Summaries of Publications

Nella Lonza, *Criminal Justice in the Eighteenth-Century Republic of Dubrovnik (Pod plaštem pravde)*. Dubrovnik: Zavod za povijesne znanosti HAZU, 1997.

The administration of criminal justice in the eighteenth-century Republic of Dubrovnik was determined by a variety of interactive elements. In order to give a general view of the system, research into some of the most significant features of legal practice was essential, such as legal background, organization of the judiciary, social structure and crime rates, the penal system, procedure, penal policy, and the ideology of punishment. Records of over 3,000 cases presided over by the central Criminal Court served as major source of the study.

I

The Principal medieval legal collections (Statute of 1272, *Liber omnium reformationum*, *Liber viridis*, *Liber croceus*), were formally effective until the fall of the Republic at the beginning of the nineteenth century. However, legal practice continuously modeled itself in accordance with new conditions. Criminal law offered a number of examples in which legal practice gave way considerably to certain solutions which bore no trace in the regulations (e.g. prison in the penal system or torture in the procedure). A close analysis of court records has proved that legal practice was far more productive and often contradictory to the legal provisions. And reversely, a thorough study of court records has provided a more credible and realistic reconstruction of the system of legal sources.

It has been shown that over the centuries the Statute of 1272 and other legal collections gained political rather than legal value. The continuity of legal order was the stronghold of legitimacy. The sources put forward as positive law by the Republic of Dubrovnik had an illusionary effect. As a matter of fact, they were the symbols of the Republic's identity, crucial to its self-confidence and political image.

II

The judiciary did not operate as a separate public function performed by professionals, but represented a mere political device in the hands of the nobility. The analysis of judicial selection shows that the *cursus honorum* was strict. Petty offences were decided by local counts, patricians who would begin service in their early twenties, with little life, let alone, legal experience. Working their way up the political ladder over the following fifteen years, they would practice the "art of governing", which led them to judicial and other high offices in their mid-forties. Judges, as well as local officials, were elected for a limited one-year therm without the possibility of being re-elected for a period of two years. Since most of them resumed their judicial office just a few times and after long intervals, they were scarcely trained in criminal law. Approximately one quarter of the patricians were re-appointed to judicial office several times, thus managing to maintain their acquired legal knowledge and skill. For the rest of them, however, the judicial function represented only a minor episode in their public lives.

Only exceptionally judges had proper legal education, acquired at foreign universities. Towards the end of the eighteenth century, the Republic of Dubrovnik organized a legal course so that the patricians (and commoners in public services) could obtain some

basic knowledge necessary for practicing. Generally speaking, though, the legal education of the judges was meagre.

Under such conditions chancellors were those who contributed to criminal justice on a somewhat higher professional level. Although their role seemed to be subordinate and of minor importance, they assisted the judges acting as guarantees of legal standards. First of all, a long apprenticeship offered the chancellors thorough training in all aspects of criminal law. Furthermore, chancellors specialized in criminal matters, unlike patricians, who recurrently changed their duties. Finally, the chancnellors holding long-term offices maintained the necessary continuity in criminal justice. Metaphorically speaking, the chancellery was the driving-wheel of the judiciary. The role of experienced chanellors was even more valuable in local units, where they assisted the unskilled local counts.

The important position of chancellors in the Dubrovnik state reflected on their social condition. The chancellor's families constituted a closed social group within commoners, the sons frequently inheriting the office from their fathers.

It is evident that in criminal procedure the judge and the chancellor had distinct roles. The criminal judges were in charge of the main issue of the case, while the chancellor's predominant contribution was in the legal field. Chancellors certainly made use of *Criminalium*, the repertory of criminal law provisions. More complex legal problems demanded the aid of specialized reference books, kept in chambers. Unlike civil procedure, Dubrovnik criminal procedure was never fully described in the form of a written manual, but survived as part of the chancellors' oral tradition. Their work was based on "judicial style" (*stylus curiae*), i.e. inveterate practice. It had no character of strict precedents, but contained rules, principles, instructions, and formulations deriving from long and selective experience. The chancellors were tutored by their seniors and they in turn passed their knowledge on to younger colleagues.

The judges could rely upon the assistence and professional liability of chancellors and concentrate on decisive points, such as the evaluation of evidence, the choice of the penalty, etc. Judicial decision was not the result of mere improvisation. It showed a tendency towards consistency and stability, both characteristic of the conservative image of the Republic of Dubrovnik. However, political and legal issues intertwined continually, either in the choice of punishment or the transfer of jurisdiction. The judges were guided by the state interest, that is, their judicial and political roles overlapped.

