants of the village/city-quarter where the corpse had been found. See Uriel Heyd, *Studies in old Ottoman criminal law*. Oxford: Clarendon Press, 1973: pp. 310-311.

²⁷ For example: *C*, vol. 6, f. 242 and *Lam. Crim.*, vol. 113, f. 17; *C*, vol. 7, f. 199v and *Lam. Crim.*, vol. 148, f. 31; *C*, vol. 7, f. 260v and *Lam. Crim.*, vol. 159, f. 78v.

after the sentence it became possible to convey the culprit to justice, the village which paid the fine could sue him for a reimbursement.²⁸ This institution of collective responsibility was meant to attain several objectives of the criminal justice policy. First, the condemnation of the community and the payment of the indemnity provisionally closed the case. Secondly, the members of the community were motivated to be on the alert for the presence of outsiders, for unusual occurrences, and for suspicious movements on their territory, in order to avoid the financial burden of collective liability. Finally, the criminal justice system shifted the problem of establishing the facts to the village. Otherwise, if the culprit were an insider, the central state institutions would most likely have to face the problem of covering up, i.e. the reluctance of the villagers to cooperate in solving the case. By transferring a segment of the jurisdiction to the rural community, the state authorities tried to increase the general efficiency of the justice system while saving expenses at the same time. Collective responsibility was directed at village communities and, with one exception, which will be analyzed below, did not apply to the inhabitants of the city of Dubrovnik. One reason for this might lie in the much too dynamic circulation of persons in the town for them to be expected to notice any suspicious acts. But more importantly, the city itself did not have particular institutions which could assume a delegated jurisdiction.

Punishment as a message to the social group

Punishment in traditional societies was often public and ritual, because it had to launch an easily intelligible message. It had to demonstrate the triumph of the state's authority and its power to re-establish order, and was supposed to give an abominable example, aimed at intimidating the citizens and penetrating into the collective memory.²⁹

Generally, the authorities tended to direct the message by means of punishment to a large audience. This was the main reason why penalties were usually executed in the town of Dubrovnik. Moreover, when punishing the

²⁸ For instance, *Lam. Crim.*, vol. 55, f. 1rv.

²⁹ This topic is discussed in numerous works on criminal justice history. On penal rituals see especially Esther Cohen, "Symbols of culpability and the universal language of justice: the ritual of public executions in late medieval Europe". *History of European Ideas* 11 (1989): pp. 407- 416.

most terrible crimes, the authorities deliberately attracted, intensified, and prolonged the attention of the public by quartering the corpse of the criminal and exposing its parts by the roadsides, or at the most visible points of the landscape.³⁰ However, in some cases the execution of a penalty was carried out closer to the criminal's own locality, because the authorities did not want the people of his community to miss the punitive epilogue of the criminal behavior it witnessed.³¹

Punishments for petty crimes were usually executed in the village of the criminal. Two typical means of punishment were the *morica*—in which the criminal was exposed to the public with a heavy stone hanging around his neck³²—and a public apology made by the offender.³³ These acts were supposed to take place in front of the parish church, during or after the Sunday mass. The *morica* and the public apology combined the elements of punishment and penance, and were usually applied in cases of slander, personal offence, or the culprit having shown disrespect for his parents. Since the category of honor acquires meaning only within the social context, it had to be symbolically re-established in the same local environment where the reputation of the offended came under question.

The autonomous jurisdiction of the village

It is difficult to shed light on the autonomous jurisdiction of village communities, since all communication was oral, and very few related archival sources exist.³⁴

³⁰ For Dubrovnik practice in the eighteenth century, see Lonza, *Pod plaštem pravde*: pp. 145-148. For comparative data, see Michel Foucault, *Surveiller et punir: Naissance de la prison*. Paris: Éditions Gallimard, 1975: p. 48; Pieter Spierenburg, *Spectacle of suffering: Executions and the Evolution of Repression from a Preindustrial Metropolis to the European Experience*. Cambridge: Cambridge University Press, 1984: p. 57; Ruth Pike, "Penal Practices in Early Modern Spain". *Criminal Justice History* 5 (1984): p. 47; Guido Panico, *Il carnefice e la piazza: Crudeltà di Stato e violenza popolare a Napoli in età moderna*. Napoli, 1985: p. 43.

