

“TWO SOULS LOST”: INFANTICIDE IN THE REPUBLIC OF DUBROVNIK (1667-1808)

NELLA LONZA

ABSTRACT: Social, anthropological and legal aspects of infanticide in the Republic of Dubrovnik are discussed on the basis of court records from 1667 to 1808 which are compared with the research results elsewhere in Europe. An attempt is made to reconstruct the social control network over the moral behaviour of individuals and the reaction of social groups (family, fraternity, village etc.) to extramarital pregnancy and infanticide. The characteristics of the trials in a court of law, especially the rules of evidence and the penal policy, are analyzed.

1. Introduction

1.1. Prosecuting the “non-existent” crime

The fact that the penal provisions of Dubrovnik failed to classify infanticide as a criminal offence may well come as a surprise to all those accus-

Nella Lonza, member of the Institute for Historical Sciences of the Croatian Academy of Sciences and Arts in Dubrovnik. Address: Zavod za povijesne znanosti HAZU, Lapadska obala 6, 20000 Dubrovnik, Croatia.

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tomed to the concepts of modern law.¹ However, in legal practice such a wrongdoing was condemned and punished. During the period when the principle of legality had not yet been recognized in Dubrovnik, or elsewhere in Europe, criminal procedure was based on various legal sources, among which doctrine and judicial practice occupied a prominent place.² Not only do the Ragusan criminal records show that infanticide was actually prosecuted, but they provide plenty of elements for the constitution of its legal definition.³

It was in the Middle Ages that a clear distinction between infanticide and other types of offences was made. Canon law distinguished *infanticidium* from homicide within the family (*parricidium* in Roman law), it also specified a sanction in the form of penance, while the difficulty in obtaining proof was to be overcome by means of the so-called oath of purgation by which the accused was ordered to swear innocence, alone or with a number of compurgators (*purgatio canonica*).⁴ Underlying further evolution of this offence in the codes of various countries of the early modern period were the procedural aspects—the problem of submitting evidence of the crime, which, as a rule, had no witnesses.

In medieval Europe, the law of criminal procedure produced rules of evidence which were to govern the court in the evaluation of evidence. Primarily shaped to assist judges in their work, the set principles were soon to show a serious drawback: they could not be applied to many concrete cases. The principal presumption according to which the guilty verdict could only be reached upon finding direct evidence —concordant testimonies of two wit-

¹ A single legal provision on infanticide, most likely dating from the seventeenth century, can be traced to the official register of the district of Župa dubrovačka (Josip Lučić, »Uprava u Župi dubrovačkoj.«, in: *idem, Iz prošlosti dubrovačkog kraja u doba Republike*. Dubrovnik: Časopis "Dubrovnik", 1990: p. 369).

² For more details on this, see Nella Lonza, *Pod plaštem pravde: Kaznenopravni sustav Dubrovačke Republike u XVIII. stoljeću*. Dubrovnik: Zavod za povijesne znanosti HAZU, 1997: pp. 31-37.

³ Court records on infanticide in Dubrovnik 1667-1808 have been examined by Nenad Vekarić in his extensive study of family murders (Nenad Vekarić, »Ubojstva među srodnicima u Dubrovačkoj Republici (1667.-1806.).« *Analiz Zavoda za povijesne znanosti HAZU u Dubrovniku*: pp. 95-155, esp. pp. 114-120). I wish to thank the author for providing me with additional materials which contributed significantly to my research. All the sources are filed at the State Archives of Dubrovnik.

⁴ See R.M. Helmholz, »Infanticide in the Province of Canterbury during the Fifteenth Century.« *History of Childhood Quarterly* 2 (1975): pp. 379-383.

nesses or confession—was leading in practice to the ineffectiveness of prosecution. Thus, the evolution of the many rules of evidence was marked by the first exceptions. This gave way to a gray area in which the judge's free evaluation gained in importance: with minor offences and those committed under special circumstances, at night, for instance, the verdict could be based on far less evidence, for example, on the testimony of only one witness. Although exceptions such as these were introduced fairly early, the most powerful change in the principles of evidence took place in the sixteenth and seventeenth centuries by way of the so-called extraordinary punishment (*poena extraordinaria*): in cases of serious crimes the verdict could still be reached on the basis of a less rigorous standard of evidence, though coupled with a less severe punishment than usual.⁵

In the case of infanticide, the matter was further complicated by the fact that, in general, there were no eyewitnesses, and by the difficulty in establishing some crucial facts—whether the child was stillborn, whether death was the result of violence or of a natural cause. Thus, application of the general rules of evidence, however flexible they might have been, offered few grounds for the conviction of the mother. The solution to the problem was sought in defining infanticide as a separate crime, determined by its own standard of evidence.

The earliest European laws, which regulated the offence of infanticide as such, paid considerable attention to the problem of evidence.⁶ Concepts varied, but they all relied on assumptions (*indicia*), the standard of proof no longer being based on direct evidence. Thus according to the German criminal code of Charles V from 1532 (*Constitutio Criminalis Carolina*), an act of infanticide was interpreted as death of any infant born out of wedlock, if the pregnancy was secret and the childbirth concealed.⁷ The French penal law of 1556 required a woman to report illegal pregnancy and state the name of the child's father; if she failed to do so and the child was found dead, she was consid-

⁵ See John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*. Chicago-London: The University of Chicago Press, 1977: pp. 47-50.

⁶ For a general survey, see Richard Trexler, »Infanticide in Florence: New Sources and First Results.« *History of Childhood Quarterly* 1 (1973-74): pp. 103 and 114, note 40.

⁷ See Otto Ulbricht, *Kinds-mord und Aufklärung in Deutschland*. München: R. Oldenbourg Verlag, 1990: pp. 17-18.

ered to have committed infanticide.⁸ The English statute of 1624 went a step further by introducing a presumption of the live birth, proven otherwise only by the statement of the eyewitness.⁹ In other words, an unmarried mother giving birth to a child could be accused of infanticide if she tried to dispose of the body even though the child was stillborn or died at birth. However, such legal deviation from the traditional law of proof of the English common law was not welcome in judicial practice. Though against the norm, the courts required that the prosecution prove that the child was born alive, which was eventually introduced with the 1803 statute reform.¹⁰

Similar definitions of infanticide, with some minor variations, prevailed in all European penal codes and procedural doctrine of the early modern period. For instance, in Benedict Carpzov's *Practica nova rerum criminalium*, infanticide was also based on presumption and circumstantial evidence, such as illegitimacy, concealed pregnancy, secret birth, and a living and mature infant.¹¹ The reason for mentioning Carpzov's treatise here is not only the fact that it was a true European bestseller in its genre, but also because it was present among the reference books of the Ragusan Criminal Court.¹² It is hard to establish the extent to which literature or pragmatic reasons influenced Ragusan jurisprudence. Nevertheless, in case of infanticide Dubrovnik's legal practice followed the mainstream of the European penal law. The Criminal Court of Dubrovnik placed emphasis on much the same problems as their European counterparts during the seventeenth and eighteenth century: concealment of pregnancy, the circumstances of child's death, disposal of the body, mother's motives, the reasons for not placing the child in a foundling home, etc.

⁸ See O. Hufton, »Women and violence in early modern Europe.«, in: *Writing Women into History*, ed. Fia Dieteren and Els Kloek. Amsterdam: Historisch Seminarium van de Universiteit van Amsterdam, 1990: p. 78.

⁹ Cited in R.W. Malcolmson, »Infanticide in the Eighteenth Century.«, in: *Crime in England, 1550-1800*, ed. J.S. Cockburn. London: Methuen & Co. Ltd., 1977: pp. 196-197; Peter C. Hoffer and N.E.H. Hull, *Murdering mothers: infanticide in England and New England 1558-1803*. New York-London: New York University Press, 1981: p. 20.

¹⁰ Cf. R.W. Malcolmson, »Infanticide«: pp. 197-198; Hoffer-Hull, *Murdering mothers*: pp. 69-79; Frank McLynn, *Crime and Punishment in Eighteenth-Century England*. London-New York: Routledge, 1989: pp. 114-115; Mark Jackson, »Suspicious infant deaths: the statute of 1624 and medical evidence at coroners' inquests.«, in: *Legal medicine in history*, ed. Michael Clark and Catharine Crawford. Cambridge: Cambridge University Press, 1994: pp. 66-75.

¹¹ Benedictus Carpzovius, *Practica nova rerum criminalium Imperialis Saxonica*. Lipsiae 1739: pp. 34-40.

¹² See N. Lonza, *Pod plaštem pravde*: pp. 32-35.

1.2. *Infanticide in a court of law: many stories, one pattern*

The accounts of secret pregnancy, birth and infanticide traced in the criminal records seem to follow the same pattern. Certainly, the way of penning the trial reports,¹³ and the use of formulae have to be credited for the similar narrations. Also, it could be the effect of the "procedural strategy" of the accused women in their attempt to reproduce a story which had already proven successful in the previous trials.¹⁴ Almost all mothers, tried at the Dubrovnik court, claimed that the delivery was short, secret, and without any witnesses.¹⁵ Historical evidence on the very course of parturition being exceptionally rare, Ragusan trial reports appeal to the researchers in their study of different birth customs, perception of pain and reaction to it. Analysis of childbirth in primitive societies has shown that the experience of pain is to a certain extent a cultural phenomenon,¹⁶ medical research pointing to the fact that the shift of concentration (in this case to concealment) can reduce the sensation of pain,¹⁷ while the body accustomed to hard work is likely to suffer less severe labour pains. However, a striking resemblance between the testimonies of the accused does not prove that the experience was shared by all women, not even those of the same social status. The fact that the trial accounts describe only easy births which passed unobserved means that with other types of child-

¹³ On this point related to children's testimonies, see N. Lonza, *Pod plaštem pravde*: pp. 226-227.

¹⁴ On the stereotypes in pardon pleas, see Nella Lonza, »The policy of pardon in the eighteenth-century Republic of Dubrovnik.«, in: *Le pardon*, ed. Jacqueline Hoareau-Dodinau, Xavier Rousseaux and Pascal Texier. Limoges: PULIM, 1999: pp. 468-469.

¹⁵ See Laura Gowing, »Secret Births and Infanticide in Seventeenth-Century England.« *Past & Present* 156 (1997): pp. 98-108 for the seventeenth-century England; for eighteenth-century France, see Jacques Gélis, *L'arbre et le fruit: La naissance dans l'Occident moderne, XVI^e-XIX^e siècle*. Paris: Fayard, 1984: p. 421. For a more general European survey, see Keith Wrightson, »Infanticide in European History.« *Criminal Justice History* 1 (1982): p. 6; Sylvie Laurent, *Naître au Moyen Age. De la conception à la naissance: la grossesse et l'accouchement (XII^e-XV^e siècle)*. Paris: Le Léopard d'Or, 1989: p. 159.

¹⁶ See Mireille Laget, "La naissance aux siècles classiques: pratique des accouchements et attitudes collectives en France aux XVII^e et XVIII^e siècles". *Annales E.S.C.* 32 (1977) 5: pp. 966-967, in her analysis of G.-J. Engelmann (*La Pratique des accouchements chez les peuples primitifs*. Paris, 1885). On the public opinion held in seventeenth-century England on illegitimate births always being easy and short, see L. Gowing, »Secret Births«: p. 99.

¹⁷ Richard C. Chapman and Judith A. Turner, »Psychologic and Psychosocial Aspects of Acute Pain.«, in: *The Management of Pain*, ed. John J. Bonica, 2. ed. Philadelphia-London: Lea & Febiger, 1990: pp. 122-131; Sandra Horn and Marcus Manafò, *Pain: theory, research and intervention*. Buckingham-Philadelphia: Open University Press, 1997: pp. 68-84.

birth—accompanied by screams and calls for help—the woman most surely would have drawn attention to herself, making infanticide absurd. Secret killing of the newborn infant and the disposal of its body, intentional or not, in cases such as these, was practically impossible to carry out. Difficult labour could, at times, prove fatal to the baby, yet paradoxically, it helped save a few lives from most certain violent death.

2. “Wish I parted with this child...”: from conception to infanticide

2.1. Infanticide and the methods of avoiding unwanted pregnancy

The changed circumstances which a woman carrying an unwanted child found herself in were determined by a number of factors: family structure, partner’s reaction, abortion attempts, the course of pregnancy and labour, personal attitude to sin and life values, the fear of moral punishment, the community’s reaction, etc. Infanticide should be viewed within a more general framework of unwanted parenthood, covering a wide range of issues from contraception to foundling homes and adoption. However, it should be emphasised that even the more humane solutions were not without consequences for the child. The children raised in foundling homes or given up for adoption had a higher mortality than those raised by their biological families.¹⁸

The investigated Ragusan records cast no light on the issue of contraception. Although demographic data point to the practice of family limitation and birth spacing,¹⁹ no evidence can be traced to the methods of contraception.²⁰

Examination of reproductive behaviour patterns in the Dubrovnik region

¹⁸ Nineteenth-century Ragusan sources point to the high overall mortality rate of institutionalized foundlings, and higher than usual in adopted children (see Niko Kapetanić and Nenad Vekarić, *Stanovništvo Konavala*, I. Dubrovnik: Zavod za povijesne znanosti HAZU, 1998: pp. 361-369), and it can be assumed that in the previous period the situation was not much better. This however does not rule out the fact that some of the adopted children were blessed with good and loving care. Jeremić and Tadić have recorded a popular belief in Konavle according to which an adopted child brings good luck, which might explain the good treatment of these children (Risto Jeremić and Jorjo Tadić, *Prilozi za istoriju zdravstvene kulture starog Dubrovnika*, II. Beograd: Centralni higijenski zavod, 1939: p. 209).

¹⁹ Nenad Vekarić et al., *Vrijeme ženidbe i ritam poroda: Dubrovnik i njegova okolica od 17. do 19. stoljeća*. Zagreb-Dubrovnik, HAZU-Zavod za povijesne znanosti u Dubrovniku: p. 78.

