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LAW AND PUNISHMENT IN EARLY RENAISSANCE VENICE

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Fourteenth-century Venice was an unusual city, perhaps the wealthiest in Western Europe. It had a trading empire whose domain stretched from the Near East to the Atlantic. Individual entrepreneurs had even reached as far as China and in the process the merchant elite of Venice, who were legally recognized as nobles, had become collectively and individually some of the richest men in Europe. A balanced trade provided the main economic measure of their wealth; balanced, that is, between the long-distance trade of spices and other luxury products of the East and a short-distance trade in staples carried out over the extensive inland waterways of the Lombard plain. But Venice was unusual in more than its wealth. Politically, its merchant nobility—which formally took absolute control of government in the fourteenth century by enacting laws that allowed no one but members of their legally defined class to hold office—attempted to rule Venice through a particularly rationalized and unified bureaucracy. While much of the rest of Europe was still under the rule of the households of hereditary kings or local nobles, Venice lived and traded under a rule of written law interpreted by elected councils and judges and enforced by an elaborate bureaucracy.

For a merchant elite the social defense system was especially important for protecting the monopoly of power and for providing a climate of peace and stability essential for trade. In the fourteenth century this system was considerably enlarged and strengthened with police patrols eventually reaching a proportion of one patroller to every 250 inhabitants. At the same time, much of the judicial system was streamlined and rationalized. This complex process has been discussed elsewhere.[1] In this article I wish to concentrate on another aspect of the social defense system—its approach to penology.

Generally both historians and criminologists who have studied the development of penology have been hampered because they have relied too heavily on the law as an accurate reflection of actual practice. The principal problem with this approach is the fact that law is an extremely conservative institution. It often represents value systems that have long fallen out of use, and which remain only as "window dressing" for current practice. The historian who places too much faith in law may be describing an impractical pastische of the good intentions of several centuries, which have almost no relationship to actual usage.

In the Early Renaissance, custom and law were so intertwined on a day-to-day basis that it was virtually impossible to separate them. Contemporaries did make progress in distinguishing the two, at least on the theoretical level, but their major obstacle in practice was the technological problem of keeping track of the quantity of legislation being passed by the growing number of councils having legislative responsibilities, in the complex governments of the period.

Fourteenth-century Venice was a good example of how this technical difficulty presented a problem in the application of law to society. The core of Venetian criminal law was codified in the *Promissione Maleficorum* of the early thirteenth century. Although this document remained a basic reference, it was modified only slightly in the next two centuries, when actual criminal procedure was undergoing significant change. *Parti*, legislation with the force of law, were being passed in many councils of state but little attempt was made to integrate this new law with the old. The sheer mass of this legislation made it almost impossible to determine what the actual law of Venice was at any given time.[2]

The nobility was well aware of the confusion caused by this multiplicity of laws, and attempted a number of solutions at the end of the thirteenth century and the beginning of the fourteenth. This

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[1] *See* G. MARANINI, LA COSTITUZIONE DI VENEZIA DOPO LA SERRATA DEL MAGGIOR CONSIGLIO (1931). My forthcoming book entitled "Violence and Perception in Early Renaissance Venice," will also discuss these developments in detail.

[2] On the general problem of just what constituted the law in late medieval and early renaissance Venice probably the best introduction is now, L. PANSOLLI, LA GERARCHIA DELLE FONTI DI DIRITTO NELLA LEGISLAZIONE MEDIEVALE VENEZIANA (1970). The source for easiest access to Venetian law remains M. FERRO, DIZIONARIO DEL DIRITTO COMUNE E VENETO (2d ed. 1845).

was a period when the number and powers of councils were being expanded, so a conciliar solution was attempted.

A fairly obvious council to tackle the problem was the Avogaria di Comun as it had traditionally worked closely with Venetian legal problems. Its three main members, known as Avogadori and drawn exclusively from the nobility, were the primary criminal prosecutors for the state. They prepared, argued and recommended penalties for most crimes before the main judicial councils of Venice. Though the name of their office and their function implied that they were lawyers, they were generally non-professionals elected by their peers for a term of two years apparently more for their own or their families' political and social savvy and significance than for their legal acumen. The latter, legal acumen, was supplied by a varying number of non-noble notaries and scribes who tended to have legal training and to be more permanent functionaries on the council.[3]

Essentially, the Avogaria di Comun was given the responsibility for collating the laws and acting as a legal reference service for the state. One of the results of this responsibility was a series of registers listing the most important legislation passed by the commune. Capitularies, also, were set up for all the councils of Venice, but especially for patrolling bodies and courts. These capitularies were collections of the laws and working procedures that applied to a particular council, patrolling body, or court. Although lacking the force of law, the capitularies were, along with the recommendations of the Avogadori and custom, the source of daily legal practice. However, the capitularies were kept in an extremely haphazard fashion during the Early Renaissance, so much so that it is impossible to reconstruct legal practice on the basis of the evidence contained in the documents.[4] Even if the evidence were complete, however, there would be a further limitation to its use. Instead of referring to legal precedent, Venetians were content to leave decisions about penalties for individual crimes almost entirely in the hands of the judge or judging council. For criminal matters, practice tended to bypass formal written law.