³¹ For example, in 1753 Ivan Ušić and Mato Koprivica were hanged in their home district (*Detta*, ser. 6, vol. 62, tergo, f. 1rv).

³² For instance, *C*, vol. 8, ff. 60 and 117.

³³ For example, *C*, vol. 6, f. 213; vol. 7, ff. 74, 234; vol. 8, ff. 26v, 82v, 212v. The public apology in Dubrovnik was similar to "amende honorable" in France. See Esther Cohen, *Peaceable domain, certain justice*. Hilversum: Verloren, 1996.

³⁴ Cf. Gilissen, "Étude historique": pp. 809-811.

Some meager indications can be found in the regulation acts of the confraternities (*matriculae*). According to these documents, the village was entitled to deliver a sentence for petty verbal and physical injuries, such as a fine or some other minor penalty.³⁵

In fact, the punitive area over which the jurisdiction of the village spread or occasionally entered was much broader than the *matriculae* suggest. However, such cases were made known only via their reference in the acts of state institutions, either when the Criminal Court accepted the results of an autonomous trial,³⁶ or when it reacted to abuse.³⁷ From these examples it can be discerned that villages seized the jurisdiction in serious matters as well. The “procedure” which they applied was shaped by local custom, but some effects of acculturation can also be recognized. For example, it was common that the village insisted on the confession of the suspect, even by means of torture, which seems to be a procedure borrowed from the Criminal Court.³⁸

Further, on some occasions the villagers claimed the right to decide on the fate of their fellow-villager. Their attitude towards the perpetrated crime, which was based on an internal code of values, was not necessarily the same as the one proclaimed by the state authorities. Consequently, the efficiency of the state justice system was challenged in cases when the village gave precedence to their own moral values and resorted to self-will. This was the case when they expelled the alleged criminal from the village, or threatened to lynch him.³⁹ In some other cases they were rather indulgent, allowing the il-

³⁵ See, for example, the regulations of the confraternities of Our Lady of Šunj on the island of Lopud, St. George in Gruž, Holy Ascension in Mokošica, and St. Stephen in Luka Šipanska (*Bratovštine i obrtne korporacije u republici dubrovačkoj od XIII do konca XVIII vijeka*, ed. K. Vojnović. Monumenta historico-iuridica Slavorum Meridionalium, 7. Zagreb: JAZU, 1899-1900: pp. XV-XVI, XIX, 167; Ante Marinović, “Lopudska Universitas”. *Anali Historijskog instituta u Dubrovniku* 3 (1954): p. 217.

³⁶ For example, *Lam. Crim.*, vol. 214, ff. 85-86v.

³⁷ E.g., *Lam. Crim.*, vol. 97, ff. 63 and 157.

³⁸ See *Lam. Crim.*, vol. 67, f. 103; vol. 73, f. 47; vol. 96, f. 54.

³⁹ For instance *Lam. Crim.*, vol. 97, ff. 25 and 183. For examples of earlier French practice, see Alfred Soman, “La Justice criminelle aux XVIIe-XVIII siècles: le Parlement de Paris et les sièges subalternes”. In: *idem, Sorcellerie et Justice Criminelle (16e-18e siècles)*. Aldershot-Brookfield: Variorum, 1992: VII, p. 27.

legal presence of the convicted, and withstanding the energetic requests of the authorities to denounce or capture him.⁴⁰

Crime within a social group

Another means of understanding interpersonal relations and the shape of social groups is criminality itself. In 480 cases from a sample of 1,200 cases tried by the Criminal Court,⁴¹ it was possible to ascertain the villages from which the offender and the victim were.⁴² The analysis showed that in 304 cases (63 percent) they both lived in the very same village, and in 125 cases (26 percent) the offender came from a neighboring village, or one which gravitated toward the same local center.⁴³ In the remaining 51 cases (11 percent), the offender was an inhabitant of a more distant village, a townsman, or a foreigner.