²⁰ Here I refer to avoidance of pregnancy in the broadest sense, from sexual abstinence, prolonged lactation, to coitus interruptus and the use of special agents. Cf. John M. Riddle, *Eve’s Herbs: A History of Contraception and Abortion in the West*. Cambridge: Harvard University Press, 1997.

indicates that attitude towards premarital sex was not that conservative.²¹ In a good number of cases, prenuptial pregnancy speeded up marriage,²² or proved to be an efficient way of escaping an arranged one.²³ A number of underpopulated communities of the Dubrovnik area encouraged bridal pregnancy as proof of the couple's fertility. On the basis of two samples from the Dubrovnik region (late seventeenth and eighteenth century) it could be ascertained that around 15 per cent of all marriages involved a pregnant bride.²⁴

Distinctive micro-histories reveal that sexual relations were involuntary²⁵ or the result of the woman's inferior social position in which she was likely to become the object of the sexual attention of the master or male members of his family.²⁶ Cases in which a sexual affair failed to translate into a marriage bond due to a legal barrier have also been traced.²⁷ Misjudgment of the partner's character or his intentions were also frequently at work. Contrary to the woman's expectations, conception had a far more serious meaning than a mere premarital episode which could eventually be crowned by marriage. She was suddenly faced with family rejection, loss of service, a sharp drop

²¹ A similar popular practice was known to prevail elsewhere in Europe. Cf. K. Wrightson, »Infanticide in European History«: p. 8; Otto Ulbricht, »Infanticide in eighteenth-century Germany.«, in: *The German Underworld: deviants and outcasts in German history*, ed. Richard J. Evans. London 1988: p. 116; Tomás A. Mantecón, »Meaning and social context of crime in preindustrial times: Rural society in the North of Spain, 17th and 18th centuries.« *Crime, Histoire & Sociétés* 2/1 (1998): p. 66.

²² In a case from 1798, marriage literally took place at the last moment, the bride having already been admitted to the foundling home for childbirth (R. Jeremić-J. Tadić, *Prilozi* II: 207).

²³ For instance, pregnancy was sometimes used as a pretext for breaking off a previous engagement, in order for the family to accept and welcome the marriage with a new partner as a lesser evil (*Lamenta criminalia*, ser. 50.3, vol. 162, f. 119 et ss.; I am grateful to Frano Haklička for drawing my attention to this case and for having provided me with his transcript).

²⁴ In the Lastovo sample (1691-1710) it was 16.82 per cent, and 13.64 per cent in the City of Dubrovnik (1741-1770). See N. Vekarić et al., *Vrijeme ženidbe*: pp. 98-99.

²⁵ *Lamenta criminalia*, vol. 16, ff. 68v-239; vol. 28, ff. 19-60.

²⁶ For instance, *Lamenta criminalia*, vol. 28, ff. 11-47v. The child previously conceived with the master's son was given up for adoption, but the next pregnancy (with the same partner?) occurred at the time of the woman's engagement, her social expectations being also at stake (*Lamenta criminalia*, vol. 99, f. 419v).

²⁷ For instance, it was an affair with a married man (*Lamenta criminalia*, vol. 31, ff. 54v-79), a cousin or a brother-in-law, when marriage could take place only with the permission of the church authorities (*Lamenta de intus et foris*, ser. 53, vol. 72, ff. 198v-211; *Lamenta criminalia*, vol. 12, ff. 230-260; see N. Vekarić et al., *Vrijeme ženidbe*: p. 55).

in the marriage potential or virtually no marriage prospects.²⁸

Guided by wishful thinking, some poor souls believed that the pregnancy will be terminated by and of itself.²⁹ Other women tried to provoke an abortion. Although certain techniques of abortion were known, the question as to how much this practice prevailed in the Dubrovnik region remains obscure. Trial records highlighting the issue are sparse, mostly because of the very nature of the act which could not be detected in cases of early pregnancy.³⁰ A host of methods have been resorted to in order to induce abortion: tight wrapping of the abdomen,³¹ vigorous jumping,³² drinks inducing abortion (solutions of arsenic and mercury),³³ or herbal preparations with the desired effect.³⁴

²⁸ Wrightson has made the point well: "... mistaken trust, disappointed hopes, or foolishness turned a potential pregnant bride into an actual bastard-bearer" (K. Wrightson, »Infanticide in European History«: p. 8). Cf. also O. Ulbricht, »Infanticide in eighteenth-century Germany«: p. 116.

²⁹ The case of Rade Laletin of Mravinjac is an interesting example of popular religious belief, according to which one could ask saints to intercede even in cases contrary to Christian values: ("I have made a pledge to Our Lady of Orašac and to St. Anthony to part with this child and dispose of it" - *Lamenta criminalia*, vol. 17, ff. 119-123).

³⁰ In 1709 Marija, maid to Vicko Budić of Sudurad, was sentenced to three months in prison for abortion (*Criminalia*, vol. 6, f. 17v). The accused denied pregnancy and persisted in her explanation that the enlarged abdomen, a seven-month absence of menstruation, culminating in heavy bleeding full of large blood clots, were all the result of a disorder. However, a witness testimony, according to which Marija's mother was seen to have "rubbed her daughter's stomach", contributed to the charge against her, along with the evidence of pigmented nipples and colostrum (*Lamenta criminalia*, vol. 54, ff. 142-170).

³¹ When the wife of Ivan Manetta came across a bandage in the house, she immediately linked it to the maid's possible abortion attempt: "she must be using the bandage to provoke a miscarriage". Whether true or false, it proves that she was familiar with this method of abortion (*Lamenta criminalia*, vol. 218, ff. 45bv-127v).

³² *Lamenta criminalia*, vol. 162, f. 119 et ss. (according to the transcript of F. Haklička).

³³ A trial report reveals arsenic (*sičan*) and mercury (*živo srebro*) as agents used to induce abortion (ibid.). About *sičan* and its toxicological effect see Zdenko Šundrica, »Otrovi u Dubrovačkoj Republici.« *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 36 (1998): pp. 91, 98-99.

³⁴ Although Ragusan sources provide no direct evidence, one may rightly suppose that abortion methods employed elsewhere in Europe were also applied in Dubrovnik. This claim is supported by the widespread application of herbs in gynaecological treatment. For instance, popular medicine was acquainted with the healing effect of the root of madder with certain women's diseases (*Lamenta criminalia*, vol. 22, ff. 163-222), in addition to the antilactation effect of ivy compresses (*Lamenta criminalia*, vol. 218, ff. 45bv-127v).

The number of illegitimate children born in the Republic of Dubrovnik cannot be determined with certainty. Utilizing the records of the illegitimate children baptized in the period 1675-1771, we are able to establish the bottom figure. From 1690 onwards, between 16 and 46 children born out of wedlock were baptized annually, an average of 26 a year.³⁵ But having in mind that some illegitimate births remained unregistered, one is unable to determine the exact proportion of illegitimate infants in the overall birth cohort.³⁶ The data on infanticide being shrouded in mystery, the ratio of one infanticide to 60 illegitimate births can be viewed as roughly indicative. Though burdened with ambiguities, the number of registered illegitimate children was much higher than that of the admitted foundlings, leading us to believe that some children, although reluctantly, were accepted by the mother's relatives.³⁷

Apart from the prevailing Ragusan practice of adopting a child from the foundling home,³⁸ cases of an unwanted infant being directly given to the foster parents have also been noted. Moreover, the child was sometimes fostered by the members of the household in which the unwed mother had given birth.³⁹

³⁵ R. Jeremić-J. Tadić, *Prilozi II*: pp. 207-208 and the table on pp. 210-211.

³⁶ Stjepan Krivošić, *Stanovništvo Dubrovnika i demografske promjene u prošlosti*. Dubrovnik: Zavod za povijesne znanosti JAZU u Dubrovniku, 1990: p. 79; see also critical remarks in N. Kapetanić-N. Vekarić, *Stanovništvo Konavala I*: p. 359, note 626. On the number of illegitimate births in the parishes of Pridvorje and Cavtat, see *ibid.*: p. 245. For data on European countries in the eighteenth century, see Jean Delumeau, *Le Catholicisme entre Luther et Voltaire*. Paris, Presses Universitaires de France, 1971: pp. 318-319.

³⁷ Some infanticide trials point to this alternative. Stane Petrova testified that had the child been born alive, she would have left it with her parents, or else, at the foundling home (*Lamenta criminalia*, vol. 28, ff. 19-60). Nikola Nikićević blamed his brother's widow for infanticide, the latter having conceived with him: "if it was mine, why did you smother it, I would have provided for it" (*Lamenta criminalia*, vol. 12, ff. 230-260). Claiming her illegitimate child was stillborn, Klara Cvjetanov testified: "had the child been born alive, I would have raised it as my own". Her statement, however, should not be taken seriously, as she later testified that she would have abandoned it before the parish church (*Lamenta de intus et foris*, vol. 73, ff. 42v-97v).

³⁸ See R. Jeremić-J. Tadić, *Prilozi II*: pp. 208-209.

³⁹ Pave Basor, maidservant with the Đurašić family in Mrcine, most likely got pregnant by the master's son. She gave birth to a baby boy in the house of Mihajlo Jančić, leaving the newborn with them. Pave returned to serve with the Đurašić family and two years later delivered a girl, whom she strangled (*Lamenta criminalia*, vol. 99, ff. 229v-419v).

Dubrovnik's foundling hospital (*hospitale dela misericordia*) dates from the Middle Ages.⁴⁰ Later, the institution was to open its doors to expectant mothers too, offering them shelter during birth and after.⁴¹ In order to fulfill its social role, the home's policy was primarily based on discretion and anonymity. Constructed to facilitate an incognito abandonment, babies were handed in through a rotating window. Under no circumstances was a person heading towards the foundling home to be stopped or questioned, as the punishment for doing so was a two-month confinement.⁴² However, for an unmarried mother, who was forced to act urgently and discreetly, the path to abandonment was covered with numerous obstacles.⁴³ The chances of a peasant girl from a remote village arriving in Dubrovnik shortly after childbirth were very slim.⁴⁴ Hence, she would find someone trustworthy, who, out of friendship⁴⁵ or material benefit,⁴⁶ agreed to deliver the baby for her. But with

⁴⁰ Ragusan authorities established the foundling home in 1432 (see *Liber viridis*, ed. B. Nedeljković. Zbornik za istoriju, jezik i književnost srpskog naroda, III, 23. Beograd: SANU, 1984: c. 252), but abandoned children had been admitted to the Nunnery of St. Clare as early as the end of the thirteenth century (see Zdenka Janeković Römer, *Rod i Grad: Dubrovačka obitelj od XIII do XV stoljeća*. Dubrovnik: Zavod za povijesne znanosti HAZU u Dubrovniku, 1994: p. 108). On the establishment of foundling hospitals in Italian cities see Richard Trexler, »The Foundlings of Florence, 1395-1455.« *History of Childhood Quarterly* 1 (1973-1974): p. 261; R. Trexler, »Infanticide in Florence«: pp. 99-100.

⁴¹ By the end of the eighteenth century between 14 and 40 pregnant women a year were to seek refuge in the foundling home (R. Jeremić-J. Tadić, *Prilozi* II: pp. 206-207). According to the foundling home records, relief was offered to women in their months of late pregnancy, and up to 15 days after childbirth (*Misericordia*, ser. 46, vol. 20). French foundling homes also admitted expectant mothers in the eighteenth century (K. Wrightson, »Infanticide in European History«: p. 13).

⁴² *Liber viridis*, c. 252.

⁴³ Cf. R.W. Malcolmson, »Infanticide in the Eighteenth Century«: p. 205.

⁴⁴ Yet, the case of Điva Nikolina of Šumet shows that, unable to pay someone to do it for her, she found the strength to take the child to Ploče where, at dawn, she abandoned it at the St. Jacob's churchyard gate (*Lamenta criminalia*, vol. 9, ff. 80-84v).

⁴⁵ Anica Šabadinka was to "call a certain Marica, wife of Ivan Kocelj, who was like a mother to her, to attend her and take the child to the foundling home or elsewhere" (*Lamenta criminalia*, vol. 16, ff. 68v-239).

⁴⁶ Stane Beznoga had already given birth to six illegitimate children, each time paying someone to deliver the child to the foundling home (*Lamenta criminalia*, vol. 79, ff. 80v-94v). The sources reveal that some unmarried women did seek the help of midwives, who then took the newborn to the foundling home (*Lamenta criminalia*, vol. 31, ff. 54v-79; also *Lamenta criminalia*, vol. 53, ff. 21-27). In eighteenth-century France, midwives were also known to have taken upon themselves the role of an intermediary (K. Wrightson, »Infanticide in European History«: p. 13).

another person in play, the secrecy of the whole operation was brought into question. The foundling hospital was located at that time at Pile, outside the city walls,⁴⁷ preventing the urban mothers from abandoning their babies at night because the city gates were closed. Therefore, an attempt to abandon a child by placing it in the foundling home undoubtedly proved to be an elusive one.

Some mothers decided to leave the child at a public place where it would be found alive and taken care of, or perhaps, later admitted to the foundling home. Relying on the charity of holy and God-fearing men, the church or its vicinity seem to have been the most popular sites for abandoning children.⁴⁸ Another solution was to leave the newborn on the road hoping that someone will find it. It should be noted that in a number of cases it was difficult to separate infanticide from exposure with lethal effect: even though the intention was not to kill, the newborn was abandoned in the circumstances in which its chances of survival were extremely poor.⁴⁹ This complicated the evaluation of guilt in court, the latter having to establish whether it was a case of infanticide or whether the person believed in the child's eventual rescue.

The aforementioned options resemble a chain of independent decisions. In real life, however, some of them were eliminated by external circumstances, while others depended on what the woman had previously undertaken. Perhaps the concealment of pregnancy was the most far-sighted move.⁵⁰ As time went by and confinement was getting closer, the decision had to be taken: what to do with the child.