The *Promissione Maleficorum* was an appendix to the larger and more prescriptive compilation of civil laws organized by the chief executive officer of the state, Doge Jacobo Tiepolo, in the early thirteenth century.[5] It began with a short statement of purpose by Tiepolo: "Since we hold that justice requires our unceasing vigil and concern in order to correct excess and punish crime," a studied compilation of criminal law should, therefore, be applauded by all.[6] Although this introduction was very short, it gave an interesting perspective on the function of law in social defense. Tiepolo saw the responsibility of law in its relationship to correction and punishment. There was a fatalistic acceptance of the inevitability of crime in this preamble. "Unceasing vigil" will bring only correction and punishment, or at best the control to keep crime within acceptable limits. We find little optimism, or belief in the capacity of law to decrease the level of

[3] One of the most ancient of the Venetian councils, the Avogaria di Comun was also one of the most complex and, in criminal matters, powerful centers of authority in fourteenth-century Venice. Here we can attempt only a brief summary of its responsibilities. Unlike most of its counterparts, it had neither judicial nor legislative powers. But in the evolutionary process of Venetian political organization, these defects were overcome by a strange accretion of responsibilities that assured unusual authority both in determining and implementing the law. Central to this authority was the responsibility of the Avogaria to collect and edit into one series of registers the major legislation of the commune, noted above. The council also was supposed to see to it that this legislation was implemented. For example, the Avogadori sat in on the central councils of state to verify that those councils adhered to the rules and procedures previously enacted and, of course, recorded by the Avogaria. Finally, they suggested the penalties for infractions against these enactments. These powers along with their traditional role as state prosecutors made the Avogaria di Comun a very potent office essentially because they controlled and helped to apply the collective legal memory of the state.

[4] Existing capitularies, though they report a few important *parti* from the fourteenth-century, seem to concentrate primarily on texts from the fifteenth and sixteenth centuries. The main exception to this later orientation is the capitulary for the Signori di Notte. *See* N. MOCENIGO, CAPITOLARE DEI SIGNORI DI NOTTE ESISTANTE NEL CIVICO MUSEO DI VENEZIA (1877). The early entries of judicial capitularies were edited. *See* LE MAGISTRATURE GIUDICIARIE VENEZIANE E I LORO CAPITOLARE FINO AL 1300, in MONUMENTI STORICI DALLA R. DEPUTAZIONE VENETA DI STORIA PATRIA (M. Roberti ed. 1907–11) (3 volumes).

[5] Tiepolo's law code was published. *See Gli statuti veneziani di Jacopo Tiepolo del 1232 e le loro glosse,* in 30 MEMORIA DEL REALE ISTITUTO VENETO DI SCIENZE, LETTERE ED ARTI (R. Cessi ed. 1938). The *Promissione,* however, is not included. It was published, though, in the eighteenth century. *See Liber Promissione Malefici* [ca. 1232] in LEGGI CRIMINALI DEL SERENISSIMO DOMINIO VENETO IN UN SOLO VOLUME RACCOLTE E PER PUBBLICO DECRETO RISTAMPATE (1751).

[6] The full text reads: *"Cum ex rigore iustitie excessus emendare et punire malefitia merito invicte nobis sollicitudinis teneamus. Ad hoc efficiendum tanto studiosius intendere volumus quanto de vitiorum correctione tota patria laudabiliter praedicitur."* Marciana, Ms. Lat., Cl. V, 137 (10453), f.78v.

criminal activity, either through severity or rationality.

The *Promissione* began with a long section on robbery. That section, unlike other sections dealing with violent crimes, included a detailed scheme of penalties. Its position at the beginning of the criminal code, in addition to the detailed penalties, indicates that robbery was the crime of greatest concern to the ruling class which wrote and applied the law. Moreover, robbery was evaluated by the *Promissione* without reference to violence, but rather on the basis of the quantity of property taken. Penalties were carefully graded into several levels of severity, according to the value of the loss. The scale began with a simple whipping for first offenders who stole less than one lira. However, the scale rapidly escalated to the loss of an eye for stealing goods valued from five to ten lire. Hanging was the penalty for anyone who stole more than forty lire. For repeaters, however, the law contained no gradations: hanging was the penalty. The law also dealt in detail with penalties to be imposed for breaking and entering with the intention to rob, or for carrying weapons during a robbery.[7]

Much more brief were the subsequent sections on assault and murder. Simple assault carried a fine of twenty-five lire, or the placing of the criminal under a ban of the state. Penalties for assault that drew blood ("*sanguinem fecerit*") were left to the discretion of the judge ("*per discretionem iudicum vidicetur*").[8] The contrast in the eyes of the law between robbery and assault was clear. Penalties for robbery were carefully prescribed, but assault that drew blood was left to the discretion of the judging body. This distinction is found throughout the *Promissione*. There was judicial discretion in penalties for violence, but carefully codified penalties for property crimes.