Naturally, since the etiology of different types of crime was not the same, the relationship between the criminal and the victim varied too. In this respect, the difference between theft and homicide is more than evident. If we isolate the thefts in the countryside, we shall see that only in 24 cases (19 percent) were the thief and his victim from the same village. Often was the case that the members of a gang of thieves came from different villages. One of the reasons why theft was “exogenous”, in distinction from violent crimes, was the fact that it was not abrupt, but usually carefully planned in order to

⁴⁰ See, for example, Vesna Miović-Perić, “Jedna istraga o vođama konavoske bune 1799.”. *Dubrovački horizonti* 25 (1995) 35: pp. 75-77; Compare Soman, *Justice*: VII, p. 36.

⁴¹ The research deals only with the portion of the criminality which was tried and recorded. Further, it should be kept in mind that the Criminal Court of the Republic of Dubrovnik was not competent for petty crimes outside of the town and the immediately surrounding area. If this were the case, we could expect the results of the analysis to be even more convincing.

⁴² In 334 cases both persons lived in the city of Dubrovnik, but I left this figure out of the analysis because in this area the Criminal Court also tried petty crimes. Also, I left out all the doubtful cases, either because there existed two villages of the same name, or the information on the residence of the victim was missing. Moreover, in some cases the name of the hamlet was indicated, but I was not able to locate it.

⁴³ In the fourteenth- and early fifteenth-century England 81 percent of the homicides were committed within an area of ten miles of the criminal's domicile. See Barbara A. Hanawalt, “Violent Death in Fourteenth- and Early Fifteenth-Century England”. *Comparative Studies in Society and History* 18 (1976): p. 309. In the eighteenth-century Würtemberg two thirds of the homicides occurred within the village. See Karl Wegert, *Popular Culture, Crime and Social Control in 18th-Century Würtemberg*. Stuttgart: Franz Steiner Verlag, 1994: p. 128.

avoid risk and increase gain. In addition, if the theft took place in his residential village, the criminal would have to share the obligation by paying the indemnity and the fine. Conversely, 69 percent of the cases of homicide were perpetrated by inhabitants of the same settlement, and another 20 percent by the inhabitants of nearby villages. Bearing in mind the fact that almost all murders were committed within the area where both the culprit and the victim lived, we can say that homicide was a typically “endogenous” crime.

The high rate of (violent) criminal acts among inhabitants of the same village, or neighboring ones, is to be expected. The majority of any village population only occasionally left the place. The rural communities remote from the city were predominantly autarkic in economical and social relations. Mobility was an exception (especially for women) and was most often connected with feast-days. For this reason, it was natural that the area within which the criminal and the victim met was as narrow as the environment in which other manifestations of their social life took place.⁴⁴ It is interesting to point out, for example, that it corresponded to the zone within which marriages were most often concluded.⁴⁵ Thus, violent crimes, as a form of “negative communication” can paradoxically serve as an indicator of social interaction.

A special subset of the category of crimes within the social group is that of crime between the members of a household or a family. Certainly, many cases of violence between co-residents never came to the court. For this reason it is more appropriate to concentrate only on homicide, which was difficult to conceal. Most striking is the fact that almost half of the eighteenth-century cases of homicide among kin occurred between adult brothers (19 out of 42).⁴⁶ In the court records, we can often trace previous long-lasting

⁴⁴ See Yves-Marie Bercé, “Aspects de la criminalité au XVIIe siècle”. *Revue historique* 92 (1968) 239: p. 41.

⁴⁵ For the Pelješac peninsula on Ragusan territory see Nenad Vekarić, “Primjena tablica ascendenata u historijskoj demografiji”. *Anali Zavoda za povijesne znanosti HAZU* 26 (1988): pp. 226-230.