⁴⁷ R. Jeremić-J. Tadić, *Prilozi II*: p. 204.

⁴⁸ Klara Cvjetanov testified in court: "Had it been God's will for the child to be born alive, I would have left it at the priest's front door without anyone ever knowing" (*Lamenta de intus et foris*, vol. 73, ff. 42v-97v). In some cases involving a dead child found in the vicinity of the church, it was impossible to establish whether it had been stillborn or allowed to die (*Lamenta criminalia*, vol. 103, ff. 131v-133v; vol. 106, f. 153rv).

⁴⁹ After Nika Borovinić of Čilipi had given birth to an illegitimate child in November, her mother, as instructed by Nika's suitor, abandoned the baby on the road. In their defense, the accused argued that, the road being a busy one, they hoped the child would be found and admitted to the foundling home. Instead of being rescued, the severe winter cold had no mercy on the child, and it most probably froze to death (*Lamenta criminalia*, vol. 35, ff. 29-341).

⁵⁰ Cf. K. Wrightson, »Infanticide in European History«: p. 7.

2.2. *The motives*

2.2.1. *Infant's gender*

In the traditional rural communities attitude towards the child's gender was far from unprejudiced, since the offspring's "value" was estimated on the basis of his future economic and demographic contribution to the household. Raising a daughter who would eventually marry and leave the household with the dowry was likely to be considered a non-profit investment. During different periods and at different cultural stages, the practice of killing female children shortly after birth prevailed and was even regarded as a method of family planning.⁵¹ Though in the rural communities of the Dubrovnik region a male offspring enjoyed a privileged position,⁵² the infant's gender was not essential in resorting to infanticide.⁵³ Namely, when the nuclear family was complete, infanticide was exceptionally rare. In principle, potentially infanticidal mothers involved unmarried girls and widows, while the child born out of wedlock, regardless of its sex, became conclusive proof of their forbidden embraces. In a desperate attempt to conceal the illicit love affair and retain integrity and social position, their only way out was to eliminate the child, irrespective of its sex. Despite the fact that the court deemed the child's gender irrelevant for the verdict and sentence,⁵⁴ popular attitude had it that killing a male infant was a greater crime than putting to death a baby girl.⁵⁵

⁵¹ For the reasons of putting female newborns to death, see Susan C.M Scrimshaw, »Infanticide in human populations: Societal and individual concerns.«, in: *Infanticide: Comparative and Evolutionary Perspectives*, ed. Glenn Hausfater and Sarah Blaffer Hrdy. New York: Aldine Publishing Company, 1984: p. 447. On the practice of gender-selective infanticides in ancient Greek culture and in eighteenth-century Japan see K. Wrightson, "Infanticide in European History": pp. 2-3; on early-medieval France see J. Gélis, *L'arbre et le fruit*: p. 415.

⁵² This preference was particularly evident in adoption. Rural families were more inclined to adopt a male than a female foundling, although the examined samples do not show a marked ratio of discrepancy. Cf. R. Jeremić-J. Tadić, *Prilozi* II: pp. 209, 211, 213; N. Kapetanić-N. Vekarić, *Stanovništvo Konavala* I: p. 361 (for the nineteenth century).

⁵³ See N. Vekarić, »Ubojstva među srođnicima«: p. 136 and table 14 on p.152.

⁵⁴ In the charges and later during the trial, *creatura*, a gender-neutral term was employed.

⁵⁵ Stane Petrova, tried for infanticide, was advised by women "not to state that the sex of her child was male but female" (*Lamenta criminalia*, vol. 28, ff. 19-60).

2.2.3. *Shame and fear*

In the trial accounts, shame and fear are stated as the most common motives underlying infanticide.⁵⁶ Though both phenomena pertain to the area of experience and individual emotional response, they are deeply rooted in the social value patterns, and vary over space and time.

The fear of illegitimate motherhood was not groundless. The woman's entire future was at stake: her position in the family, employment, and marriage prospects.⁵⁷ There were also some more direct consequences to be frightened of. Illegitimate pregnancy brought dishonour to the family and public humiliation to the male head on account of his inability to control the sexual behaviour of his family members. Therefore, the most dreaded reaction was that of the family head,⁵⁸ because he had to act in order to re-establish his own authority, and restore the family's reputation in the community. The women who dared break the rules of sexual abstinence could expect a variety of familial punishments: from battering⁵⁹ to banishment from home,⁶⁰ even murder.⁶¹

⁵⁶ For instance, "I feared my mother and the loss of honour" (*Lamenta de intus et foris*, vol. 73, ff. 42v-97v); "to maintain my honour" (*Lamenta criminalia*, vol. 167, ff. 22-99). Cf. O. Ulbricht, »Infanticide in eighteenth-century Germany«: pp. 129-130; Karl Wegert, *Popular Culture, Crime and Social Control in 18th-Century Württemberg*. Stuttgart: Franz Steiner Verlag, 1994: p. 168.

⁵⁷ In Dubrovnik the birth of an illegitimate child was not prosecuted either by the state institutions (unlike England, for example) or the ecclesiastical authorities (like in Germany). Cf. K. Wrightson, »Infanticide in European History«: p. 7.

⁵⁸ For instance, Mare Sršen of Gruda hid the pregnancy from Luko, her brother and household head, for fear of "being killed and slaughtered" (*Lamenta criminalia*, vol. 28, ff. 237v-292).

⁵⁹ Baldo Certić beat his sister-in-law Marija several times, as the latter (whether true or out of revenge) named him as the child's father (*Lamenta criminalia*, vol. 141, ff. 100-151v).

⁶⁰ Marija, daughter of Đuriša Jagić, was thrown out by her parents (*Lamenta criminalia*, vol. 72, ff. 54-78v). Anica, widow of Marin Puglia from Mljet, testified in court: "at home they kept telling me to go away, because they were not content with having bastards born in the house..." (*Lamenta criminalia*, vol. 112, ff. 138-144v). Having realized that his sister-in-law was carrying a bastard, the man threatened: "get lost, you bloody whore, before I cut you into pieces" (*Lamenta criminalia*, vol. 12, ff. 119v-167v).

⁶¹ In 1765, the women from the Dominković family on Pelješac defended the honour of their family, by drowning their sister-in-law who got pregnant while her husband was away (*Acta et diplomata saec. XVIII*, ser. 76, vol. 3355, no. 192). In 1727 Ivan Milošev of Janjina killed his sister Marija because she "had resumed her immoral ways" (N. Vekarić, »Ubojstva među srođnicima«: p. 109).

Notions of honour, shame and good name—value-laden and closely intertwined—were not determined once and for all. A fallen woman was not immune from bringing shame upon herself again, and a recurrent illegitimate pregnancy was just as mercilessly stigmatized as the first one so that the woman's instinct to conceal the pregnancy was equally desperate.⁶² Alternatively, a new partner could give the woman a chance to redeem herself and restore the good name despite her sexual history, granted that the sin had taken place prior to their union.⁶³ Strictly socially determined, honour was not lost with the actual incidence of deviant behaviour, but if and when it became public, for the stigma spread with the rumour.⁶⁴ Though an illegitimate pregnancy was apparent and an open secret, the birth of an illegitimate child was the most severe blow to the woman's dignity.⁶⁵ What might have previously been interpreted as slander became an undeniable fact, and all the possible scenarios having failed (marriage, miscarriage), the "sinner" remained dreadfully exposed and lonely.

By relating illegitimate parenthood primarily to women, the society followed double sexual standards. Although men shared equal biological responsibility, they were spared by the community. Some of the men involved in such relationships had the nerve to be scandalized at the partner's flagrant conduct.⁶⁶ If gossip and hearsay revealed the name of the father,⁶⁷ by any

⁶² Although reputed as "repeaters", the women still kept the pregnancy secret. See the examples further on in the text. Cf. K. Wegert, *Popular Culture*: p. 168.

⁶³ Although he knew of her illegitimate child, Pave Basor's fiancé was ready to forgive her, as long as it did not happen again (*Lamenta criminalia*, vol. 99, ff. 229v-419v). On the rehabilitation of women whose honour had been compromised, see O. Ulbricht, »Infanticide in eighteenth-century Germany«: p. 118.

⁶⁴ *Lamenta criminalia*, vol. 12, ff. 230-260; vol. 16, ff. 68v-239; vol. 72, ff. 54-78v.

⁶⁵ The woman was banished from the household shortly before childbirth, although the pregnancy was not a secret (*Lamenta criminalia*, vol. 112, ff. 138-144v); despite the fact that everyone was familiar with the pregnancy, including the parish priest, the parents sent their daughter packing after she gave birth (*Lamenta criminalia*, vol. 72, ff. 54-78v). Cf. L. Gowing, »Secret Births«: p. 98.

⁶⁶ Nikola Nikićević called his sister-in-law, whom he impregnated, "a bloody whore", threatened her physically and menaced to throw her out (*Lamenta criminalia*, vol. 12, ff. 230-260).

⁶⁷ In the "Nikićević case", Jeljena was rumoured to have got pregnant with her brother-in-law, to which the former later confessed, first by whispering it into the priest's ear and then, at his insistence, saying it aloud (*Lamenta criminalia*, vol. 12, ff. 230-260).

chance, the illegitimate child still remained the woman's problem.⁶⁸ In view of the Dubrovnik legal practice, the evidence concerning the child's father was considered completely irrelevant in the infanticide procedure.⁶⁹

2.3. *The profile of the mother who kills her infant*

Trial records of 29 cases of infanticide detail the social and family status of the accused. Only two cases involved a married woman. In one of those cases the husband was abroad.⁷⁰ However, in a regular sexual relationship of two married people, the woman had marriage as a strong alibi for her eventual out-of-wedlock pregnancy, her position being further supported by the legal presumption that the father of the child born in wedlock was the woman's husband. Thus it was rightly presumed that a married woman had little reason for resorting to infanticide.⁷¹ In all the cases but one, the crime involved women whose pregnancy was not protected by the bond of marriage: unmarried women (23 cases), widows living in the husband's household (6 cases), and a member of a religious order.⁷² Almost half of the Ragusan mothers who killed their infants were servants (13 cases),⁷³ the reason be-

⁶⁸ Yet there were examples when the man had to face the consequences of his extramarital relationship. In 1807, in Zabrežje near Janjina, the representatives of the woman's family took the newborn to the father's house, left the baby on the threshold and, in the presence of impartial witnesses, blamed him for not having married the mother of his child. Though the two families were already related through marriage, this incident aggravated the relations so badly that gunshots were fired from the father's house. The case is described in: Nenad Vekarić, »Parničenja pred sudom Janjinske kapetanije.« *Dubrovnik* 32/3-4 (1989): pp. 136-137.

⁶⁹ Cf. J. Gélis, *L'arbre et le fruit*: p. 417. In the Amsterdam Court of law the name of the father was always required and the women reported it without exception (Sjoerd Faber, »Infanticide, especially in eighteenth-century Amsterdam: with some references to Van der Keessel.« *Acta Juridica* (1976): p. 259).

⁷⁰ *Lamenta criminalia*, vol. 141, ff. 100-151v and *Criminalia*, vol. 7, f. 157v.

⁷¹ In the 1686 case of infanticide in Mali Ston, the midwives did not examine married women, because in their opinion "...no married woman would do such a thing" (*Lamenta criminalia*, vol. 22, ff. 203-231).

⁷² For similar cases elsewhere in Europe, see K. Wrightson, »Infanticide in European History«: p. 6; K. Weigert, *Popular Culture*: p.176.

⁷³ In eighteenth-century France, half of mothers who killed their infants were servants (J. Gélis, *L'arbre et le fruit*: p. 421), and also majority in the England of the seventeenth and eighteenth centuries and in the eighteenth-century Germany (R.W. Malcolmson, »Infanticide in the Eighteenth Century«: pp. 192 and 202; L. Gowing, »Secret Births«: p. 89; O. Ulbricht, »Infanticide in eighteenth-century Germany«: p. 111; K. Wegert, *Popular Culture*: p. 167). Out of 24 infanticide proceedings conducted in the Amsterdam Court of law between 1680 and 1811, 22 involved maid-servants (S. Faber, »Infanticide«: p. 255).

hind it probably lying in their double social vulnerability. Their position of live-in servants made them an easy target of the sexual harrasment of the master or his son.⁷⁴ By contrast, the latter's household was not as motivated in hiding the servant's illegitimate pregnancy as they would have been if the daughter of the family was involved.

Many women lived in hope of crowning their sexual relationship with marriage.⁷⁵ According to their statements at court, they were lured into the affair by false promises, and once with child, courtship vows were broken and the women were left to deal with the problem on their own. In several cases, however, the motives proved more complex. A women's pregnancy might eventually have been not only accepted but also desired, but as it was ill-timed, the couple stood little chance against the conventions of the family of the potential groom.⁷⁶ The life history of Marija Žuhović of Crna Gora, on the Pelješac peninsula, proves how perplexing these situations sometimes were. She was married for three years but was not brought into her husband's house, the couple always hoping to find the financial resources for the celebration of the wedding. When Marija got pregnant, her partner wanted her to move in with his family without any further formalities but, aware that without a wedding ceremony she will never enjoy a position equal to other daughters-in law in the family, she procrastinated. The baby was born earlier than she expected and she killed it.⁷⁷

⁷⁴ For instance, *Lamenta criminalia*, vol. 218, ff. 45bv-127v.

⁷⁵ Kate, the widow of Petar Brainović, testified in court of having had sexual relations with Ivan Rusković after he "had sworn to God" to marry her. In her words, she conceived shortly afterwards (*Lamenta criminalia*, vol. 167, ff. 22-99). Whether her account was accurate or not, the pregnancy period corresponded with the conception date (she gave birth on St. Stephen's Day, 26 December 1777, that is, she conceived during Lent, between 16 February and 30 March). Marija, the widow of Frano Nikolin, also gave in to a suitor who offered her marriage (*Lamenta criminalia*, vol. 14, ff. 84v-89v). In the case of Stana Županović of Vitaljina marriage did take place despite infanticide. The couple soon fled the Republic of Dubrovnik (*Lamenta criminalia*, vol. 24, ff. 94v-99).