Jurisdiction was initially given to the Criminal Court and the local counts, but in accordance with the principle of "sliding jurisdiction", it could be upgraded in the hierarchy. The scale of state institutions started with local counts and continued through the Criminal Court up to the Minor Council and the Senate, which was authorized to intervene in criminal justice at its own discretion. The Senate proved to be a perfect laboratory for blending legal and political issues in the most delicate cases. Although the Senate did not exercise its judicial authority too often, its political power hovered above the jurisdiction of all the other institutions.

The judiciary embodied several supervisory mechanisms. *Provisores*, three experienced patricians well versed in law, supervised the legality of judicial decisions. Whether or not an already - passed sentence would be re-examined depended upon their

judgment, but not entirely - the final decision was reserved for the Senate. The local officials' misuse of authority was monitored at regular intervals by the supervising committee (*Syndici*). Possible errors or inconsistencies could be rectified by means of pardon, thus providing the penal system with the necessary flexibility.

III

The difficulties facing most of Dubrovnik's institutions in the eighteenth century reflected upon the work of the criminal judiciary. The decrease in the number of patricians caused problems in holding the institutional model according to the principles of rotation and family representation. Furthermore, conflicts among the nobility almost completely paralyzed the institutional system, so that the elections could not take place regularly.

Thus the elections for Criminal Court judges were often prolonged, and some of the possible candidates were appointed to assignments elsewhere. The problem was even worse with the function of local count, the most unpopular form of service among young patricians. Incapable of adjusting and coping with unpredictable situations, the judiciary suffered a serious crisis. The eighteenth century shed light upon all the defects that discredited the Dubrovnik judiciary, such as dilatory and desultory procedures or negligent and tardy executions.

IV

Court records are among the most illustrative and valuable data pertaining to the eighteenth-century Dubrovnik society. They are also of extreme significance to historiography, as they provide insight into the life of rural communities, which is seldom reported on in other sources.

Paradoxically, social conflict is not only an act of collision but also of closeness, defining crime as a form of "negative communication". Crime is markedly endemic in more compact communities, particularly in rural areas. Two-thirds of the violent offences occured between fellow villagers. Almost nine-tenths of the perpetrators of violent crimes committed them within the limits of neighboring villages, against people linked to them by marriage bonds and everyday contacts.

Urban crime displayed no such compactness. It was dictated by a different life-style, people communicated and circulated in broader social circles. The Jewish community was the only relatively compact and isolated urban social group with endemic criminality.

On the other hand, more than four-fifths of all the tried thieves committed thefts outside their home villages, often being organized into gangs. Thefts were mostly premeditated and directed towards alien communities in order to avoid collective liability and to improve the chance of being undetected.

Research into crime within the family is not easy, since minor offences were often successfully covered up. According to the sources, serious violent crimes within the family most frequently occurred between adult brothers, which offers grounds to believe that the rigid form of joint family was the major source of conflict. Some data about the transformation of family structure and disintegration of joint families can be confirmed by documents on reconciliation and settlement.

In the Ancien Régime societies organized on a collective basis, the authorities were scarcely concerned with the individual, as the focus was on the group, and introduced some devices of collective liability. In that

way both the self-control of the community was reinforced, and the group itself was enabled to individualize collective sanctions. For such an approach to be effective, density of social relations and transparrency of events was essential. These connections prevailed only in rural communities and in the Jewish ghetto within the city itself.

The autonomous judiciary of the village represented a complementary body of the state judiciary. Although oral tradition barely left any trace, some transitional mechanisms half-way between custom and law were reported, bearing ancient patterns along with the prevailing features of dominant culture. Furthermore, the rural community felt empowered to decide upon major issues of life and death: on certain occasions, despite numerous warnings, it sheltered escaped criminals, but also expelled its members or, at worst, attempted to lynch them. The background of these actions signifies disharmony between the value system accepted by the state judiciary and the one deeply implanted into the traditional understanding of justice.

The pattern of social events coincided with the cycles in nature in the literal sense of the world: the rhythm of crime followed the rhythm of nature. Criminal offences were out of season at the time of exhaustive crop work and vice versa, social relations (from sexual relations down to crime) intensified in the period of little field work. This phenomenon emphasized the gap between rural and urban communities, as the latter showed no seasonal oscillations of criminal behavior.