⁴⁶ In the years 1667-1806 thirty-one cases of homicide between brothers were tried, out of eighty-two cases of homicide between kin. In the same period there were 33 cases of homicide between husband and wife. See Nenad Vekarić, “Ubojstva među srodnicima u Dubrovačkoj Republici (1667.-1806.)”. *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 37 (1999): p. 143.

tension that finally escalated into extreme violence. The conflict obviously arose out of the easily affected relationships within the multiple family household, especially *frèreche*.⁴⁷ The diversity of the patterns of households in eighteenth-century Dubrovnik society puts this specific form to the test with examples of households with more individualized features in relation to property and decision-making. The multiple family household was rigid, with one individual being the sole holder of authority (the father, or one of the brothers). There was not enough room for personal ambitions on the part of the subordinated members, and that was especially difficult for a brother (adult and usually married) who would have preferred to set up his own household.⁴⁸ However, the impact of customary law, which was adverse to division, inhibited such an issue enormously.⁴⁹ Thus, the frustration persisted, and the tension sometimes finally escalated to homicide.⁵⁰

The social group as a party in an out-of-court settlement

In many criminal cases the culprit tried to reach an out-of-court settlement with the offended party, since this could produce favorable juridical consequences for him. Some of these agreements, aimed at facilitating and speeding up the procedure of pardon, were written down in court records, especially when they took place after the sentence was pronounced.

Normally, when it was a case of injury, the victim himself decided whether he wanted to come to terms with the culprit, and if so, under what conditions (compensation). But when a homicide took place, neither the close kin, nor the members of the household could come to a valid compromise with the defendant: it was the custom that the broader family had to agree upon the settlement.⁵¹ Sometimes this principle was already implied by the number of

⁴⁷ For more details, see Vekarić, "Ubojstva među srođnicima": pp. 105 and 109.

⁴⁸ According to Wegert, the non-existence of the homicide cases between natural siblings in the eighteenth-century Würtemberg was the result of the system of partible inheritance. See *Popular Culture*: p. 143.

⁴⁹ See Kapetanić-Vekarić, *Stanovništvo Konavala 1*: pp. 330-331.

⁵⁰ See examples quoted by Vekarić, "Ubojstva među srođnicima": p. 106.

⁵¹ For instance, Pasko Pendo, convicted for murder, emphasizes in his petition for pardon "d'aver ottenuto da tutto il parentado... remissione..." (*Diplomata et Acta saec. XVIII*, vol. 3357, no. 64).

(adult) persons involved in this act, which was much higher than the size of an average household.⁵² Furthermore, in some cases it is obvious that the kin involved in the settlement might not be living in the same household.⁵³ It should also be noted that sometimes not all the relatives gave consent at the same time, but successively, in groups (probably by household). It is difficult to determine the true reason for calling a kin to take part in a settlement of a homicide case. I am inclined to suppose that it had something to do with blood feud, an institution that was slowly dying out in Dubrovnik society,⁵⁵ but was still present in this relic.

In traditional societies, reconciliation between the two parties was accompanied, at times, by an act of fraternization. Dubrovnik sources mention that a number of out-of-court settlements were strengthened by a link of marriage between the two families.⁵⁶ Since homicides were often unpremeditated and unintentional, the establishment of new family (or family-like) connections between the families of the offender and the victim was not so odd as it might seem to be.

⁵² For example, in a 1733 settlement, twenty-seven persons were involved on the side of the victim (*C*, vol. 6, f. 161). According to the (incomplete) 1673/4 census of the Dubrovnik Republic population, households with 10 or more members were very rare, and only a few of them reached 15-18 members. See Šundrica, "Popis", p. 454; (Zdravko Šundrica), "Stanovništvo prema popisu 1673/74. koji je provela Dubrovačka Republika". *Statistički godišnjak općine Dubrovnik 1980*. Dubrovnik, 1980: pp. 235-295.

⁵³ For instance, in one settlement the wife, brother, and two brothers-in-law of the victim took part (*Acta Cons. Maior.*, vol. 55, ff. 26v-27); in another, the wife, married daughter, and son (*C*, vol. 7, f. 43). In the Republic of Dubrovnik families were virilocal. The only exceptions to this were families without a male heir. Hence, the married daughters and the brothers-in-law were presumably not living in the household of the victim.