⁷⁶ Điva Nikolina of Šumet was promised marriage, but only after the death of her partner's mother (*Lamenta criminalia*, vol. 9, ff. 80-84v). Luka Voihnić of Gabrile promised to marry Nika Borovinić of Čilipi; when she gave birth, he suggested abandoning the child on the road to avoid his parents' disapproval (*Lamenta criminalia*, vol. 35, ff. 29-341). About two months after childbirth and infanticide, Nika persuaded Luka for the breaking of the promise to marriage, most likely designed as a means of pressure upon her fiancé, for the proceedings were abandoned (*Lamenta criminalia*, vol. 35, f. 104v). Four months later, they got married, about the same time as the court decided to apprehend Nika (*Lamenta criminalia*, vol. 35, ff. 29-341).

⁷⁷ *Lamenta criminalia*, vol. 92, ff. 91-125. For more details, see N. Vekarić, »Ubojstva među srođnicima«: p. 119, note 134.

Trial records do not provide data on the age of the accused. In cases in which it could be determined genealogically, the women involved were in their 20s.⁷⁸ Data related to other European regions also confirm that the women involved were neither very young nor inexperienced. Interestingly, the age at which the married and the unmarried women conceived was practically the same.⁷⁹

Some cases involved repetitive illegitimate pregnancies.⁸⁰ The fact that she already had children, sent to the foundling home or given up for adoption, was often used by the accused as a strong argument in favour of her innocence, for it was apparent that they showed no infanticidal intentions towards their older children.

All the accused lived either in their parental homes, the husband's household, or the house of their employers. According to the testimonies of the household members, the latter had no knowledge of the pregnancy or the birth.⁸¹ It is true that in the households functioning on the male-female labour division most of the every day activities were carried out separately, while the duties on the estate required at times "night shifts" out in the

⁷⁸ Pava Laptalo was about 22 when she committed infanticide, already having a three-year-old illegitimate child; Kata Šemeš was 24; Marija Jagić was in her mid-20s, but that was not her first childbirth; Marija Bogišina was around 30 when she committed infanticide. For the establishment of the age of the mothers who killed their infants I am grateful to N. Vekarić.

⁷⁹ Cf. David Levine and Keith Wrihston, »The social context of illegitimacy in early modern England.«, in: *Bastardy and its Comparative History*, ed. P. Laslett, K. Oosterveen and R.M. Smith. London: Edward Arnold, 1980: p. 161; J. Gélis, *L'arbre et le fruit*: p. 421; O. Ulbricht, »Infanticide in eighteenth-century Germany«: p. 116.

⁸⁰ For Made Miavilović, servant from Popovo, this was a third birth (*Lamenta criminalia*, vol. 218, ff. 45bv-127v). Pava Laptalo of Uskoplje had given birth to a baby girl three years before, whom she abandoned at the foundling home (*Lamenta criminalia*, vol. 31, ff. 54v-79). Pava Basor's illegitimate child was given up for adoption in the same village (*Lamenta criminalia*, vol. 99, ff. 229v-419v). Vica Hlanjević of Klokurići already had four illegitimate children at the foundling home (*Lamenta criminalia*, vol. 53, ff. 21-27), while Stane Beznoga had six (*Lamenta criminalia*, vol. 79, ff. 80v-94v).

⁸¹ For instance, Pava Laptalo, who lived with her mother, brother, and sister, allegedly managed to hide her advanced pregnancy (*Lamenta criminalia*, vol. 31, ff. 54v-79). Pera Borovinić claimed that not for a single moment, until the very delivery, did she think that her daughter was with child (*Lamenta criminalia*, vol. 35, ff. 29-341). Made Miavilović's sister, servant in the same household, testified that she had no idea whatsoever of the events taking place (*Lamenta criminalia*, vol. 218, ff. 45bv-127v). For parallel examples see L. Gowing, »Secret Births«: pp. 101-103; K. Wrihston, »Infanticide in European History«: p. 7.

barn.⁸² It may be that malicious neighbours often kept a much closer eye on the events than the household members themselves. It is, however, likely that tacit knowledge was at work, where the entire household assisted the woman in getting rid of the unwanted child and thus escaping the danger of the whole family being stigmatized.

All the culprits shared a history of living in a male-dominated household (of a father, brother, father-in-law, brother-in-law, or master).⁸³ Several women claimed that the very fear of the male household head and his reaction drove them to hide the pregnancy and subsequently kill the newborn. A shameful act such as that was a disgrace to the name of the household head, discrediting him before the local community.⁸⁴ In a patriarchal society, the honour of the head of the household depended on his ability to control the sexual behaviour of his inferiors (primarily women).⁸⁵ The fact that he was unaware of what was happening was not an excuse but an additional reason for public humiliation and ridicule of his lack of authority.⁸⁶ Hence the reaction to an illegitimate pregnancy went beyond the issue of personal relations and tolerance, questioning both the family authority and its honour. Shock and rage were the reactions to be rightly expected from the head of the household upon his discovery of infanticide, an act symbolizing the dou-

⁸² For instance, Mare Sršen, who was single and living in her brother's household, delivered the child at night, in the barn where she usually slept (*Lamenta criminalia*, vol. 28, ff. 237v-292). Nikola Nikićević, though the master's son, slept "in the stable with animals, not in the house" (*Lamenta criminalia*, vol. 12, ff. 230-259v).

⁸³ In one of the cases the accused lived with her widowed mother (*Lamenta criminalia*, vol. 73, ff. 42v-97v).

⁸⁴ As Jeljena's mother-in-law believed, the former, the widow of Luko Nikićević of Smokovljani, committed adultery bringing thus double shame upon her late husband and her father-in-law, the household head (*Lamenta criminalia*, vol. 12, ff. 230-260). Having been charged with murder of his daughter Anica, Andrija Fattuto, blacksmith, stated in his appeal for clemency that he had punished her on several occasions, as her indecent behaviour discredited his reputation and honour (*Acta Consilii Maioris*, ser. 8, vol. 54, f. 78).

⁸⁵ See Guido Ruggero, »'Più che la vita caro': Onore, matrimonio, e reputazione femminile nel tardo Rinascimento.« *Quaderni Storici* 66 (1987): pp. 755-756. In the region of Dubrovnik, as elsewhere in the Mediterranean, a "fucking billy goat" was a very common insult for men (e.g. *Lamenta criminalia*, vol. 61, f. 26); the allusion could be explained by the specific mating habits of a billy goat which allows other males to copulate with his nanny goat. See Anton Blok, »Rams and billy-goats: a key to the Mediterranean code of honour.« *Man: The Journal of the Royal Anthropological Institute*, N.S. 16 (1981): pp. 427-440.

⁸⁶ Villagers of Smokovljani blamed Stjepan Nikićević, the head of the household, for not being more aware of what was going on in his house, making him share the blame (*Lamenta criminalia*, vol. 12, ff. 230-260).

ble shame of murder and an illicit sexual relationship,⁸⁷ unless of course, he was trying to cover up for his own behaviour or that of a male relative.⁸⁸

Nenad Vekarić argues that in Dubrovnik the "bulk of the mothers bearing illegitimate children stemmed from the lowest urban socio-economic class", as out of 64 infanticides, 22 were detected in the city of Dubrovnik.⁸⁹ The urban-rural infanticide ratio is the subject matter widely discussed among the specialists around the world. The major question is which of the two communities was more infanticide-prone, combined with the dilemma of the proportion of rural women behind the urban cases.⁹⁰ Several authors argue that the rural community offered better conditions for a secret pregnancy, birth, and a variety of scenarios for the disposal of the body.⁹¹ Others, by contrast, favour the urban environment as a setting where it was easier to conceal such questionable behaviour due to a more lax social control.⁹² In my opinion, no marked difference in terms of social control of the behaviour of an individual can be established between the Ragusan rural and urban community of the seventeenth and eighteenth centuries, despite widespread discrepancies in the ways it was performed. The village was far more than a type of housing. It was also a social group with its own internal structure and leaders holding

⁸⁷ Jeljena Nikićević begged not to be taken to the head of the household: "don't take me before the old man 'cause he will slaughter me and kill me, I'd rather jump from a wall and break my neck than face him" (*Lamenta criminalia*, vol. 12, ff. 119v-167v).

⁸⁸ In the case of Made Miavilović, the servant in the household of Ivan Manetta from Kono, his wife demanded of the husband to send the girl away, threatening to leave the house herself. For the reasons one may presume, the husband replied as follows: "you can go whenever you please, for I won't send her away" (*Lamenta criminalia*, vol. 218, ff. 45bv-127v). Stjepan Nikićević resorted to bribe (donations to the parish church and paying for drinks) in order to prevent the infanticide case involving an illicit affair between his daughter-in-law and his son from appearing in court (*Lamenta criminalia*, vol. 12, ff. 230-260).

⁸⁹ N. Vekarić, »Ubojstva među srođnicima«: pp. 114-115. One should point out that according to the 1807 census, which included the city of Dubrovnik and the suburbs, the women represented 60 per cent of the population. See the table in 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): p. 97. With reference to the rural areas of the Republic, the same census data show that the male and female population was equally distributed, except in the communities where sea-faring was the main occupation.

⁹⁰ N. Vekarić also addresses this problem in »Ubojstva među srođnicima«: pp. 115-116.

⁹¹ S. Faber, »Infanticide«: p. 260; R.W. Malcolmson, »Infanticide in the Eighteenth Century«: p. 196.

⁹² N. Vekarić, »Ubojstva među srođnicima«: p. 115; K. Wrightson, »Infanticide in European history«: p. 10.

certain public positions (*kaznac*, fraternity head, etc.). The social cohesion of the villagers based upon family, friendship, economy and other social ties within the local community was much stronger than with anybody outside that group. In the city, by contrast, in its districts or neighbourhoods there was no such formal structure, or social cohesion typical of a small village community.⁹³ However, narrow streets and densely packed houses inside the city walls left little space for privacy. Regular next-door visits (of women primarily) also contributed to social control, though more diffused and informal, but equally intrusive. If it was more difficult to conceal the pregnancy symptoms in the village than in the city, it was undoubtedly easier to dispose of the body which could always be buried at night or thrown from a cliff. On the other hand, the “advantage” of the city lies in the difficulty of detecting the mother among so many women, particularly if she kept her pregnancy well concealed. In only 5 of the 22 Ragusan “city infanticides” has the mother been traced.⁹⁴ While detecting a pregnant woman by means of gynaecological examination was a fairly easy task in the rural community, it could not have been applied with the female urban population.

Looking for reasons for a greater number of infanticides discovered in the city than in the countryside, Vekarić assumes that rural women were sexually less indulgent, because they faced more serious social sanctions (family rejection).⁹⁵ This statement cannot be confirmed without the comparative data on the frequency of extramarital conceptions in the rural areas and the city. Several arguments spring to mind that bring Vekarić’s hypothesis into question. The first one is of a more general nature, it questions the extent to which the fear of sanctions shapes human behaviour. If it were the case, criminal behaviour could easily be suppressed by draconian measures. The crucial element seems to be the estimate a potential delinquent makes about the risk he stands of being detected, his judgment being based on a series of factors (familiarity with the means of social control and examples of repression, perception of the efficiency of the legal system, self-confidence, simple-mindedness, etc.). In addition, premarital sexuality was most likely part of

⁹³ On the legal position of the community and the cohesion in the urban and rural environment see Nella Lonza, »Criminal Justice Perspective on Social Groups: the Eighteenth-Century Dubrovnik Case.« *Dubrovnik Annals* 4 (2000): pp. 83-103.

⁹⁴ N. Vekarić, »Ubojstva među srodnicima«: p. 115.

⁹⁵ N. Vekarić, »Ubojstva među srodnicima«: p. 114.

the courtship and marriage strategy which varied in accordance with the availability of the marriage partners in a certain community at a certain time. Thus virginity could be highly valued in some communities, while pre-marital intercourse and conception were encouraged in others and considered an event which would strengthen the relationship and lead to marriage. Moreover, a good number of mothers who killed their infants did not live with their parents but earned their own living. Loss of employment was an equal threat to both a country and a city servant, and so were their chances of getting a new job. Lastly, family rejection must have been a severe blow to a country girl, for she would find herself in a situation similar to her city counterpart: she could try and find employment as a domestic servant, while the child—in the absence of a better solution—was abandoned in the foundling home. True, a country girl had to pass a longer path than a woman of the lower urban class, but servants who most often resorted to infanticide were already on their own. Therefore, the village versus the city hypothesis needs to be researched further in order to establish whether infanticide was an urban rather than a rural phenomenon or whether we might be dealing with an illusion.

2.4. The circumstances of the crime

In most cases of infanticide it was impossible to find out what actually happened. Most often conclusions have to be based on centuries-old evidence which cannot be verified, while the difficulties of fact-finding which the Ragusan Criminal Court had to face at the time, limit our ability to throw light on the case. For instance, in some cases it had been proven beyond reasonable doubt that the infant was killed, but in many more it remained unclear whether the child was stillborn, whether it died at birth, or shortly after, or whether it was actually put to death.

For a child to survive birth, the umbilical cord had to be cut and tied. A woman who was giving birth without anybody's help had to do it herself to prevent the baby from bleeding to death through the umbilical cord or the placenta.⁹⁶ This certainly draws out attention to the mother's conscious effort and skill during the whole process.⁹⁷ Some women may have had previ-

⁹⁶ My thanks on the comments and detailed information on the matters of medical nature go to Tatjana Buklijaš.

ous labour experience, others may have seen or heard about the procedure concerning the umbilical cord,⁹⁸ but to a number of women the analogy with the animal world was their only source of information. In addition, the quality of neonatal care, for example the removal of the mucus from the respiratory tract and being kept warm, may have been essential for the infant's life.⁹⁹ That is why unattended labour proved more threatening to the baby's life, particularly if the mother was not motivated to fight for it.