Research into criminality trends has been carried out by isolating crimes with the least methodological obstacles. The early decades of the eighteenth century registered a rapid decrease in the number of homicides due to general stabilizing conditions, particularly along the border of the Republic. Prior to that time, fear of banditry resulted in a situation of continual tension and constant carrying of weapons, both leading to many tragic events. In the second half of the eighteenth century the percentage of homicides fall to 10% or even considerably less. Considering a span of time longer than a century, this drop in the number of murders coincides with a general European trend of decrease in violent crimes. Besides, the Dubrovnik court records display a progressive shift from physical aggression toward verbal or symbolic. The explanation of this transitional process can be found in the theory developed by Norbert Elias on the "economy of instincts" and the growth of self-control as elements of a very complex, evolutionary and highly stratified "civilizing process", spanning from the Middle Ages to contemporary society.

The study of murder and theft rates in different regions of Dubrovnik's territory reveals diverse social backgrounds, life-styles and moral codes. Apart from the common differences between rural and urban societies and the peculiarities of life in detached island communities, the Pelješac peninsula had a much lower crime rate than the border areas of Primorje and Konavle. The remote and border-line communities, far from the reach of the authorities, were perfect grounds for a variety of criminal behavior. Since the protection of subjects, as well as their punishment, was ineffective, it gave way to behavior patterns founded on violence, self-help and self-will. This accounts for the higher rate of violent crimes committed in Primorje (a territory stretching along the longer border) in comparison with Konavle, although the two provinces were similar in position and comparable in number of inhabitants.

V

The ideology of punishment was never expressly formulated in the Republic of Dubrovnik, but the forms of the inflicted penalties reflected some of the aims of the penal policy. Each penalty was not solely the response of the society to the committed crime, but a complex message as well.

Some penalties, conceived on the idea of retribution, contained certain attributes of the crime itself: the punishment for murder was death, moral offences were matched by putting the offender to shame, whereas verbal offences required apology. Some forms of punishment were intended to remove the criminal from his community or social group, e.g. through banishment, or expulsion from the nobility, or confinement in the fortress, at home, or in prison. Through fines and penal servitudes the authorities aimed at gaining profit for public finances. Each particular punishment, as well as the system as a whole, resulted from the combination of such elements. On the basis of intrinsic criteria it was possible to reconstruct the original penalty scale in which disgracing penalties had a very high position.

The types of penalties in Dubrovnik legal practice were not different from those in other European countries of the Ancien Régime, especially those of the Mediterranean. However, if we regard the penal system on the whole, considerable discrepancies arise. Three-quarters of all the sentences of the Criminal Court were the punishment of imprisonment, while the other penalties hardly reached two-figure percentages. Furthermore, imprisonment began occupying a prominent place in the Dubrovnik penal system as early as the fifteenth century, whereas in most European countries it appeared (in combination with forced labor) as late as the sixteenth century. Dubrovnik society was not founded on feudal bases, but mercantile values: circulation, time, and money. Therefore, deprivation of liberty by imprisonment and waste of valuable time were hard enough sentences for the offender. The fact that there were no restrictions regarding communication among prisoners and their visitors made the prisoner's everyday life more endurable than in the newly established prison institutions throughout Western Europe.

To the most serious crimes the authorities esponded most brutally and publicly, bringing the punishment to the level of a ritual. The punishment was to be exemplary, horrible, and meaningful, a sight to remember. The public infliction of punishment used comprehensive symbols: reverse ritual was to reaffirm the values violated by the offender (disgracing procession), while exposure at the Column of Orlando (on the main square of the city) and branding with the state seal demonstrated political authority and the triumph of legal order. The effectiveness of the message was further stressed by "theatrical" elements of scenery, musical effects, and the use of dummies. Sometimes the social effect of the punishment was prolonged by a permanent mark on the offender's body, or by the exposure of a quartered corpse. But the authorities were aware that, in order to strike spectators, such punishments were to remain exceptional.