⁵⁴ For example, after the homicide of Stjepan Radelja, the culprit settled first with the widow and the son of the deceased, then with one of his brothers, and finally with the other brother (*C*, vol. 8, f. 216). Mato Šaletović was killed by Vicko Đurić in 1746. The murderer reached a settlement with the widow and the son of his victim in 1752, and two years later with the father and the other members of the family (*C*, vol. 6, f. 222).

⁵⁵ See Nenad Vekarić, "Ubojstva u Dubrovačkoj Republici prije 300 godina". *Dubrovački horizonti* 24 (1993) 33: p. 94.

⁵⁶ For example, in 1698 Ivan, brother of the murdered Matko Vodopija, reached a settlement with his murderer, Ivan Milković, and married his daughter (*Acta Cons. Maior.*, vol. 51, f. 52).

A specific urban case: the Jewish community

All the cases analyzed above exemplify the relationship between the criminal justice system and rural communities. Structured local communities with some autonomous prerogatives, as well as more complex and tenacious family types, either gave solid backing to repressive institutions and criminal policy or, contrarily, exhibited primordial vitality and resistance to the state's authority. The city of Dubrovnik was a completely different milieu, with a vivacious circulation of its own inhabitants and foreigners. Generally speaking, the people of the city belonged to less stable and less tough social microstructures. The families were nuclear (in which women had an economically and socially more active position in the commoners' families), while the importance of the confraternities was restricted to religious functions and the financial subsidy of their needy members.

However, one urban group formed an exception, and in many aspects was closer to the tendencies which were typical of the rural environment. This was the Jewish community. In the eighteenth century, the Jews made up about 0.7 percent of the entire population of the Republic of Dubrovnik, but almost all Jews lived within the city, and made up some 4 percent of the urban population.⁵⁷ Jewish habitations were concentrated in one street which functioned as a *ghetto*, but in this period the Jewish families became so numerous that the authorities had to tolerate their housing in other parts of the city. The Jewish community was not merely the most numerous non-Catholic group, but also the only one with the right to its own religious observances.⁵⁸ In addition, it was the sole religious group with a sort of collective individuality, since from the seventeenth century on, Dubrovnik's Jews had their own confraternity, *Schola Haebreorum*.⁵⁹

⁵⁷ This calculation is based on the census of 1807. See Stipetić, "Brojčani pokazatelji": p. 97. The same proportion should be valid for the eighteenth century as well, since no research had shown any important demographic change within the Jewish community of Dubrovnik in this period.

⁵⁸ See Bernard Stulli, *Židovi u Dubrovniku*. Zagreb: Jevrejska općina [etc.], 1989: pp. 42 and 44. The position of the Orthodox and Muslim inhabitants of the Republic of Dubrovnik never reached this stage of autonomy. This was because few of them lived permanently in the city, but it was also a result of the restrictive state policy in religious matters.

⁵⁹ See Stulli, *Židovi*: pp. 37-46 (pp. 9-10 of the English summary).

In fact, whatever criterion formulated earlier in this paper were to be applied to the data on the Dubrovnik's Jews, the existence of strong social cohesion would be noticed.

At first sight, the Jews seem to have committed crimes more often than the rest of the population.⁶⁰ This conclusion, however, could be misleading, as almost the entire Jewish population lived in city, where the Criminal Court was also competent for petty crimes. In fact, during the whole century there was not a single case of homicide or death caused by wounding among the Jews. On the other hand, the Jewish community was a group with a very pronounced endogenous criminality, since almost one half of the eighteenth-century cases involved both a Jewish offender and a Jewish defendant.

One interesting feature of the criminal justice policy towards the Jews is that the Court tended to sentence them to higher alternative fines than the rest of the population.⁶¹ What captures attention is that the Jews regularly agreed to pay those fines so as to avoid the alternative penalty (usually imprisonment), and actually paid their fines in a short period of time.⁶² This phenomenon could be explained by the sum the Court estimated, as it was in accordance with the offender's financial abilities. However, if we compare these sums to what the non-Jewish well-to-do citizens were willing to pay, another explanation emerges. There is no indication that Dubrovnik's Jews were particularly wealthy. However, it seems that they were able to summon high amounts in a very short time because they could count on the solidarity of other Jews.⁶³ Naturally, one should not assume that recipients of this sub-

⁶⁰ Some 1.3 percent of all the sentences of the Criminal Court concerned Jews, which is almost twice their proportion in the population.