As long as the infant's body was not found and the woman was under the suspicion of having delivered a baby because her swollen stomach had suddenly disappeared, she could attribute her condition to a disorder that she got rid of, disguising the bleeding from the uterus as menstruation.¹⁰⁰ It makes us wonder how many women actually knew that the cessation of menstrual bleeding was a pregnancy symptom, or how many may have refused to face the condition they dreaded so much.¹⁰¹

The way the crime was executed, sheds light on the social setting in which it happened.¹⁰² Most of the cases tried in court show that the child was either suffocated,¹⁰³ drowned (thrown into the sea or a well),¹⁰⁴ its throat slashed,¹⁰⁵

⁹⁷ An abandoned newborn had its umbilical cord tied with a woolen thread (*Lamenta criminalia*, vol. 38, f. 63).

⁹⁸ An interesting account of what she had overheard from the midwives was given by the mother's neighbour: "the child dies lest its cord is tied", and that "unless a midwife attends the child the minute it is born and ... fails to cut the umbilical cord, it could twist round its neck and cause death" (*Lamenta criminalia*, vol. 112, ff. 138-144v). Irrespective of the fact that she had no clear idea about the actual cause and the consequences, she seemed quite aware of the most critical moments and the possible complications during labour. The child's life can really be threatened if the umbilical cord coils round its neck (e.g. due to the sudden outflow of amniotic fluid), as was probably the case here.

⁹⁹ On these causes of death in the infanticide trials see K. Wegert, *Popular Culture*: p. 157.

¹⁰⁰ Some women declared the post-partum bleeding as menstrual one: "natural things" (*Lamenta criminalia*, vol. 12, ff. 119v-167v), "I have what every woman has" (*Lamenta criminalia*, vol. 28, ff. 237v-292). Cf. L. Gowing, »Secret Births«: p. 96. In order to deny the rumours of her pregnancy, Marija Dobud agreed to be examined ("come and feel if I am pregnant"), misled in her belief that the midwife could not recognize signs of a recent delivery (*Lamenta criminalia*, vol. 12, ff. 119v-167v). On comparative data, see S. Faber, »Infanticide«: p. 258; S. Laurent, *Naitre au Moyen Age*: p. 158; René Leboutte, »Offense against Family Order: Infanticide in Belgium from the Fifteenth through the Early Twentieth Centuries«, in: *Forbidden History: The State, Society, and the Regulation of Sexuality in Modern Europe*, ed. John C. Fout. Chicago and London: The University of Chicago Press, 1992: p. 48; L. Gowing, »Secret Births«: pp. 96-98.

¹⁰¹ For extreme examples, in which it is hard to say whether the woman's inept defense or complete ignorance of physiology are at work, see K. Wegert, *Popular Culture*: pp. 178-179.

¹⁰² On this see also R.W. Malcolmson, »Infanticide in the Eighteenth Century«: pp. 194-196.

simply dumped into a cesspool¹⁰⁶ or thrown from a cliff.¹⁰⁷ In general, the methods provoking quick death were favoured, for the mother's major concern was avoidance of discovery because of the child's crying.¹⁰⁸ Some of the more "passive" methods such as leaving the umbilical cord untied, letting the baby starve, abandoning it out in the cold, presented a greater risk of detection. In carefully premeditated infanticides, in which the act was carried out resolutely and skillfully, the chances of being detected were reduced to a minimum.¹⁰⁹ In cases discovered and prosecuted, we find a bewildered mother, possibly with a plan in which something went wrong, or without any plan, or a mother who panicked in a desperate attempt to get rid of the unwanted child.¹¹⁰

The murder of a newborn was followed by the body disposal. Recorded cases reveal that the body was either buried somewhere outside¹¹¹ or in the

¹⁰³ *Lamenta criminalia*, vol. 13, ff. 204v-222; vol. 21, f. 206rv; vol. 37, f. 19v; vol. 53, ff. 142-234v; vol. 59, f. 99rv; vol. 64, ff. 24v-26v; vol. 72, ff. 54-78v; vol. 92, ff. 3-207v; vol. 99, ff. 229v-419v, *Lamenta de intus et foris*, vol. 72, ff. 198v-211. In the eighteenth-century Württemberg, suffocation proved to be the most common way of committing infanticide (K. Wegert, *Popular Culture*: p. 156).

¹⁰⁴ *Lamenta criminalia*, vol. 22, f. 112v; vol. 96, ff. 24-25; and perhaps vol. 8, ff. 137v-175v.

¹⁰⁵ *Lamenta criminalia*, vol. 28, ff. 237v-292; vol. 28, ff. 253-299v; vol. 141, ff. 100-151v. Cf. J. Gélis, *L'arbre et le fruit*: p. 419.

¹⁰⁶ In a pit latrine next to St. Roch, a child was found dead due to a fall (*Lamenta criminalia*, vol. 142, ff. 26v-29v); Mare, a maidservant from Lastovo, dumped the baby into the pit privy of captain Vicko Piljković of Orebić. It was still alive when found, but died shortly afterwards (*Lamenta criminalia*, vol. 215, ff. 78v-126). On similar cases in France in the eighteenth century see J. Gélis, *L'arbre et le fruit*: p. 419; for the Netherlands, see S. Faber, »Infanticide«: p. 261. In a Dubrovnik case from the sixteenth century, a woman gave birth sitting on a pit privy (*Lamenta de intus*, ser. 51, vol. 86, ff. 152v-154v).

¹⁰⁷ *Lamenta criminalia*, vol. 93, ff. 160-204.

¹⁰⁸ Cf. Frank McLynn, *Crime and Punishment in Eighteenth-century England*. London-New York: Routledge, 1989: p. 112.

¹⁰⁹ Cf. R.W. Malcolmson, »Infanticide in the Eighteenth Century«: p. 195.

¹¹⁰ The case of Mare Sršen of Gruda is the best illustration of it. According to the confession extorted under duress, but still reliable, she delivered the child in the barn where she usually slept (!) at dawn, but when her brother came insisting that she open the door, she slashed the child's throat with a knife in order to silence it. After her brother had left, she hid the body in a chest in the house. Her previous attempts to defend herself by fabricating a story in which the child was stillborn or was not deliberately injured during delivery failed, as several witnesses testified to having seen the child's throat cut (*Lamenta criminalia*, vol. 28, ff. 237v-292). The defendant's behaviour during the trial was conspicuously foolish, which may also be accounted for by the state of panic she was in.

earthen floor of the house,¹¹² thrown into a crevice or a pit,¹¹³ in a well,¹¹⁴ the sea,¹¹⁵ a pond,¹¹⁶ or a cesspit. It could also be left in the open,¹¹⁷ laid down in an open grave,¹¹⁸ burnt¹¹⁹ or thrown to the pigs.¹²⁰ The method and the site were dictated by the circumstances, thoroughness gave way to haste, and quick access to the site prevailed upon efficiency. Luck, too, played a significant role in making sure the body remaining undetected: the sea could wash the body back to the shore, a body shallowly buried could be dug out by animals. Timing was definitely the most important element. The body should have remained undetected until all reliable clues based on its appearance (maturity, live birth, violence) disappeared and the woman's body bore no more signs of having carried a child.

If the corpse of the newborn was found, but no definite trail led to the mother, sometimes a systematic gynaecological examination was performed: all the women of fertile age underwent an inspection by two midwives.¹²¹ Naturally, this method could be the last resort only if the infant's body was found within the village area. As this goal was hardly attainable in a densely populated town of Dubrovnik, it is not surprising that 17 out of 19 unsolved cases related to infants found in the city.¹²²

¹¹¹ *Lamenta criminalia*, vol. 17, ff. 119-123; vol. 28, ff. 253-299v; vol. 33, ff. 170v-173; vol. 72, ff. 54-78v; vol. 218, ff. 45bv-127v.

¹¹² *Lamenta criminalia*, vol. 141, ff. 100-151v i vol. 157, ff. 91-96v.

¹¹³ *Lamenta criminalia*, vol. 12, ff. 230-260; vol. 53, ff. 142-234v; vol. 92, ff. 3-207v; vol. 92, ff. 91-125; *Detta*, vol. 83, f. 74.

¹¹⁴ *Lamenta criminalia*, vol. 8, ff. 137v-175v; vol. 24, ff. 94v-99; vol. 28, ff. 19-60; vol. 96, ff. 24-25.

¹¹⁵ *Lamenta de intus et foris*, vol. 72, ff. 198v-211; vol. 73, ff. 42v-97v; *Lamenta criminalia*, vol. 37, f. 19v.

¹¹⁶ *Lamenta criminalia*, vol. 167, ff. 22-99.

¹¹⁷ *Lamenta criminalia*, vol. 88, f. 162v; vol. 31, f. 287; vol. 57, ff. 46v-67; vol. 89, f. 51; vol. 93, ff. 160-204; vol. 99, ff. 229v-419v; vol. 128, ff. 38-63; vol. 203, f. 74v; vol. 13, ff. 204v-222 (covered by a thin layer of snow).

¹¹⁸ *Lamenta criminalia*, vol. 50, f. 156v.

¹¹⁹ *Lamenta criminalia*, vol. 18, ff. 153-155v.

¹²⁰ *Lamenta criminalia*, vol. 22, ff. 203-231.

¹²¹ *Lamenta criminalia*, vol. 22, ff. 203-231 (Mali Ston); vol. 28, ff. 19-60 (Lopud).

¹²² See the cases referred to in N. Vekarić, »Ubojstva među srodnicima«: p. 115.

3. *The village watch*

3.1. *Infanticide and social control*

Historically, social attitude towards extramarital pregnancy varied considerably. The study of the Ragusan medieval period shows that sexual activity outside marriage was not morally sanctioned and that illegal parenthood was acceptable to a certain extent.¹²³ By contrast, social norms which prevailed in the period under examination condemned illegitimate births. As the change of moral attitudes towards sexuality in the Ragusan community has not yet been thoroughly explored, nothing precise can be said about its development and causes.¹²⁴

In early modern Europe both the Reformation and the Counter-Reformation promoted new and stricter moral norms. The Catholic church of the post-Trentine period looked for support in its own institutions and beyond them in trying to impose its moral authority, social influence and power. Among the measures most trusted were the missionary activities, increased authority of the parish priests, fraternities bound to the parish, catechism and registers of the parish souls.¹²⁵ Ragusan authorities supported these reforms, not so much for the sake of the Catholic cause in Southern Europe, but because they too favoured the strengthening of social control. Although the relations between the Church and the Republic of Dubrovnik were sometimes tinged with misunderstanding and tension, both institutions shared the same goal: control of its subjects.¹²⁶ Most illustrative are the government regulations which adopted and applied the "Trent formula" pertaining to the supervising role of the parish priest and of the fraternities.¹²⁷

¹²³ See Z. Janeković-Römer, *Rod i Grad*: pp. 115-119.

¹²⁴ On this point, see N. Vekarić et al., *Vrijeme ženidbe*: pp. 92-97.

¹²⁵ For a brief survey on this, see Robert Muchembled, *Culture populaire et culture des élites dans la France moderne (XVe-XVIIIe siècle)*. Paris: Flammarion, 1978: pp. 256-259.

¹²⁶ On this in the German lands, see K. Wegert, *Popular Culture*: p. 166.

¹²⁷ Two examples can be provided on the Ragusan implementation of the postulates of the Council of Trent, related to the observance of morality: regulations of Župa dubrovačka against the meeting of young men and women, most likely dating from the seventeenth century (J. Lučić, »Uprava u Župi dubrovačkoj«: p. 369) and the 1778 proclamation concerning the appointment of several confraternity members assigned to keep an eye on the moral behaviour (*costume dei casalini*); see Josip Lučić, »Uprava u Dubrovačkom (Slanskom) primorju u doba Republike.«, in: *idem, Iz prošlosti dubrovačkog kraja u doba Republike*. Dubrovnik: Časopis "Dubrovnik", 1990: p. 319.

When the control of sexuality was concerned, there existed an area of overlapping competence between the Church and the state authorities. The former were the guardians of morality, playing at times the role of a prosecutor.¹²⁸ The latter were in charge of punishing the illegal acts, but were known to react against unacceptable behaviour not enshrined in law. The network of social control linked the central government (state and the Church) to local institutions, and the village communities.

Four forms of social life were to overlap in the rural communities. The village, *kaznačina*, fraternity and parish did not only happen to coincide territorially (or at least one network did not interfere with another),¹²⁹ but all four concentrated on the social control of the same group. True, each of the aforementioned social communities was marked by its own distinctive feature: the village focused on everyday activities (this “group” shared no formal structure, but was familiar with the division of social roles), *kaznačina* acted on the repressive-legal basis (subordinated to penal institutions), the fraternity was rooted in the mutual feeling of piety and support, while the parish experienced the hierarchical subordination to the church authority. Though easily demarcated, in everyday life the activities of these social networks overlapped, and owed their importance to the initiative of their leaders. In principle, the person entrusted with the judicial measures in a rural community was a *kaznac*, whose responsibility also covered different forms of social control—formal or informal—including repression. In the cases of infanticide, it was sometimes the parish priest who took the initiative, or more often the fraternity head, or even the fellow villagers who “took the matter in their own hands”.¹³⁰

There were two ways in which the community watched over its members. The first was the density of the social fabric, the village being a tightly

¹²⁸ For example the priest initiated the criminal proceedings by reporting that Mare Bagović of Gabriele was impregnated by her uncle Dominik Baletin of Stravča (*Lamenta criminalia*, vol. 58, f. 197).