This distinction had several important results. First, although the *Promissione* left little leeway to the judge in robbery cases, punishment for violence was more likely to include personal factors. Second, since the law prescribed the penalties for robbery without reference to violence, considerations of violence did not enter into the discussion of robberies preserved in the criminal records except in extreme cases. These records, which served as the prosecution brief for each case, were much more concerned with establishing the value of the property taken than examining levels of violence. Most important, however, this judicial discretion for violent crimes meant that the penalties, within the parameters established by law, reflected contemporary perceptions of the seriousness of the crime, rather than a continuing legal tradition.

This was especially true in the Council of Forty, the main council dealing with violent crime in Venice.[9] In the Forty a sizeable group of noble councilors, virtually all amateurs in legal matters, acted as both judge and jury for a wide range of crimes. The Forty's trial procedure was both complex and personal. Briefly the Avogadori as state prosecutors and the Forty as judge and jury covered six steps in a normal trial: (1) accusation; (2) preparation by the Avogadori of the prosecution's case—the *intromissione;* (3) the pleading of the case by the Avogadori—the *placitare*; (4) the voting on guilt or innocence by the Forty with a majority being normally sufficient for conviction; (5) the proposal of penalties by the Avogadori and by individuals or groups within the Forty; (6) voting the penalty with a majority being necessary for a penalty to pass. Behind this formal structure of the trial, however, much room was left by the procedure and the law for these amateur judges (but professional nobles) to weigh the social and political impact of their actions. Thus, within similar crime categories there existed wide ranges of penalties, based more upon perceptions of violence, politics or personalities than upon abstract concepts of law and justice.

Homicide followed the same pattern as assault, with the penalty being left to the discretion of the judge. However, for homicide further questions of proof of guilt were raised. If guilt was not securely established through a confession or testimony, the matter was left to the conscience of the judge.[10] Thus, criminals whose guilt was not clearly established might still be punished in accordance with the judge's perception of the case. "Innocent until proven guilty" was too limiting a distinction to apply to Venice's fluid jurisprudence. Once more,

[7] *Id.* at f.78v–79v.

[8] *Id.* at f.79v.

[9] The Forty was a legislative and judicial council. As a legislative body it was primarily concerned with the internal affairs of the state. For a general survey of the powers of the Forty see, 1 LE DELIBERAZIONI DEL CONSIGLIO DEI XL DELLA REPUBBLICA DI VENEZIA 1342–1344, in 9 DEPUTAZIONE DI STORIA PATRIA PER LE VENEZIE, MONUMENTI STORICI (A. Lombardo ed. 1954)(nuova serie).

[10] "[A]nd if the accused did not clearly commit homicide, condemning and punishing him will be left to the conscience and discretion of the judge." The Latin text reads "*[A]ut non fuerit manifestum homicidium ipsum perpetrasse sit in conscientia et discretione iudicum de condempnando et puniendo eum.*" Marciana, Ms. Lat., Cl. V, 137 (10453), f.80r.

the importance of law was negated by the laws themselves. What really mattered in penology were the institutions of society and the men who controlled them.

The penalty for rape was clearly spelled out in the *Promissione*. Whether the victim was a virgin, an unmarried woman who was no longer a virgin, or a married woman, rape had a fixed penalty. If the culprit confessed or was convicted by testimony, he was to be placed in jail for eight days until he had paid as a fine the equivalent of the victim's dowry. This sum was determined by the judges, thus introducing an element of judicial leeway. If the criminal could not pay the fine within eight days, he was to lose both eyes.[11] In the fourteenth-century records, however, there was not one case where rape was punished by cutting out the eyes of the criminal. What little corporal punishment there was concentrated on beating and branding. Still, the law of 1232 seemed more definite for rape than for either assault or murder. But this apparent specificity was compromised by a final clause which ruled that if the crime was not clearly rape, or the proof of guilt insufficient, then once more the penalty was to be left to the judge's discretion.[12] Given the nature of rape, especially in a male-oriented society, it must be assumed that judges regularly claimed such authority.

In the 1331 correction of the *Promissione*, attributed by some manuscripts to Andrea Dandolo, this broader latitude was formally granted. The Forty and the ducal councilors were instructed to judge rape cases in such a manner that all concerned were indemnified, including the victim, the state, and whoever else might have been injured.[13] But as to what these indemnities should be, the law made no mention, leaving the penalty to the discretion of the Forty.