⁶¹ In the penal system of the eighteenth-century Dubrovnik Republic the position of the imprisonment was central (74.8 percent). In some 20.5 percent of these cases the court conceded an alternative to the convict, i.e. allowed him to pay a certain fine instead of going to prison. If the convict was a Jew, the monetary equivalent of one day of prison was much higher (two to five times) than in other cases. For more details on the penal system and this particular question see Lonza, *Pod plaštem pravde*: pp. 193-194.

⁶² For example, C, vol. 6, ff. 19, 169v, 181v; vol. 7, f. 197; vol. 8, f. 153v. There is only one exception (vol. 8, f. 153v).

⁶³ Moreover, in one seventeenth-century case, the Jewish community provided maintenance for the imprisoned Jew (Stulli, *Židovi*: p. 27).

sidy were free of the obligation to pay back, but it is important to notice that social ties among the members of the Jewish community were strong enough to raise the money needed by one of its members on very short notice.

In a number of cases the collective responsibility was imposed on the Jewish community as a whole. For example, in 1724 the *Schola Haebreorum* was threatened with an extremely high fine in the case that any Jew disregarded the order to deliver to the state authorities his copy of the *Talmud* (which was to be destroyed).⁶⁴ Furthermore, the Jewish community—just as any village—had to denounce the return of a banished person, risking a very high fine if they chose otherwise.⁶⁵ As inhabitants of the city, the Jews were always a part of the general audience that watched exemplary punishments at the gallows, the pillory, etc. But in one case, all Jewish boys were summoned and obliged to observe the whipping of a young Jew.⁶⁶ Finally, the Jewish community also had limited disciplinary jurisdiction over its members.⁶⁷

All the elements of the criminal justice system's attitude towards the Jews cannot be explained in a simple way, since some of them referred to very complex theological and political issues. However, it seems convincing to me that the Jewish community of Dubrovnik had some specific qualities of its own—i.e., a much closer way of life, both in the physical and the social sense—which enabled the criminal justice policy to approach not only the individual, but also his social group.

Conclusion

As stated in the opening section of this paper, the criminal justice system of the Republic of Dubrovnik addressed several social groups. The analysis of different relations between the state policy and these groups proved that the village (i.e., confraternity, parish, or *kaznačina*) and the household were by far the most relevant. The preference given to these two groups by the criminal justice system was not accidental, but was based on an appropriate

⁶⁴ See Stulli, *Židovi*: pp. 47–48.

⁶⁵ *Diplomata et Acta saec. XVIII*, vol. 3358, no. 24.

⁶⁶ *Diplomata et Acta saec. XVIII*, vol. 3398, no. 10.

⁶⁷ *Ibidem*, no. 39.

evaluation of the social reality. The household and the village displayed high cohesion, leading sometimes to recalcitrance in regard to the repressive system. A certain degree of social intertwinement also provided a natural background for violent crimes.

Again, the analysis showed deeply rooted differences between urban and rural social environments. Thanks to many factors—the greater territory, the pronounced privacy, the general dynamics of life, the shape of the family, and the less strictly determined lifestyle, to name just a few—both criminality and the repressive system was different in the city than in the country. This general conclusion is shaded (but in some way also re-confirmed) by the existence of the “urban exception”: the Jewish community. It had a closer territorial frame, very strong cohesion in all sorts of everyday situations (from endogamy to schooling and professional partnership), and a certain degree of social isolation from the rest of the urban population. All these particularities influenced the treatment of the Jews by the criminal justice system, thus confirming the characteristic that a social group had to exhibit in order to be a suitable target of the repressive policy.

This analysis of data from Dubrovnik indicates that criminal records can be used with proficiency for the research of social structure. Criminality and repression, both of which phenomena are strongly socially marked, display valuable data on social groups, their shape, and internal cohesion.