¹²⁹ About this in Konavle, see Niko Kapetanić and Nenad Vekarić, *Stanovništvo Konavala*, II. Dubrovnik: Zavod za povijesne znanosti HAZU, 1999: pp. 18-20 and 39.

¹³⁰ Overlapping competence becomes quite clear in the case of Mare Sršen whose uncle called his nephew (head of the family), the local priest, and *kaznac* to see the newborn (*Lamenta criminalia*, vol. 28, ff. 237v-292).

knit network of kinship,¹³¹ friendship, neighbourly, and economic ties. Day-to-day activities draw the members together (seasonal farm work, funerals, etc.), but often happen to be the cause of misunderstanding and conflict (crop damage, etc.).¹³² On the other hand, the village community as a whole had a distinctive feeling of collective identity and honour,¹³³ and—following a family pattern—it was determined to keep the good name of its female population. Therefore, the village armed itself with the means, motive and excuse for prying into someone's life.¹³⁴ Within this general social discipline there existed special women's surveillance which covered those areas of social life generally considered as female: sexuality and parenthood.¹³⁵ It is not by chance that in the infanticide trials, contrary to other crimes, witnesses were mainly women. Whether their knowledge of someone's pregnancy and birth was based on confidentiality, excessive curiosity or rumour,¹³⁶ this very fact proves that women were the most authoritative experts on "female matters".

¹³¹ It is interesting to note how some women accused of illegitimate birth and infanticide tried to win over those whose testimonies could harm them (potential female witnesses) by "adopting them as mothers": "I take thee for my mother, don't tell a soul", "God be my witness, I take thee for my mother, say that nothing happened" (*Lamenta criminalia*, vol. 28, ff. 19-60; vol. 131, ff. 105-131).

¹³² On the density of social fabric and interrelations in German villages cf. Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700-1815*. Ithaca-London: Cornell University Press, 1996: p. 37.

¹³³ This dual aspect of the phenomenon is displayed in the Spanish term *honra*, meaning personal honour, and *honor*, referring to group honour (see Tomás A. Mantecón, »Honor and Social Discipline in Early Modern Spain.«, in: *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa*, ed. Heinz Schilling. Frankfurt am Main: Vittorio Klostermann, 1999: pp. 203-223).

¹³⁴ The court records indicate that "privacy" hardly existed. For example, neighbours felt free to enter each other's house to get water from the well, or go to the rooms upstairs; satisfying thirst next door in the middle of the night was a common practice; remorseless in her eavesdropping outside the bedroom door of her sister-in-law and her lover, the woman doesn't hesitate to spread the story (*Lamenta criminalia*, vol. 162, f. 119 and ss., according to the transcript of F. Haklička).

¹³⁵ About this see L. Gowing, »Secret Births«: pp. 51-53.

¹³⁶ An illustrative example of malicious gossip concerns the case of Simohaja, a Jewish woman. There were two parallel rumours in the city. The first concentrated on Simohaja's sickly swollen abdomen, as she was rumoured to have committed adultery and got pregnant by a Christian or even her own brother-in-law. The other rumour had it that a murdered child was found in the city. The two stories easily blended, gaining in spicy details as the gossip spread. According to the final version, "the Jews struck the child on the head with a mallet", weaving certain elements of the traditional misrepresentation of Jews as child killers into the story. The court procedure proved nothing beyond hearsay: no body was found, and Simohaja was suffering from some kind of a female disorder (*Lamenta criminalia*, vol. 22, ff. 163-222).

With or without any cause for suspicion, the village kept an unmarried woman under close observation,¹³⁷ letting her know that an eventual pregnancy and the events likely to follow were of major communal concern. The pregnant woman was not only exposed to inquisitive looks and indiscreet comments of her neighbours,¹³⁸ but also to actual attempts to “touch” her.¹³⁹ Fellow villagers or their leaders (fraternity heads, the parish priest, *kaznac*) warned the woman of the danger of trying to get rid of the foetus or the newborn,¹⁴⁰ holding the head of her household responsible if anything of the kind took place.¹⁴¹ The state authorities not only expected and demanded of the *kaznac* and the informer to report the crime, but they were also to take all the possible measures in order to prevent infanticide from occurring.¹⁴²

Formally, it was the responsibility of the *kaznac* to report the offence committed in the village community.¹⁴³ True, in a number of cases it was the *kaznac* who reported the crime to the local count or clerk.¹⁴⁴ However, some other cases show that the crime was reported by the fraternity head,¹⁴⁵ or the villagers themselves bringing the suspect to the local count.¹⁴⁶ Before report-

¹³⁷ Cf. J. Gélis, *L'arbre et le fruit*: p. 417; K. Wegert, *Popular Culture*: p. 163.

¹³⁸ A maidservant reproached the other: “how come your sister Mada goes to Mass although she is rumoured to be with child...” (*Lamenta criminalia*, vol. 218, ff. 45bv-127v).

¹³⁹ In an attempt to satisfy her curiosity and see whether Anica Šabadinka was really pregnant, her neighbour “stripped her breasts naked and saw the dark circles round the nipples indicative of a pregnant woman” (*Lamenta criminalia*, vol. 16, ff. 68v-239). On the practice, common among rural women in England in the 17th century, of inspecting each other’s breasts, see L. Gowling, »Secret Births«: p. 91.

¹⁴⁰ The same woman “pleaded with her not to harm the child”, together with other Šabadinka’s neighbours who warned her to keep the baby (*Lamenta criminalia*, vol. 16, ff. 68v-239). A certain woman was “advised by the priest to care for the child when born” (*Lamenta criminalia*, vol. 72, ff. 54-78v).

¹⁴¹ *Lamenta criminalia*, vol. 12, ff. 119v-167v. The head of the fraternity asked the priest to warn the master of the house to prevent his maidservant from “harming the child” (*Lamenta criminalia*, vol. 54, ff. 142-170).

¹⁴² See the seventeenth-century regulations cited in Župa’s register: J. Lučić, »Uprava u Župi dubrovačkoj«: p. 369.

¹⁴³ For more details, see N. Lonza, *Pod plaštem pravde*: pp. 100-102. Ivan Đuratović warned the *kaznac* of his obligation to report an illegitimate (incestuous) pregnancy to the court if he wanted to stay out of trouble (*Lamenta criminalia*, vol. 112, f. 60).

¹⁴⁴ *Lamenta criminalia*, vol. 35, ff. 29-341; vol. 53, ff. 142-234v; vol. 72, ff. 54-78v; vol. 157, ff. 91-96v.

¹⁴⁵ *Lamenta criminalia*, vol. 79, ff. 80v-94v.

¹⁴⁶ *Lamenta criminalia*, vol. 17, ff. 119-123; vol. 31, ff. 54v-79.

ing the crime to the state authorities, the village community was determined to establish the basic fact—the identity of the mother. Relating the mother to the infant sometimes proved an easy task because the pregnancy was usually common knowledge, a reasonable guess, or sometimes proven by feeling the woman's abdomen.¹⁴⁷

One should not be misled in the belief that the prosecution, trial and punishment were reserved exclusively for the state. In the case of infanticide the village community showed a peculiar reluctance in forwarding the case to the authorities. As it concerned one of their own, the villagers sometimes hesitated to report the crime to the authorities,¹⁴⁸ stating, in one case, that "it is our decision to conceal this case and punish the perpetrator among ourselves".¹⁴⁹ Some of the women ardently hoped that the whole affair would remain within the village borders, considering it a better option,¹⁵⁰ while others dreaded the reaction of the local community.¹⁵¹ The independent attitude of the village towards crime was not confined to reporting the crime, it was also concerned with the issue of taking the accused woman to court,¹⁵² or, if she was on the run, tracking her down and handing her over to the authorities.¹⁵³

¹⁴⁷ For example *Lamenta criminalia*, vol. 12, ff. 119v-167v; vol. 16, ff. 68v-239; vol. 28, ff. 253-299v; vol. 53, ff. 142-234v; vol. 72, ff. 54-78v; vol. 112, ff. 138-144v. Cf. J. Gélis, *L'arbre et le fruit*: p. 418.

¹⁴⁸ Disapproving of such an attitude, a man threatened to report his fellow-villagers unless the woman was taken to court, which proved convincing (*Lamenta criminalia*, vol. 79, ff. 80v-94v).

¹⁴⁹ *Lamenta criminalia*, vol. 12, ff. 119v-167v. The motives here were not a question of principle, for the head of the family obtained the villagers' decision by offering them wine, and that of the priest with a generous donation.

¹⁵⁰ Anica Šabadinka said to some women: "there is no need for you to go to court if I have confessed my pregnancy and miscarriage" (*Lamenta criminalia*, vol. 16, ff. 68v-239). Rade Laletin had a strong reason for pleading with her villagers to punish her and not to be tried in court, for two years earlier she had been sentenced to death for infanticide by that very court. As she was living in hiding, she was petrified of the possible implementation of that sentence (*Lamenta criminalia*, vol. 17, ff. 119-123 and *Lamenta de intus*, vol. 131, ff. 105-131).

¹⁵¹ "I beg of you not to strike me, for my Lords are in the City, I shall tell what I know of" (*Lamenta criminalia*, vol. 28, ff. 19-60).

¹⁵² The village tolerated the accused for two years, after she escaped from the hospital during the criminal trial, and brought her before the local count only after she committed another infanticide (*Lamenta criminalia*, vol. 17, ff. 119-123).

¹⁵³ For example, the villagers of Topolo apprehended Mande, daughter of Mihajlo Božov, in the neighbouring village sixteen years after she had been sentenced to death in absence. In all likelihood, this sudden dutiful behaviour had more to do with taking care of some unsettled accounts rather than seeing justice done (*Lamenta criminalia*, vol. 28, ff. 253-299v; *Criminalia*, vol. 5, f. 106v; *Acta Consilii Maioris*, vol. 52, ff. 177v-178).

3.2. Tintilini and witches

According to the Christian belief people come into the world burdened with the original sin of which they are delivered through the rite of baptism.¹⁵⁴ Thus the societies exhibiting a high infant mortality rate tended to perform the rite shortly after birth.¹⁵⁵ If there was reason to believe that the child had a poor chance of survival, the ceremony of baptism could be performed, according to canon law, by any adult. It involved sprinkling water over the baby's head and the invocation of the Holy Trinity.¹⁵⁶

If the child were to die unbaptized, it would be denied both life on earth and in heaven.¹⁵⁷ Infanticide was, therefore, considered a double crime: two souls were at stake, that of the perpetrator and that of the victim.¹⁵⁸ This belief was deeply rooted in the traditional Dubrovnik society as well as in the consciousness of the infanticidal mother ("If I was still with child, I would

¹⁵⁴ As late as 1969, the Catholic baptismal rite included exorcism of evil powers. See Henry Ansgar Kelly, *The Devil at Baptism: Ritual, Theology, and Drama*. Ithaca-London: Cornell University Press, 1985: pp. 261-266.

¹⁵⁵ According to the seventeenth-century regulations of Župa's register, the newborn was to be baptized on the date of birth (J. Lučić, »Uprava u Župi dubrovačkoj«: p. 370). Cf. J. Delumeau, *Le Catholicisme entre Luther et Voltaire*: pp. 245 and 281. On the reasons why the Church in the Counter-Reformation period favoured baptism shortly after birth see John Bossy, »The Counter-Reformation and the People of Catholic Europe.« *Past & Present* 47 (1970): p. 57.

¹⁵⁶ The child was most commonly baptized with the following formula: "I baptize thee in the name of the Father, the Son, and the Holy Spirit". See Edward Muir, *Ritual in early modern Europe*. Cambridge: Cambridge University Press, 1997: p. 24. A similar practice prevailed in Belgium in the eighteenth century, water sometimes being replaced by the mother's own saliva (R. Leboutte, »Offense against Family Order«: p. 41). In a Dubrovnik case from 1695, the child's grandmother baptized it before she and the mother abandoned it on the road (*Lamenta criminalia*, vol. 35, f. 104v). In a case from 1708, the priest inquired if the child had been baptized, but the latter proved to have been stillborn (*Lamenta criminalia*, vol. 53, ff. 21-27). See also a case from 1750 when the mother had baptized her child with the blessed water before it died, most likely of natural causes (*Lamenta criminalia*, vol. 112, ff. 138-144v). When in 1757, a child was thrown into the sea in a basket, the people who found it, ran to fetch the blessed water to baptize it if it was alive (*Lamenta criminalia*, vol. 128, ff. 38-63).

¹⁵⁷ J. Gélis, *L'arbre et le fruit*: p. 417; R. Leboutte, »Offense against Family Order«: p. 38. This motive is in line with the Florentine decision of 1484 on establishing a foundling home (R. Trexler, »Infanticide in Florence«: p. 100), and less explicitly with the Dubrovnik regulation of 1432 (*Liber viridis*, c. 252).

¹⁵⁸ In the infanticide case tried before the Ragusan court in the sixteenth century, the fact that the mother failed to baptize the child before she threw it into the water was also considered relevant (*Criminalia*, vol. 20, ff. 16v-17v). On the mother's practice of baptizing the child before killing it or lying to have done it, see S. Laurent. *Naître au Moyen Age*: pp. 160-164.

not have lost two souls"),¹⁵⁹ and in her environment ("why did you lose his and your soul").¹⁶⁰

The sanctuary of the churchyard was reserved for the ritual burial of the baptized,¹⁶¹ while the body of a liveborn infant which died shortly after birth, unbaptized, was buried or laid to rest without particular formalities.¹⁶² In the Dubrovnik region the infant was usually thrown into the sea¹⁶³ or buried at a distance from the village,¹⁶⁴ sometimes even across the border, on the territory of the Ottoman Empire.¹⁶⁵ Apart from the church rules concerning burial, the prevalence of such a custom was generated by prejudice and superstition, for it was believed that an unbaptized child buried on one's land brings hail or crop failure.¹⁶⁶

In the popular belief of the Mediterranean region, and elsewhere in Eu-

¹⁵⁹ *Lamenta criminalia*, vol. 54, ff. 142-170 (it was probably a case of abortion induced in late pregnancy).

