Joanna Carraway Vitiello, *Public justice and the Criminal Trial in Late Medieval Italy: Reggio Emilia in the Visconti Age*

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- 1 This book is an important contribution to the history of medieval justice in Italy, centered on an interesting case-study: the city and the territories (*contado*) of Reggio Emilia in the Visconti Age. The work measures up to the best historiography on Italian medieval cities, both on the Anglo-American (for example, Blanshei, Dean, Stern) and the Italian side (Vallerani, Zorzi, Sbriccoli). The book is set in Reggio Emilia, in the second half of the fourteenth century, after the plague of 1348. Fought over by the great houses of Milan (the Visconti) and Ferrara (the Este), after 1371 the city fell to the earliest of the princely dynasties. Criminal justice, from Barnabò Visconti and his wife Regina della Scala to the signorial regime of the *condottiero* Ottobuono Terzi (subsequently killed, in 1409, by Niccolò d'Este), was an important instrument deployed to consolidate the power (*plenitudo potestatis*) and the political control of the Visconti family over a strategic city then impoverished and suffering from a profound demographic crisis.
- 2 The archival sources have enabled the author to study an almost complete run of trial records, dating from 1373 to 1408. A particularly rich collection of municipal statutes has served as another important source. One of the merits of this book is Carraway's

skill in combining her specific case study with a sustained and illuminating series of comparisons with other medieval Italian cities that display both common elements and significant differences. Another positive aspect to be underscored is the author's insightful approach to the *doctores in iure* and their highly sophisticated doctrines. We are thereby able to contrast the opinions of jurists with their actual practice and "law in action".

- 3 In Reggio Emilia the criminal judge (*Iudex Maleficarum*) was a key figure in the Podestà's retinue. Being his *vicarius* he was appointed to oversee major criminal matters. These judges were sometimes highly educated and were at the center of the criminal justice system run by notaries, officials, Lords of the *Contado* in a competing jurisdictional universe. The book shows clearly how justice was then undergoing a transformation. Inquisition process soon became a tool allowing municipal criminal courts to pass judgment on major crimes. Indeed, ordinary trial process was *accusatio*, whereby the offended party would play an active role when responding to a crime considered as a private matter. Inquisition procedure as extraordinary remedy, especially in the face of hidden crimes and major felonies, became a "revolutionary" and swiftly implemented justice between the thirteenth and the fourteenth century. Indeed, it was an important resource in many cities, Reggio Emilia among them. *Inquisitio* thus began to "replace" *accusatio* as the regular trial procedure for major crimes. But, it was not a simple move from one system to another. The author is right to note that "inquisition procedure became a hybrid of old accusatorial processes, which emphasized the active participation of parties in conflict, and the new *inquisitio*, which centered authority in the figure of the judge. This change whereby – to borrow Sbriccoli's distinctions – 'hegemonic justice' came to incorporate features of 'negotiated justice' needs explanation" (p. 6). However, this trend was not unilinear or uniform. Carraway provides a general, very useful, outline that has to be "tested" in the specific historical contexts. We need to follow local variations (and Reggio Emilia is a good example) in order to show how the procedure was sufficiently flexible to be adapted to suit local needs and political circumstances.
- 4 Procedures adopted at Reggio Emilia affirmed the idea that justice was a public function "ne crimina remaneant impunita". The Visconti were thereby able to wield the sword of criminal justice and thus to play a political role in legitimating new power structures. In their city inquisition became the dominant trial procedure, "a hybridized and flexible process" that could incorporate elements of both *accusatio* and *denunciatio*. Inquisition commencing *ex officio* and by *publica fama* was supported in some cases by the denunciations of local officials or *ex querela*, by the complaints of private parties. In 951 inquisition trials, some 58% were initiated by a public official, 26% *ex querela*, 15% *ex officio*. But then the judge acted was moved *ex officio* and by *publica fama*.
- 5 Carraway's monograph studies mechanisms of criminal inquisition focusing on the role of *fama*, notoriety and proof. *Fama* was crucial in a medieval society founded upon differences of status depending on class, wealth, gender, lineage. Reputation and honor oriented justice. Different kinds of *fama* (of facts and of persons) were the keystone of the medieval probatory system. Carraway presents a wide-ranging treatment of this topic, which may be regarded as the "anthropological" background to medieval procedure. *Fama* is crucial to our understanding of proofs, the use of judicial torture and the determination of guilt or innocence. The case of Reggio Emilia suggests that too much emphasis ought not to be placed upon the use of torture. Another aspect to

consider is the high overall conviction rate, approximately 90 percent in the period under examination. But this is not synonymous with judicial efficiency. 48,5 percent are ordered *in absentia*. This figure reflects the paucity of justice and policing resources but also, probably, together with a widespread use of bans, a strategy deployed by the court. This “strategy” could pave the way to several different options: reconciliation between parties, *instrumenta pacis* and the payment of money, or, finally, a request for clemency on the part of the Visconti. “The activity of the court – Carraway concludes – shows us the scholastic inquisitorial process as it confronted the quotidian reality of justice. It is a picture of how one court, in difficult and uncertain times, navigated its complex role inside a changing hierarchy of laws, between criminal and dispute resolution, and between public interest and personal justice”.

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