In the middle of the eighteenth century the long-term evolution of the penal system came to a turning-point. Public and ritual executions were becoming less frequent along with other penalties meant to cause physical pain and suffering. An identical process in other European countries of the Ancien Régime provoked a vivid discussion in historical science. Dubrovnik sources confirm that the extent and pace of these

changes could not have solely been induced by the ideas of the Enlightenment. They should be placed within the context of fundamental and gradual transformations of human society and its values. The works of Pieter Spierenburg, inspired by the theory developed by Norbert Elias, support the idea that changes in the penal system result from profound transformations in the domain of sensibility end mentality, reflecting upon a variety of basic issues of human life. Taking into consideration the contributions of Michel Foucault, we can sense vague outlines of modern society built on the individual. Punishment began to focus on the offender and no longer represented a social happening. It did not demonstrate ritual triumph of the punitive authority any longer, but was supposed to express the idea that the punishment was inevitable.

VI

Criminal procedure in the Republic of Dubrovnik was never entirely regulated; the provisions remained scarce and few. After detailed analysis of a great number of cases, it is possible to establish the elements and principles of the procedure.

The Court had great authority to initiate the procedure so as to avoid the negative consequences of the passivity of the aggrieved party. Since in pre-police societies crime reporting was uncertain, Dubrovnik criminal justice tended to eliminate or surmount the problem in the following ways: first, the right to submit a claim was extensive and free of formalities. Second, subjects were encouraged to report crimes by the method of reward and sanction. And lastly, persons presumed to be informed about crimes (physicians, parish priests and village authorities) were obliged to report them. The collecting of information on a network basis produced rather satisfactory results for a state with a yet unestablished police force.

In spite of the settled principles denoting the species and value of evidence, the law of proof was only apparently rigid. On the one hand, the Court often examined far more evidence than was required by the law of proof. On the other hand, in few cases the sentences were founded on nothing but indicia. The evidence was examined and evaluated according to its inner credibility and in relation to other previously established facts. Thus, the value of the law of proof remained on the level of formal recommendations as a possible mode, while in practice it relied upon judicial initiative and evaluation.

Although each regulated criminal procedure implies limitation of judicial arbitrariness and hence the protection of the parties, concrete guarantees of human rights are scarce. Nevertheless, the eighteenth century brought into Dubrovnik judicial practice some elements concerning the right of defence.

Dubrovnik criminal procedure in the eighteenth century consisted of a variety of elements and principles and cannot therefore be classified in any of the specific procedure types. It allowed the predominantly inquisitorial or accusatory character of the procedure to develop. Generally, the initiation and issue of the procedure rested upon the disposition of the aggrieved party and the decision of the court. The leading role of the court was most distinctively exhibited in procedural questions.

VII

Criminal justice underwent considerable changes in the course of the eighteenth century. The number of cases increased rapidly in the middle of the century, which could

not be only attributed to population growth. At the same time, the number of unfinished cases also rose, particularly those interrupted at an early stage of the procedure. These evidently were the result of the accuser's disposition, and not judiciary negligence or inefficency. These proceedings mostly dealt with minor offences settled by agreement. Such cases which had formerly been treated entirely out of court were, in the second half of the eighteenth century, brought to justice in order to persuade the defendant into settlement.

The change in crime rates affected the functioning of the judiciary. It caused a relative decrease in inquisitorial proceedings, a change in ratio between finished and unfinished procedures, as well as the structure of the penalties.

Some changes resulted from the internal problems of the judiciary. Because of the aforementioned general problems, judicial institutions were hardly able to ensure the continuity of practice. The system was in constant pursuit of a way out of the crisis, trying to keep pace and be more efficient with unfinished cases piling up. Typical of crisis-prone institutions, the Court did not sit regularly, would speed up towards the end of its mandate, or was too eager to pass sentences with diluted effect.

The policy of executions and pardon largely depended on the conduct of the condemned person. This was not the case with imprisonment, since the defendant was often held in custody. On the other hand, serious criminals were usualy out of the reach of justice, and verdicts remained fruitless for many years. The mitigation of these sentences by pardon was due to compromise with the escaped criminal. The fact that executions of the most severe punishments were rare was compensated by the intimidating ritual.

The elements discussed here, along with a number of others, formed a complete system of interactive factors occuring simultaneously and reaching a turning-point around the middle of the eighteenth century.

Dubrovnik also nested followers of a new approach to constitutional and legal order in accordance with the ideas of the Enlightenment, but these circles had no impact upon state policy. The panic-stricken authorities attempted to constrain the reformative demands and the ideas of the opposition and their penetration into public institutions. The Enlightenment influenced culture, while the penal system and the judiciary remained almost intact. Nevertheless, the eighteenth century was a time of gradual social change in which Dubrovnik followed the transitional patterns of other European societies of the Ancien Régime.