Continuing this theme in the last section of the *Promissione*, Tiepolo summed up the whole of the criminal code by stating that it would be impossible to enumerate every possible crime and posit penalties for it; instead, for those crimes not covered, the determination was to remain "in the hands of the judge according to the quality of the crime."[14] Since the code considered only robbery, assault, murder, and rape in any detail and, excepting robbery, tended to leave wide latitude to the judges anyway, it was apparent that the *Promissione* did not place many limitations on judicial decisions.

This was typical of the Early Renaissance style of justice in Venice, which was individualistic and personal rather than fixed upon an abstract concept of justice embodied in the law. Symbolizing this attitude there is, among the sculptures on the capitals of the columns before the Ducal Palace, a representation of Justice holding the traditional scales and sword. But the sculpture is unusual because Justice is presented without a blindfold. Venetian law removed the blindfold from justice, by asking the judges to evaluate each case with their eyes open and while mindful of the character and condition of both culprit and victim. The law provided Venetian practice with only the most general framework. To understand the real Early Renaissance reaction to criminality, we must turn to the cases themselves and to the penalties which were imposed.

Within the process of assigning penalties for crime, there is constant tension between retribution and warning, between vengeance and social control. These elements are difficult to disentangle because they interrelate on both the emotional and intellectual levels, and because they are constantly changing in relationship to individual crimes. In certain societies or for certain crimes, vengeance predominates; while in other societies or for other crimes, penalties are aimed more at the goal of social control. Carlo Calisse argued that the Renaissance tended to focus on the utilitarian aspect of penalties: "Punishment [following the Middle Ages] was conceived in a new way. The different purposes assigned to it in the Middle Ages were abandoned and it re-acquired a political or utilitarian object for the State and Society."[15] Venice exemplified this transition, with vengeance becoming secondary to rational repression in the Early Renaissance period.

But Calisse argued further that this transition

[11] *Id.* at f.82r.

[12] "If, however, these [rapes] were not clear nor able to be proved the penalty imposed by the judge will be at his discretion . . . . " "*Si vero hec manifesta non fuerint nec probari poterit in discretione sit iudicum penam eis talem imponere* . . . . " *Id.*

[13] The exact text paraphrased above states "*quod puniatur per ipsa consilia vel maiorem partem eorum in persona et in havere tam in satisfaciendo mulieri quam comuni quam etiam quibuscumque iniuria pertinebitis.*" *Id.* at f.83v. An exemplar of the tradition that names this as part of the Dandolo correction is a manuscript now preserved in the Querini Stampalia: Querini, Cl. IV, Cod. 2 H. 7, f.11r.

[14] Marciana, Ms. Lat., Cl. V, 137 (10453), f.82r. This section is entitled, "Concerning Crimes Not Specified, the sentence will be at the discretion of the judge according to the quality of the crime." ("*De maleficiis variis et diversis specificata, sententia sit in discretione iudicium iuxta maleficii qualitatem.*").

[15] Calisse, *A History of Italian Law* reprinted in 8 THE CONTINENTAL LEGAL HISTORY SERIES 175 (1969).

spawned, as part of its utilitarianism, a new emphasis on cruelty and terror in penalties: "The penalty aimed both to punish the criminal and by inspiring terror to prevent repetition and imitation. Such a system provided very cruel penalties. There was death made terrible in many ways: mutilation, blinding, torture, flogging, exposing in cages, unspeakable prisons all with a view to inspire fear."[16] Although this might seem to be the logical result of a desire to control crime through penalties, it does not fit the Venetian situation. There, a heightened rationality in the use of penalties led to a tendency to weigh them almost as if they were an investment in repression, rather than an indulgence in Calisse's blood bath of fear. Moderation and restraint typified the approach of this merchant-banker elite to the punishment of most crime. Excessively severe penalties were judged to be counterproductive.

This rationality was evident even in cases where the state decided to raise penalties in order to deter a particular offense. In 1359, the Major Council[17] decided that the penalty traditionally imposed for bigamy was not large enough to deter potential offenders ("for many frauds are committed in this city by some who accept two wives because of the small penalties involved") and it decided to control this problem by increasing the severity of the sanction.[18] Although bigamy was a most serious crime in the eyes of the church, the council's reaction contained none of Calisse's cruelty. Instead, it acted with sagacity and moderation. Realizing that the primary motive for this crime was the profit that male bigamists could make in dowries, council members attempted to remove the profit incentive and handle the question as a business matter rather than a moral question. The fine was increased to a minimum of 100 lire, and the bigamist was required to return the full amount of all dowries taken.

