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- 1 This volume of essays, entitled *The Criminal Trial and Public Opinion in late nineteenth- and early twentieth-century Italy*, makes an important contribution to the expanding literature on the criminal court as theater. With the transition from the European old regime to the liberal state, punishment became invisible as confinement within prison walls replaced the public spectacle of shaming, mutilation, and execution. Concurrently, the courtroom emerged out of the shadows, becoming the center of legal drama after Enlightenment principles condemned secrecy in penal procedure as detrimental to the rights of defendants. The consequences of opening up criminal trials to public scrutiny have been little studied in modern Italy, where legal historians have traditionally focused primarily on legal doctrines and jurisprudence while social historians have largely ignored the field of criminal justice history. Only a few studies, like Patrizia Guarnieri's micro-history of the case of the infamous child-killer, Carlo Grandi, have analyzed courtroom practices and how they were interpreted by journalists for the general public. Therefore, the editors of this collection of essays – Floriana Colao, Luigi Lacchè, and Claudia Storti – must be thanked for bringing together

an eminent group of legal historians to address an issue that has previously received much more attention in the historiography of northern Europe and northern America.

- 2 As legal historians, the authors of these essays focus on several specific aspects of Italian penal procedure that mediated the relationship between the courtroom and the public during the liberal and fascist periods. During this time-span, three different codes of criminal procedure regulated the courtroom drama: that of 1865, which was based on Piedmontese precedent; that of 1913, which expanded the rights of the defense in line with the democratizing politics of the period; and that of 1930, which reversed this liberalization as incompatible with the totalitarian objectives of the Mussolini's state. Despite these legislative shifts, however, several themes draw the essays together over the longer period. First, several authors explore the tension within Italy's system of the "mixed trial" between its two stages: the "examination," or the gathering of evidence which was carried out in secret according to the inquisitorial method; and the "debate," or the public trial which offered a larger role to the defense. Popular opinion had much more impact on the second stage because the courtroom was open to spectators and the press. Secondly, public opinion influenced criminal trials through the jury, an institution transferred from the Kingdom of Piedmont to the rest of the peninsula after unification. Composed of lay judges who shared the bench with their professional colleagues, the Italian "jury" differed from the Anglo-American model, but had a similar goal of bringing the voice of the people into the legal process. Yet many members of the legal profession, especially the adherents of the positivist school like Enrico Ferri, wanted to abolish the jury, deploring the lack of expertise among its lay judges. Finally, newspapers helped to shape public opinion about specific cases and more generally about the functioning of a legal system that was not held in high public esteem. After a useful introduction by Giulio Cianferotti, the essays are divided into two sections: "the 'logic' of the criminal trial and public opinion" and "the 'logic' of public opinion in the criminal trial."
- 3 The first section, which focuses on specific aspects of criminal procedure, begins with an essay by Ettore Dezza on the combative role taken by the Venetian journal, *L'Eco dei Tribunali*, to advance liberal ideas of legal reform after the revolutions of 1848. A supporter of the accusatory method of legal procedure, the newspaper called for public trials and the introduction of juries, neither of which was incorporated into the reactionary Austrian codes of the early 1850s. Luigi Lacchè offers an innovative analysis of the assize courts in the context of Italian state-building as they turned the citizenry into a national audience for a series of spectacular trials. Lacchè argues for the primacy of the assize courts in any discussion of public opinion because they had jurisdiction over the most heinous crimes and were open, during the second phase of the criminal procedure, to spectators and the press. He cautions, however, that the independence of the jury, and therefore its role as representative of the common citizen, was severely circumscribed by the powerful role of the "president" or lead judge in each trial over his lay colleagues on the bench. The article by Claudia Storti focuses on the Supreme Court of Cassation and specifically on its rulings related to the initial "examining" stage of the criminal process, whose procedures were strictly inquisitorial, that is, characterized by secrecy, written rather than oral evidence, and the virtual exclusion of defense attorneys. She finds a surprising penetration of public opinion into this closed preparatory phase, sometimes directly through journalistic revelations of secret evidence. Furthermore, the rulings of the Cassation appear to have been sensitive to

political trends, thus favoring the defense during the liberal years of the early twentieth century and subsequently strengthening state power in the subsequent epoch of nationalism and fascism. These shifts in the philosophy of the high court paved the way for legislators to approve new versions of the Code of Criminal Procedure in 1913 and 1930.