¹⁶⁰ *Lamenta criminalia*, vol. 12, ff. 230-260.

¹⁶¹ For comparison, see Barbara A. Kellum, »Infanticide in England in the Later Middle Ages.« *History of Childhood Quarterly* 1 (1973-74): p. 374; Silvano Cavazza, »Double Death: Resurrection and Baptism in a Seventeenth-Century Rite.«, in: *History from Crime*, ed. Edward Muir and Guido Ruggiero. Baltimore and London: The Johns Hopkins University Press, 1994: p. 21. For example, the parish priest of Trpanj refused to bury an unbaptised child (*Lamenta criminalia*, vol. 141, ff. 100-151v), while one of the nuns of the Third Order of Danče managed to talk a woman out of burying her unbaptised child in the vicinity of the convent church (*Lamenta criminalia*, vol. 135, ff. 13v-23). Contrarily, Anica, the widow of Marin Puglia of Mljet, buried her newborn in the churchyard because she herself performed the baptismal ceremony (*Lamenta criminalia*, vol. 112, ff. 138-144v). One may speculate on the similar fate of a baby found resting in the damaged grave of the Church of the Rosary (*Lamenta criminalia*, vol. 50, f. 156v).

¹⁶² S. Cavazza, »Double Death«: p. 21; L. Gowing, »Secret Births«: p. 108.

¹⁶³ *Lamenta criminalia*, vol. 28, ff. 11-47v; vol. 35, f. 104v. A similar practice had applied to the bodies of suicide victims (*Lamenta criminalia*, vol. 42, ff. 74-97v; vol. 55, ff. 111-147; vol. 74, ff. 238v-260v).

¹⁶⁴ Having informed the priest of the child being stillborn, the midwife was followed his instructions and left the body in a place where those who were stillborn or unbaptised lay (*Lamenta criminalia*, vol. 53, ff. 21-27). See also *Lamenta criminalia*, vol. 31, ff. 54v-79; vol. 79, ff. 80-94v. The count of Lopud ordered the child's body found in a water tank to be buried at the locality known as Hljeb, a place reserved for the burial of unbaptised children (*Lamenta criminalia*, vol. 28, ff. 19-60). A suspect testified: "I would bury the child somewhere in the woods as the others do if the baby is stillborn..." (*Lamenta criminalia*, vol. 131, ff. 105-131).

¹⁶⁵ *Lamenta criminalia*, vol. 28, ff. 237v-292; vol. 72, ff. 54-78v; vol. 92, ff. 3-207v.

¹⁶⁶ The fear of "an evil fate befalling us and our field" (*Lamenta criminalia*, vol. 92, ff. 91-125); "Where are we to bury this poor thing, unbaptised, it shouldn't lie in the field and bring hail and barren years" (*Lamenta criminalia*, vol. 19, ff. 11v-16).

rope, supernatural qualities were attributed to an unbaptized soul. Sometimes it was represented as a jocular character making harmless jokes and at other times as a mean and vengeful creature.¹⁶⁷ *Tintilin*, a creature of Dubrovnik provenance, curses his mother¹⁶⁸ and is capable of either harming or helping everyone he happens to come upon.¹⁶⁹ He is a perfect blending of the qualities of his European counterparts: those of a trickster and a vengeful person.

There is ground, therefore, for supposing that the fear of the supernatural also contributed to the shaping of the popular attitude towards infanticide. In the traditional, rural cultures infanticide was considered an act contrary to nature. A mother who had killed her infant exhibited the power of deciding over life and death—having created life and taken it away—connecting thus the two ends of human existence. The line between unnatural and supernatural seemed to be vague, so that a mother who killed her infant was often considered to be a witch.¹⁷⁰ The belief that a witch gained strength through sacrificing her own child had its parallel in Dubrovnik, too. In the trials against those accused of witchcraft in the seventeenth century Dubrovnik, the aforementioned element recurs in the “confession” of the accused.¹⁷¹ However, while in some societies the association between an infanticidal mother and a witch made its way into the official judicial policy,¹⁷² Ragusan practice failed

¹⁶⁷ See B.A. Kellum, »Infanticide in England«: p. 380; Carlo Ginzburg, *Storia notturna: Una decifrazione del sabba*. Torino: Giulio Einaudi editore, 1989: p. 145; S. Cavazza, »Double Death«: pp. 22-23; K. Wegert, *Popular Culture*: pp. 172-173.

¹⁶⁸ Tomislav Macan, »Čaranje i gatanje: Blato na Mljetu.« *Zbornik za narodni život i običaje* 28/2 (1932): p. 229.

¹⁶⁹ On the character of *tintilin* in the Dubrovnik region, see particularly Maja Bošković-Stulli, »Usmene pripovijetke i predaje s otoka Brača.« *Narodna umjetnost* 11-12 (1974-1975): pp. 146-147; *eadem*, »Tragovi konavoskoga pričanja.« *Dubrovnik N.S.* 9/1 (1998): p. 14; T. Macan, »Čaranje«: p. 229; Vid Vuletić-Vukasović, »Prizrijevanje.« *Srpski etnografski zbornik* 50 (1934): pp. 174-176. On a similar character in Italy, cf. S. Cavazza, »Double Death«: pp. 22-23. On comparative information from other regions of Croatia, see M. Bošković-Stulli, »Usmene pripovijetke«: pp. 144-147.

¹⁷⁰ Cf. K. Wegert, *Popular Culture*: pp. 172-173.

¹⁷¹ According to a document from 1660 “...vogliono i Demoni, quando qualcheduna viene in Sbor ch’offerisca il suo figliolo o figliola”, while a witch confessed “che ha offerto in sacrificio la sua propria figliuola, la quale gl’era unica”. In 1689 Vica Antičeva of Prizdrina said that “she had consumed no other than her four sons...” See Kosto Vojnović, »Crkva i država u dubrovačkoj republici.« *Rad JAZU* 121 (1895): pp. 64-72.

¹⁷² On the territory of today’s Belgium in the seventeenth and eighteenth centuries women sentenced to death for infanticide and witchcraft were executed in the same manner (R. Leboutte, »Offense against Family Order«: pp. 35-38); on the similar practice in Germany, see K. Wegert, *Popular Culture*: p. 173.

to follow such a pattern. Still, the popular belief, according to which the infanticidal mother was bewitched by an evil force, remained.¹⁷³

4. *In a court of law*

4.1. *Looking for evidence*

Infanticide being considered a major offence, criminal procedure was most often initiated by the court (*ex officio*). The crime-reporting network included both the hierarchically established judicial institutions (from *kaznac*, the local court, to the Criminal Court), and less formal methods.

Criminal proceedings were conducted according to a more or less established procedure as in other serious crimes,¹⁷⁴ but the very nature of this offence placed the spotlight on evidence which, in other circumstances, might have been considered irrelevant. This shift in focus was the result of secrecy in which the act was committed (no eyewitnesses), and only circumstantial evidence could be produced. The facts relating to the pregnancy, the birth and the cause of death were most carefully evaluated and the court often called expert medical witnesses, physicians or midwives. However, the statement of the suspect played a crucial role, and she was interrogated at a somewhat earlier stage comparable to other procedures, confession often being obtained by torture.

As infanticide implied the killing of a live and developed infant, the defense of the accused was commonly based upon the statement that her child had been stillborn,¹⁷⁵ premature or poorly developed.¹⁷⁶ Whether the women were telling the truth, or they considered it their best defense strategy, continues to puzzle the historians just as it puzzled the judges of Dubrovnik several

¹⁷³ In the trial against Marija Žuhovič in 1738, the accused explained the infanticide by "being tempted by the devil" (*Lamenta criminalia*, vol. 92, ff. 91-125). On Württemberg in the eighteenth century, cf. Mary Nagle Wessling, »Infanticide trials and forensic medicine: Württemberg, 1757-93.«, in: *Legal medicine in history*, ed. Michael Clark and Catharine Crawford. Cambridge: Cambridge University Press, 1994: p. 117.

¹⁷⁴ See N. Lonza, *Pod plaštem pravde*: pp. 207-256, especially on pp. 252-256.

¹⁷⁵ *Lamenta de intus*, vol. 131, ff. 105-131; *Lamenta criminalia*, vol. 17, ff. 119-123; vol. 28, ff. 19-60; vol. 31, ff. 54v-79; vol. 53, ff. 21-27; vol. 79, ff. 80v-94v; vol. 92, ff. 91-125. On Belgium and France in the seventeenth and eighteenth centuries, see R. Leboutte, »Offense against Family Order«: p. 46; on England in the eighteenth century R.W. Malcolmson, »Infanticide in the Eighteenth Century«: p. 198.

¹⁷⁶ *Lamenta criminalia*, vol. 16, ff. 68v-239; *Lamenta de intus et foris*, vol. 73, ff. 42v-97v.

centuries ago. According to the relevant literature, the number of stillbirths was considerably higher in the eighteenth century than it is today.¹⁷⁷ In extramarital pregnancies, it could have been markedly higher, particularly if the woman wrapped her abdomen tightly to avoid looking pregnant or, was performing physically demanding chores to avoid arousing suspicion.¹⁷⁸

In four infanticide cases the accused were subjected to torture,¹⁷⁹ this being one-third of all the trials in which the suspect was directly interrogated in court. Torture was resorted to only in cases where there was sufficient incriminating evidence against the accused. B. Carpzov's manual provides a series of similar *indicia* (circumstantial evidence) of infanticide, such as the change in waistline, lactation, positive result of the gynaecological examination, and the woman's statement of the child being stillborn if the pregnancy as well as birth had been kept secret.¹⁸⁰ The Ragusan practice followed this doctrine. All the tortured women concealed their pregnancy and claimed that the infant was stillborn, two of them having milk in their breasts.

In two cases the accused withstood pain during torture and denied any guilt, claiming that the child was stillborn and confessing the deed only once. Other Ragusan criminal records confirm that confession extorted by torture was less common than denial of guilt.¹⁸¹ European doctrine and judicial practice are ambivalent about the legal consequences in the case of the accused who withstood torture without admitting the offence: according to a doctrine which prevailed in the earlier period, the accused was thus "cleansed" from the incriminating evidence,¹⁸² while according to the view which dominated in the eighteenth century, the accused could still be punished, but less severely.¹⁸³

¹⁷⁷ On this, see R.W. Malcolmson, »Infanticide in the Eighteenth Century«: p. 198.

¹⁷⁸ See S. Laurent, *Naître au Moyen Age*: p. 160; K. Wrightson, »Infanticide in European history«: p. 10; K. Wegert, *Popular Culture*: p. 164.

¹⁷⁹ *Lamenta de intus et foris*, vol. 73, 42v-97v; *Lamenta criminalia*, vol. 17, ff. 119-123; vol. 28, ff. 19-60; vol. 28, ff. 237v-292. On a general survey of torture in the Ragusan judicial practice of the eighteenth century, see N. Lonza, *Pod plaštem pravde*: pp. 232-238.

¹⁸⁰ B. Carpzovius, *Practica nova rerum criminalium*, p. III, q. 122, tit. 19-28. Cf. also M.N. Wessling, »Infanticide trials and forensic medicine«: p. 120.

¹⁸¹ N. Lonza, *Pod plaštem pravde*: p. 234.

¹⁸² As prescribed, for instance, by the *Constitutio Criminalis Carolina* and by Carpzov (p. I, q. 15, tit. 39: "... si in tortura innocentiam obtinuerit...").

¹⁸³ J.H. Langbein, *Torture and the Law of Proof*: pp. 47-48.

Dubrovnik's judicial practice shows that, as far as infanticide was concerned, the women who endured their ordeal without admitting the crime were set free and the case was dropped.

In establishing relevant medical evidence, qualified persons or persons experienced in the field were called to assist the court (surgeons, midwives). Examination or the autopsy of the infant's body was to provide the answers to the following questions: was the child live-born, what were its survival chances and was the cause of its death natural or violent.¹⁸⁴ In a number of cases, physicians could definitely determine that the child was killed, whereas in others they were more circumspect, stating only what they thought had happened and the circumstances on which they based their opinion.¹⁸⁵ As far as the gynaecological examination was concerned, midwives seemed to have been the most competent experts whose opinion on pregnancy and birth was essential.¹⁸⁶ Their "findings" were primarily based on the breast examination of the accused, for colostrum or milk was considered to be conclusive evidence of a woman having given birth.¹⁸⁷ In pursuit of the postpartum symptoms, midwives also examined the colour and the size of the nipples, the evidence of the marked stretching of the abdomen skin, the traces of birth

¹⁸⁴ On the similar data on Württemberg in the eighteenth century, see M.N. Wessling, »Infanticide trials and forensic medicine«: p. 122; on Belgium, see R. Leboutte, »Offense against Family Order«: pp. 40-41.

¹⁸⁵ The maturity of the fetus was generally established by examining its hair and nails (e.g. *Lamenta criminalia*, vol. 157, ff. 91-96v). In one of the cases, expert witnesses based their presumption of the child having been thrown into the sea alive on its broken nails in the struggle for air (*Lamenta criminalia*, vol. 22, f. 112v). Another case shows disagreement between the experts concerning the cause of death, and Domenico, the surgeon, was ready to explain his point of view with examples from medical manuals (*Lamenta criminalia*, vol. 21, 206rv). In Western Europe, the examination of the child's lungs was used to establish whether the child was born alive. If a sample of the lungs floated in water, it meant that the child had inhaled to take air, but if lung sample sank, it led to the conclusion that the child was stillborn. See M. Jackson, »Suspicious infant deaths«: pp. 75-81; R. Leboutte, »Offense against Family Order«: pp. 40-41.

¹⁸⁶ Yet, in a case from the sixteenth century two midwives were summoned to testify, as well as the surgeon who performed a gynaecological examination (*Lamenta de intus*, vol. 86, ff. 152v-154v).