This was not a penalty to strike fear into the heart of bigamists. It was designed to balance the profit potential of bigamy with the danger of financial loss if detected. In fact, the *parte* made this logic clear. The earlier penalties of the Signori di Notte were inadequate because ("*propter parva pena*") men were still willing to take the risk of committing bigamy. To offset the attraction of this ill-gotten gain, the fine was raised and any doubts about the full restitution of the dowry were removed.[19]

Moderate investment in repression should not seem strange in this society of bankers and merchants. A good part of their world was controlled through investments, and it was only logical that this technique be carried over into other areas requiring careful control. However, when the need was felt, the courts were still capable of violence of the most brutal and repressive sort. The Forty sometimes ordered public executions which were replete with bloody mutilations and symbolic pageantry.

But these moments of final justice were measured events. There was no wholesale bloodbath. Penalties were carefully guaged to the crime, to the status of the criminal and the victim, and even to the need for exemplary state violence at a given time. Brutality in discrete quantities, balanced by the certainty of punishment, seemed to be the goal for the guardians of Venetian order. The courts drew on a wide range of penalties for criminal violence. Mutilation, for which there was a strong medieval tradition, was becoming a secondary judgment, replaced to a great extent by fines and jail sentences. Moreover, during the fourteenth century, jail sentences were, for technical reasons, beginning to replace fines as well. In Venice, there is strong evidence for arguing that for many crimes the thirteenth century saw mutilation replaced with fines, and that the fourteenth century saw these fines replaced by jail sentences.

The fact that jail sentences played such an important part in Venetian penology of the fourteenth century is at variance with the traditional historical view about the development of jails. Harry Barnes, in his classic *The Story of Punishment*, wrote: "The eighteenth century was the period of transition from corporal punishment to imprisonment, and, though the process of change was most rapid after 1775, there can be no doubt that the

[16] *Id.* Calisse was aware that Venice may have been different as it used jail sentences for penalties; *see id.* at 417.

[17] The Major Council was the primary legislative council of the state made up in theory of all noble males over the age of 25, a group that probably numbered around 2,500. For any normal day's business, an average attendance would have been about 500.

[18] "*[C]um multe fraudes committantur in civitate ista per nonullas accipientes duas uxores et hoc propter parva pena . . . .*" A.S.V., M.C., *Novella,* f.80v (1359) and registered with the Avogadori: Adv., *M.C.,* Reg. 24/7, f.45r (1359). The council responsible for overseeing this provision was the Signori di Notte. One of the primary policing agencies of the city, it also enjoyed the right of imposing summary justice in the streets for minor brawls and illegally carrying weapons. They also prepared some unpremeditated murder cases for trial and sex crimes that fall under the rather loose heading of "unnatural acts" including bestiality and anal intercourse with males or females.

[19] *Id.*

general movement was in progress during the entire period."[20] Others have argued that penal incarceration can be traced as far back as the Middle Ages. But this was true only in England, where a unique legal tradition made such penalties a viable alternative to fines and mutilation.[21] Nonetheless, imprisonment was a normal part of Venetian criminal punishment a full four centuries before the Enlightenment.

The reason for the transition from fines to jail sentences in Venice was, on the surface, rather paradoxical in that jail sentences reduced the number of prisoners in the Venetian jails. The use of fines as punishment had tended to cause excessive crowding in the jails,[22] because debtors were held there until they could clear their obligation. The result was a logjam of persons in jail, lower-class debtors, with little hope of raising the sums necessary to pay their fines. One method of controlling this problem was the *gratia*. A *gratia* was any adjustment to a penalty, and was generally granted by the Major Council or the Forty with the advice and consent of the doge, his councilors, the captains of the Forty and whichever court imposed the original penalty.

The granting of a *gratia* required the cooperation, in theory at least, of most of the important men of Venice.[23] It might seem that this high-level cooperation would rule out the *gratia* for all but the powerful. However, the problem caused by the jailing of lower-class offenders who could not pay their fines, forced this clumsy procedure to be used as a safety valve to empty the jails. The *gratia* allowed for the partial remission of fines based upon time served, upon need or for good reputation, or, most often, by setting time payment schedules, including interest to be paid to the state. Despite its awkwardness, the *gratia* procedure churned out more than 18,000 adjustments to pen-

[20] H. BARNES, THE STORY OF PUNISHMENT, A RECORD OF MAN'S INHUMANITY TO MAN 114 (2d rev. ed. 1972). Barnes claimed, moreover, that widespread use of imprisonment did not begin until late in the eighteenth century: "The earliest application of imprisonment as a widespread method of dealing with criminals was carried on not in prisons but in the prison hulks which Great Britain legalized following 1776." *Id.* at 115.