- 4 Massimo Meccarelli traces the lively debate among eminent Italian jurists like Luigi Lucchini over the definition of the appropriate roles for lay and professional judges in relation to the technical distinction between “fact” and “law” in forming a verdict. Should the jury rule only on the “facts” of the case (the guilt or innocence of the suspect) and the professional judge on the “law” (the severity of punishment)? They also disagreed over the purpose of the jury and thus the appropriate breadth of its jurisdiction. Like Lacchè, Meccarelli concludes that in practice, even under the “liberal” code of 1913, the president of the assize court retained ample power to “direct” the jury toward the decision favored by the state. In her essay on judicial reform, Cristina Danusso explores the several ways in which public opinion contributed to the failure of a 1903 proposal by the Minister of Justice, Giuseppe Zanardelli, to stream-line the national judicial system and particularly the local courts of the *pretori*, which handled the least serious but far more numerous cases. Reaction to the proposed legislation came from learned jurists, municipalities that risked losing their local courts, and newspapers, which Danusso points out not only reflected but also shaped public opinion. Despite the intent of the reform, which was to improve the tarnished reputation of the legal system in the eyes of Italian citizens, a change in government ultimately prevented its passage. Finally, Marco Nicola Miletto compares the codes of 1913 and 1930, showing how provisions to restrict the “internal secrecy” of the examination phase and thus open certain types of evidence to the defense in 1913 were reversed by the later fascist legislation of 1930. Laying the groundwork for Rocco Code’s re-assertion of the state over the individual – and thus the judge and public prosecutor over the defense attorney – were a series of legal opinions stretching back to 1913 in which both eminent jurists and, more importantly, the Court of Cassation attacked the “democratic-liberal sentimentalism” of the 1913 Code. Because the Rocco Code remained in effect after World War II, special legislation and intervention by the Constitutional Court was necessary to re-integrate the defense attorney into the early stages of criminal trials.
- 5 The second section of the book focuses for the most part on famous trials and the ways in which public pressure shaped their verdicts. The exception is an essay by Elisabetta D’Amico on the brilliant oratory of the defense attorney Ferri, better known outside Italy as the leader, with Cesare Lombroso, of the positivist school of criminology. Disdainful of the role of both the jury and public opinion in the judicial process, Ferri nevertheless crafted his summations for the defense so that they would teach the new approaches of criminal anthropology to lay judges and, through the press, to the public more generally. In her analysis of the Martignoni-Borgomanero case of the early 1860s, Raffaella Bianchi Riva shows how the “public voice” in a small town of Lombardy convinced a local jury to convict the two defendants, a decision that was soon understood to be faulty and overturned on appeal in the Court of Cassation in Turin. The case occasioned denunciations by eminent jurists like Pietro Ellero of the institution of the jury, which had recently been transferred from Piedmont to the entire peninsula in 1865. In her reconstruction of the “Carnago case” of the late 1880s, Alessandra Fusco also argues that public opinion was not just a social but also an

important legal factor in the conviction of two defendants, in this case a married couple. To secure a conviction, the president of the court used the pressure of public opinion, embodied in the crowded courtroom, to shape the opinions of the jury. In her analysis of the De Medici case of 1904, Enrika Daggunagher instead portrays a presiding judge who outraged public opinion by making use of legal technicalities to call into question the verdict of the jury. In subsequent preparations for the code of 1913, such technicalities were defended as necessary arms in the implicit battle between professional judges and inept juries.

- 6 The final essays explore the relation between politics and law as mediated by public opinion. Paolo Passaniti places the famous case of “La Boje!,” the prosecution of Mantovanian peasants for inciting “local civil war” in 1886, within the larger context of parliamentary debates over the legality of strikes. The defendants were absolved after Ferri used his summation to condemn the political nature of the trial, a view championed by the public and many journalists. Similarly, Monica Stronati emphasizes the force of public opinion, culminating in petitions from local citizens, in convincing the national government to grant a pardon in 1888 to Amilcare Cipriani, a radical democrat convicted of homicide. Signed by the king, the act of pardon allowed the royal house to increase its popularity by identifying itself with the will of the people. Finally, Floriana Colao revisits the trial of “Scimula Sonzini,” the names of two nationalists killed by left-wing workers during the famous factory occupations in Turin following World War I. Rather than placing the murders within the political context of the extreme class conflict of these years, the newspapers, conservative politicians and even some liberal jurists used the case to blame socialism for the breakdown of the rule of law, thus helping to prepare the way for Mussolini’s March on Rome.
- 7 In conclusion, this volume is extremely valuable for tracing the complexities among three factors shaping the modern trial: judge/jury/public opinion. While the essays in the first section tend to emphasize the power of the judge to steer the jury toward a verdict favored by the state, the second section illustrates that high-profile cases could be swayed by the influence of public opinion on the judge, jury, or ultimately parliament. Although juries were originally introduced into Italy for the purpose of democratizing trials, they did not always represent “the public voice” and in fact could become targets of vociferous criticism by the press or the citizenry. This volume also emphasizes the importance of understanding the technicalities of legal procedure which could be manipulated by judges and defense attorneys but ultimately defined the rules of the courtroom theater. Such a rich and learned collection of essays deserves wide dissemination and translation into a language accessible to a wider community of legal and criminal justice historians.

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