¹⁸⁷ For example *Lamenta criminalia*, vol. 12, ff. 119v-167v; vol. 12, ff. 230-260; vol. 17, ff. 119-123; vol. 35, ff. 29-341; vol. 53, ff. 142-234v. Stane Petrova tried to stop the milk from her breasts by tying up the nipples with thread, but the midwives proved faster and managed to squeeze out a few drops of colostrum; this evidence was considered conclusive and no further examination took place (*Lamenta criminalia*, vol. 28, ff. 19-60).

and postpartum bleeding, the swollen abdomen.¹⁸⁸

4.2. *The outcome of the trial and penal policy*

In the Ragusan penal system of the seventeenth and eighteenth century punishment for infanticide was hanging, as for any other type of homicide.¹⁸⁹ A similar trend is evident in the penal policies of other European countries in which a variety of particularly degrading types of capital punishment was later substituted by hanging.¹⁹⁰

In 14 infanticide cases, the women were sentenced to death in absentia, since they were on the run. Of all the women suspected of infanticide, almost two-thirds were beyond the reach of the authorities.¹⁹¹ Some of them had fled immediately after delivery, while others hesitated at the risk of being apprehended. Gleanings from the judicial records highlight the post-infanticide stories of these women, who either started a new life far from Dubrovnik,¹⁹² or eventually returned home after some time of living in exile.¹⁹³

If the culprit was eventually apprehended, after having been convicted in absence, in principle, the court was to proceed with the punishment immedi-

¹⁸⁸ “Look at the swell in your stomach that always stays after childbirth and the breasts bursting with milk and your shirt stained with blood, you can’t fool me, I am a midwife of experience” (*Lamenta criminalia*, vol. 12, ff. 119v-167v); “milk in the breasts and dark nipples and stretch marks all over the stomach that appear after childbirth and the shirt all soaked in blood... bleeding that the delivery ends with” (*Lamenta criminalia*, vol. 22, ff. 203-231).

¹⁸⁹ Župa provisions are explicit about this (J. Lučić, »Uprava u Župi dubrovačkoj«: p. 369). In fact, in the sixteenth century, at least one mother who killed her infant was sentenced to death by decapitation (*Criminalia*, vol. 20, ff. 16v-17v).

¹⁹⁰ S. Faber, »Infanticide«: pp. 258-259; K. Wrightson, »Infanticide in European history«: pp. 1-2; O. Ulbricht, »Infanticide in eighteenth-century Germany«: p. 110. An increasing tendency towards a coherent penal system was a general feature of the development of the European criminal law. See on this Andrea Zorzi, »Rituali e cerimoniali penali nelle città italiane (secc. XIII-XVI).«, in: *Riti e rituali nelle società medievali*, ed. Jacques Chiffolleau, Lauro Martines and Agostino Paravicini Bagliani. Spoleto: Centro italiano di studi sull’alto medioevo, 1994: pp. 148-153.

¹⁹¹ Out of 35 suspects, 23 were beyond the reach of the authorities. On contumacy with capital crimes see N. Lonza, *Pod plaštem pravde*: pp. 269-270.

¹⁹² For example, *Lamenta de intus et foris*, vol. 68, f. 165rv; *Lamenta criminalia*, vol. 13, ff. 204v-222.

¹⁹³ This can be illustrated with the cases of two women sentenced in absence and apprehended in their own community many years later (cited below), along with the case of Rade Laletin whom her fellow-villagers brought to court only when she repeated her offence two years later (*Lamenta criminalia*, vol. 17, ff. 119-123).

ately. However, the analysis of the eighteenth-century Ragusan penal policy indicates that the authorities were generally willing to reduce the punishment, particularly if the accused gave herself up.¹⁹⁴ Even if this was not the case, the likelihood of the execution of the death penalty diminished considerably over time. For example, two women, sentenced *in contumacia*, remained outside the Ragusan jurisdiction over a period of years. Being finally apprehended, one after 16, the other after 9 years of hiding, their sentences were reduced and commuted to imprisonment.¹⁹⁵

Of all the sentences only two were issued with the accused actually present during the trial. Both women had been found guilty but were fortunate enough to avoid the death sentence. In the case of Marija Žuhović, the court issued an one-year pro forma prison sentence, equal to the length of time spent in custody. In fact, the court harboured serious doubts as to the suspect's guilt: it was established that she had given birth and hidden the corpse. As far as her pregnancy is concerned, it was neither really extramarital nor secret. Furthermore, there were no signs of violence on the infant's body, leading to the conclusion that the child was stillborn. In such a case, one might have expected acquittal or at least a temporary suspension of the case. However, in similar cases Ragusan judicial practice declared the defendant guilty, imposing the period of imprisonment equal to the time spent in custody during the trial.¹⁹⁶ This sort of compromise seemed to satisfy both the accused and the court: the former was set free, while the latter found a legal framework for the remanded custody. Mare Sršen was the second woman found guilty, and sentenced to a combination of flogging, public branding, a two-year imprisonment and a lifelong banishment from the Republic.¹⁹⁷ This sentence can

¹⁹⁴ N. Lonza, *Pod plaštem pravde*: pp. 269-271.

¹⁹⁵ Mande, the daughter of Mihajlo Božov of Topolo, was sentenced to death *in absentia*; in June 1707 she was arrested, and a month later, the death sentence was commuted to life imprisonment upon her demand (*Lamenta criminalia*, vol. 28, ff. 253-299v; *Acta Consilii Maioris*, vol. 52, ff. 177v-178; *Criminalia*, vol. 5, f. 106v). In 1739 Luce Učović was sentenced in absence to be paraded through the streets, to be displayed at the pillory, whipped, branded with hot irons and two years of prison. She was arrested in the autumn of 1748, and a few months later her previous sentence was commuted to six months of prison (*Lamenta criminalia*, vol. 92, ff. 3-207v; *Criminalia*, vol. 6, f. 186v).

¹⁹⁶ On this, see N. Lonza, *Pod plaštem pravde*: pp. 216-217.

¹⁹⁷ *Lamenta criminalia*, vol. 28, ff. 237v-292. On a comprehensive survey of the penal system of Dubrovnik in the eighteenth century, see N. Lonza, *Pod plaštem pravde*: pp. 139-206; on banishment pp. 152-155; on imprisonment pp. 165-180; on pillory pp. 160-162; on whipping pp. 151-152; on branding pp. 150-151.

by no means be considered lenient not only on the account of the lifelong banishment from the community, but also because of the public humiliation the woman was exposed to.¹⁹⁸ Yet the court's intent was to spare her the death sentence despite incriminating evidence, which included her confession, and the fact that the killing of the baby was particularly gruesome. Not a single entry in the records indicates the reasons behind this lenient sentence. Thus it leads us to think that the Dubrovnik judicial practice tended to look at infanticide as a somewhat less repugnant crime than homicide of an adult, and therefore hesitated in pronouncing the death penalty.

It is interesting to note that between the years 1667 and 1808 only two women were found guilty of infanticide, and none were actually acquitted. The principle of reaching an unambiguous and final verdict is of a relatively recent date in the history of the criminal procedure, introduced for the protection of the defendant's rights. In the judicial practice of Dubrovnik, in a great majority of cases a formal sentence was not pronounced because the cases were often dropped along the way.¹⁹⁹ With regard to infanticide, being provided with substantial incriminating evidence, but still insufficient for reaching the guilty verdict, the court decided to suspend the proceedings. In case a relevant piece of evidence emerged in favour of the prosecution, the trial could resume without any further formalities. Due to the totally unpredictable course of the trial, the suspect was often released from custody.²⁰⁰

We can say that the difficulties in establishing facts played a significant role in creating judicial practice and the sentencing policy, because the cases where the verdict had not been reached proved to be the rule rather than the exception. The fact that the court was frequently unable to identify a woman, while those "detected" usually remained beyond the reach of the judicial system, leads us to conclude that the contribution of the Ragusan judicial system to suppressing infanticide was minimal.

¹⁹⁸ In her appeal for clemency Mare Sršen suggested that whipping and branding be replaced by ten years of imprisonment. For more details on the social meaning of the degrading punishment see N. Lonza, *Pod plaštem pravde*: p. 199.

¹⁹⁹ See N. Lonza, *Pod plaštem pravde*: pp. 241-242.

²⁰⁰ *Lamenta criminalia*, vol. 31, ff. 54v-79.

5. *Conclusion*

Taking into consideration the methodological limitations, referred to in the introduction and throughout the article (figures which may be only the tip of an iceberg, with the accentuated discrepancy between the urban and rural areas, etc.), one is still able to reconstruct the social environment in which infanticides were committed in the Republic of Dubrovnik from 1667 to 1808. In the rare cases when we could establish the woman's age, she usually committed the crime in her twenties or thirties but not earlier. Almost two-thirds were servants, originating from the lowest socio-economic group in which marriage prospects were (economically) limited. All women but one were single or widows, and pregnancy was the result of a relationship which, for various reasons, could not lead to marriage (legal or social obstacles, partner's abandonment). The majority of these women lived in patriarchal families (or as live-in servants), permeated by the authority of the male household head. The driving force behind the desperate attempts to hide the pregnancy and childbirth, and then harm one's child was the fear of the family's reaction to illegitimate birth and the dread of the potential social consequences (poor marriage prospects, stigma, and the status of the outcast). The Ragusan infanticides did not therefore discriminate between male and female infants. The reconstruction of the social profile of the mother who kills her infant and the analysis of her motives follow the same pattern as in many other European countries of the time, with minor differences which could be explained by variations in family structure and differences in employment of domestic servants.

The study of criminal records concerning infanticide has cast additional light on moral norms and social control, the realm of social life the historian has rarely been given a chance to enter. The analysis of the Dubrovnik cases has revealed that the sexuality of the individual was subjected to several levels of control. The head of the household was responsible for the sexual behaviour of his family and non-related members (servants), his authority extending to the use of violence and the right to expel a member from the household. His personal honour and authority were threatened if he could not control the choice of sexual partners of the members of his household. That is why extramarital sex, revealed and complicated by an unwanted pregnancy, was not a private matter or a question of personal choice, but a crucial test of the authority and the honour of the head of the family. Whether the family

decided to shield the woman and her child born out of wedlock or to stigmatize and reject her, depended mainly on the relations between family members and the permanent power structure within the family, as well as on the circumstances. Village life was based upon the sense of community which implied social control of the individual including his or her sexual behaviour. The Ragusan examples show that neighbours or village leaders felt free to pry into other people's private lives, to peep through the keyholes, to examine someone's body, to spy or to denounce. Furthermore, social control of moral behaviour, which, in post-Trentine Europe, was transferred to the village fraternities and priests, was also applied in the Dubrovnik community. Formal (fraternity) and informal (neighbourhood, local female population, etc.) channels of social control and forms of repression were intertwined and complemented each other, sometimes acting in accordance with the judicial procedure and at other times independently. Confronted with the authority of the local community, the state aimed at linking the judicial system with the local social structure by appointing a *kaznac*, a village representative with certain public authority and responsibility. Infanticide trials have shed light on the significant role of the *kaznac* and other village leaders in detecting crime, producing evidence, and implementing sentences. In a state without police, such as the Republic of Dubrovnik, the efficiency of crime control relied entirely on the structure of the micro-community.

From the anthropological point of view, the attitude of the Dubrovnik community towards infanticide was deeply rooted in the teachings of the Catholic Church, intertwined with popular belief and superstition. The Catholic doctrine considered infanticide as a termination of life on earth and a denial of eternal life, because a child which died without baptism was left to the mercy of evil powers. In European popular belief an unbaptized child could easily be transformed into a magician, who possessed powers which could bring good or bad luck. Such features were also attributed to the Ragusan *tintilin*, a whimsical spirit, who could be vengeful, persecute his own mother, and if annoyed, could easily send hail and destroy the harvest. The popular attitude towards infanticide was more than just a reflection of human and divine laws; there was also an element of fear of the supernatural.

Legal aspects of infanticide provide plenty of data. While Ragusan laws hardly make any reference to this crime, the classification of infanticide as a separate crime was the result of long-standing judicial practice, which included the elaboration of the rules of evidence. Since the basic elements of the crimi-

nal act (murder of a live born infant) were usually impossible to establish on the basis of the prevailing standards (two eyewitnesses or confession), the rules on circumstantial evidence and assumptions were introduced in order to overcome this shortcoming. By focusing on circumstantial evidence, the Ragusan judicial system followed the mainstream European legal doctrine. Some of the noteworthy treatises and manuals on procedural law, which also discussed the problem of infanticide, were to find their place in the library of the Ragusan Criminal Court. Yet, Ragusan procedural law remained original in certain aspects (e.g. dropping the case without reaching a formal verdict), with the court sometimes acting in accordance with the general evaluation of the case and the objectives of the penal policy rather than within the strict legal norms.

Infanticide trials experienced diverse difficulties. On the slightest hint of suspicion, most of the suspects fled. As with other serious crimes where the accused was beyond the reach of the authorities, the sentence was delivered *in absentia*. Very often, the sentence was not implemented, for the woman was on the run, or, more rarely, lived as an outlaw in her own community (especially in a village), protected by the network of communal solidarity which the authorities were unable to penetrate. As time passed, public interest in punishment weakened, and the authorities were generally willing to reduce the penalty pronounced in absentia, if that was to guarantee the closing of the case.

In the cases when the accused were brought to justice and tried, the court was faced with such difficulties in establishing evidence, particularly in establishing whether the child was stillborn or not, that it was impossible to comply with the procedural standards governing the guilty verdict. The proceedings were thus often indefinitely suspended. The court's reluctance in pronouncing the death sentence in cases of infanticide even when guilt was fully proven and the seriousness of the crime should warrant it, indicates that, in practice, killing a newborn was likely to be considered a less serious crime than killing an adult.