[21] R. PUGH, IMPRISONMENT IN MEDIEVAL ENGLAND 385 (1968). Calisse does note that there was imprisonment practiced in Venice, but the picture he presents is somewhat confused and certainly underplays the significance of the jail sentence in Venetian penology. He states:

> With respect to life imprisonment, even the greater penalists still looked upon it as an exceptional punishment, not conforming to the general principles of criminal law. Clarus declared that it was not in use as a temporal penalty except in a few places, such as Venice, but that it was common with the Church. . . . Farinacius, however, declared that, if not by common law, certainly by custom, life imprisonment had become almost general in his day, and mentioned, besides those of Venice, the prisons of Florence called 'Le Stinche', and those of the fortress of Ostia and of Civita' Vecchia in the States of the Church. . . .

Calisse, *supra* note 15, at 417.

[22] Communal records are full of references to this crowding and attempts to work out schemes for removing these people from jail especially in time of war. Examples from the early part of the century can be found in:

1303	Adv.,	*M.C.*	Reg. 20/3	f.11r
1307	Adv.,	*M.C.*	Reg. 20/3	f.14r
1314	Adv.,	*M.C.*	Reg. 21/4	f.75r
1319	Adv.,	*M.C.*	Reg. 21/4	f.91r-v
1330	Adv.,	*M.C.*	Reg. 22/5	f.125r
1348	Adv.,	*M.C.*	Reg. 23/6	f.156r
1348	Adv.,	*M.C.*	Reg. 23/6	f.157r
1354	Adv.,	*M.C.*	Reg. 24/7	f.26v

Primarily for those banished by the Cinque alla Pace, this last *parte* also refers to those imprisoned. Both groups were allowed to pay off on time payments their fines if they were willing to serve in the war fleet. Apparently for minor violence banishment was being used as well as jail. The transition, however, in the absence of any criminal records from the Cinque alla Pace is impossible to reconstruct. See:

1364	Adv.,	*M.C.*	Reg. 24/7	f.57v
1367	Adv.,	*M.C.*	Reg. 24/7	f.68v
1369	Adv.,	*M.C.*	Reg. 24/7	f.81r-v

Where for example "*cum carceres nostri propter conditionem et stricturam locitantam asperitatem et horibilitatem*" the Major Council decides to seek more prison space. Most of the schemes proposed in these *parti* center on either equating certain amounts of time in jail with certain size fines or set up general plans for paying fines on time. Whatever the plan, it is clear that fines paradoxically were filling the jails.

[23] A good example of this complexity is revealed by an adjustment of the requirement for a *gratia* concerned with carrying or using of weapons:

> [N]or may a *gratia* be given to anyone who incurred any penalty from the Signori di Notte or the Capi di Sestiere or the Cinque alle Pace [all policing bodies with the right to give summary justice for minor brawling and carrying weapons] without the vote of 30 members of the Council of Forty . . . nor without the approval of the customary number of [Ducal] councilors (five of six) . . . nor without the approval of five [of six] of the Capi di Sestiere when the penalty was imposed by them.

A.S.V., Adv., *M.C.*, Reg. 21/4, f.112r (1320). On *gratia* procedure in general, see Mor, *Il procedimento per 'Gratiam' nel diritto amministrativo veneziano del sec. XIII* in CASSIERE DELLA BOLLA DUCALE, GRAZIE NOVUS LIBER (1299-1305) in FONTI PER LA STORIA DI VENEZIA, SEZ. 1-ARCHIVI PUBBLICI (E. Favaro ed. 1962).

alties between 1324 and 1406, almost all of which were designed to clear the jails of men owing fines.[24]

In light of this problem, it became simpler to put the criminal directly in jail for a few months, as a penalty for his crime, and avoid the problem of leaving him there indefinitely until a *gratia* could be worked out. This was especially true for members of the lower classes, because they were less likely to have the cash on hand to pay a fine; whereas a noble or a person of some wealth could pay a fine without having to spend time in jail. To an extent, the choice between jail or fine became a class or wealth decision, with the upper classes being fined and the lower classes being sent to jail. Of course, there were exceptions. Jail could be used to make a small penalty more severe for a noble, or a small fine could be levied against a worker. The mixture of fines and jail sentences suggests that the judges were giving consideration to the ability of the criminal to pay. As a form of hidden taxation, a fine was economically to be preferred to a jail sentence, if the crime was not too serious and if the court expected that the fine would be paid.

Table I shows the relative proportions of types of penalties for rape (including attempted rape), and for assault. Rape and attempted rape were both relatively minor crimes, and jail sentences were the most prevalent penalty, followed closely by fines. Banishment and corporal punishment were relatively rare. For assault, there was a similar emphasis placed on fines and jail sentences, although fines predominated.

Table I: Types of Penalties for Rape and Assault, 1324-1406

	Jail		Fine		Banishment		Corporal		Total*
	#	%	#	%	#	%	#	%	
Rape	305	51	242	41	24	4	25	4	416
Assault	301	40	373	49	51	7	31	4	569

*The total is smaller than the number of penalties because penalties were often combined.

There were very few penalties involving corporal or capital punishment. We can divide these types of punishment into four categories of ascending brutality: discipline (whipping or minor torture); mutilation; execution; and mutilation plus execution. The types of corporal punishment used for the crimes of rape and assault were very restrained. For assault, out of 569 cases heard by the Forty, only fifteen involved mutilation of the criminal; and sixteen more involved some form of corporal discipline. For rape offenses, corporal punishment was even less significant, with twenty cases of discipline and only four of mutilation. The brutal penalties that, for Calisse, were designed to intimidate, did not exist for minor violent crimes like rape, nor even for more serious crimes like assault. The state evidently preferred a more flexible scale of penalties, which could be tailored to the court's perception of the crime and its social context.

The differences between penalties assigned to nobles and workers is instructive for understanding the economic and social distinctions involved in social control.[25] In rape cases, among the eighty-four nobles successfully prosecuted thirty-seven received fines (44%); fourteen received jail sentences (17%); and thirty-three received a combination of both jail sentences and fines (39%). Workers, in 173 rape cases, received fines in only twenty-four cases (14%); jail sentences in eighty-nine cases (51%); and a combination of jail sentence and fine in sixty cases (35%). The role of fines and jail sentences was reversed for the two classes, with jail sentences predominating for workers, who were less

[24] The following registers of the *Gratia* were examined for this study: A.S.V., *Gratia*, Reg. 3 (12 June 1329-4 Sept. 1330) with 713 cases, 98 violent; Reg. 4 (21 Aug. 1331-17 June 1332) with 666 cases, 96 violent; Reg. 5 (22 Oct. 1331-19 May 1335) most cases concerned with property matters, only seven involved violence; this register probably does not belong in the series; Reg. 6 (9 Sept. 1333-1 Oct. 1335) with 876 cases, 230 violent; Reg. 7 (16 Oct. 1335-12 Dec. 1338) with 1223 cases, 274 violent; Reg. 8 (15 Nov. 1338-22 Apr. 1341) with 1324 cases, 170 violent; Reg. 9 (2 Apr. 1341-18 July 1343) with 1471 cases, 255 violent; Reg. 10 (23 July 1343-27 Nov. 1344) with 1109 cases, 205 violent; Reg. 11 (Mar. 1345-Sept. 1346) with 1391 cases, 221 violent; Reg. 12 (Apr. 1348-Aug. 1352) with 1601 cases, 237 violent; Reg. 13 (Sept. 1352-Oct. 1356) with 1085 cases, 214 violent; Reg. 14 (Sept. 1356-1360) with 1916 cases, 334 violent; Reg. 15 (Apr. 1361-1364) with 894 cases, 134 violent; Reg. 16 (Apr. 1364-May 1372) too badly damaged to be completely accurate on numbers but with 1710 readable cases, 387 violent; Reg. 17 (Aug. 1372-Mar. 1390) with 2150 cases, 525 violent; Reg. 18 (1390-1400) in very poor shape, only 328 cases readable of which three are identifiable as violent; Reg. 19 (19 Mar. 1401-10 Jan. 1405-06) there is only one violent case reported in this register again indicating that it probably does not belong in the series. Registers 3 through 18 covering the period 1329 to 1400 then report 18,457 *gratie* that are still legible of which 3,383 cases involve violent crime.

[25] The distinction between workers and nobles is a simple one between those who are listed in the records as nobles and those who are listed in the records as having a specific type of work. This leaves a considerable number of cases unidentified but still provides a basis for comparing distinctions in the type of penalties in the clearest of possible contrasts.

able to pay fines. Both classes had a high level of mixed penalties, but for rather different reasons. For workers, the mixed penalty was a means of taxing whatever wealth the criminal had available, and at the same time reducing the amount of time the criminal would take up space in jail. For nobles, the mixed penalty was designed to add severity to the usual fine. In a mixed penalty the bite of the law was felt more sternly, because time in jail weighed equally upon all. Noble jail sentences were relatively short, and were reserved for the most serious crimes. Only eight noble rape cases involved a term in jail of more than a year, and a majority of cases involved less than half a year.[26]

A significant example of the type of noble rape heinous enough in the eyes of the Forty to warrant a jail sentence involved the noble Nicoleto Georgio and an eight year old girl named Elena. Typical of noble economic power Nicoleto did not even carry off the girl himself. Rather he hired a certain Blanca of questionable reputation who kidnapped the victim, provided a room for the crime and actually helped in the rape itself. Nicoleto was sentenced to a half year in jail and a fine of 500 lire. The fine he paid immediately, but the half year in jail presumably took him a half year and made the matter considerably more serious than the normal fine for a rape. Blanca, on the other hand, with apparently less money available received a penalty more typical of the Forty's severity applied to the lower classes. She was whipped and branded, had her guilt publicly proclaimed at the Rialto Bridge, spent three months in jail and was perpetually banned from Venice.[27] Though strict penalties for rape were rare, this case underlines the point presented by the statistics. A significant social selectivity was used in the imposition of penalties for crimes of violence.

Assault cases heard by the Forty revealed a similar breakdown. The contrast between the social classes is less striking because these cases involved a wider range of penalties than did rape cases. Yet the distinction remains strong. Nobles in 121 cases

Table II: Types of Penalties for Murder

	Number	Percentage	Percentage Corrected for Unreported*
Jail	42	10	13
Fine	18	4	6
Banishment	39	9	12
Corporal and Capital	220	52	69
Totals	319	--	100

*There were a total of 427 cases, but in 155 cases the Signori di Notte did not report penalties imposed. The number of penalties listed above remains larger than the number of convictions because some penalties were mixed.

Table III: A Breakdown of Corporal and Capital Punishment for Murder

	Number	Percentage Corporal Penalties	Percentage All Penalties Corrected
Discipline	3	1	1
Mutilation	72	33	23
Execution	75	34	24
Ritual Execution	70	32	22

received fines eighty-three times (69%), jail sentences twenty times (17%), and mixed sentences eighteen times (15%). For workers in 195 cases, fifty-five received fines (29%), sixty-nine received jail sentences (35%), and seventy received mixed sentences (36%). In both areas of crime the message was clear: workers received jail sentences and nobles received fines. The state could not use fines efficiently as penalties for the lower classes because their inability to pay created more problems than was warranted by the revenue to be gained. Naturally, there was also a considerable amount of class favoritism involved, but this fact of social life can be balanced against the perennial problem of crowded jails. In this context, the profit from fines, when they could be collected, argued for such penalties, especially for minor crimes like rape.

For major crimes—murder and robbery—Venetian practice came closer to Calisse's generalization. Tables II and III show that the great majority of murder cases involved corporal or capital punishment, most often execution.[28] Yet, there were still significant variations within the categories. The Venetian controllers created distinctions in the manner or nature of the penalties, to fit their varying perceptions of the situation.

The most significant distinction made in captial punishment was between simple executions and

[26] This included both cases where jail was the sole penalty, and where jail was used in conjunction with fines, or a total of 46 cases.

[27] This case is also interesting because the victim, Elena, rather atypically, received a portion of the fine as a contribution to her dowry. Eight years later when she married at 16 she received from the state a handsome dowry of 99 gold ducats, the return on an investment of half the fine paid by Nicoleto. A.S.V., Adv., *Raspe*, Reg. 2, f.204v (1353). For a brief discussion of sex crime in Venice in this period see, Ruggiero, *Sexual Criminality in the Early Renaissance: Venice 1338-1358*, 8 J. Soc. Hist. 18 (1975).

[28] That is 145 cases out of 272 cases where penalties were recorded involved the execution of the culprit. In 155 cases there is no record of the penalties imposed, because the Signori di Notte failed to record the penalty imposed by the Giudici di Proprio in Reg. 10 and Reg. 11.

the more elaborate, ritual executions that included public mutilation. The latter were moments rich in the symbolism of state control. A typical example resulted from the murder of Richa di Tarvisio by her husband, Giovanni. Giovanni's crime was not the passionate outcome of a family quarrel, as were so many murders of this sort; rather, it was a planned and coldblooded act, by contemporary standards. One night after everyone was asleep, he carried his wife from bed, dumped her in a canal, and watched her drown while she cried for mercy. His reason for the crime was that he wanted to leave his wife in order to live with his mistress, but his wife had refused because of their children. Giovanni decided to murder her in order to remove this obstacle to his desires.

The Forty chose a penalty for Giovanni that expressed the nobility's antipathy to such heartless deeds. It was ordered that Giovanni be taken by boat to the far end of Venice and then returned to the place where the crime was committed, on the island of Giudecca, with his crime being proclaimed all the while by a state herald. There, at the place of the crime, his right hand was to be cut off and hung around his neck with a chain—symbolizing the literal removal of the offending member. At the same time, his guilt was to be proclaimed continually to the gathered crowd. With his severed hand hanging around his neck and the herald continuing his proclamation, Giovanni was next to be taken to St. Mark's Square, where, between the columns of justice, he was to be solemnly hanged. This public ritual was designed to free society of its shared guilt, to bring public vengeance to the malefactor and to reaffirm one of the most basic meanings of the state—that it would protect its members from criminal violence.[29]

Aspects of this public execution had particular significance. The trip across Venice assured that a maximum audience would participate in the ceremony. Historians have speculated about the mentality of the crowds which witnessed executions, citing such factors as collective blood-lust, or the existence of a mob mentality that sanctions normally unacceptable types of brutality. But these interpretations neglect a more important factor, which is the *ritual* nature of the execution. Successful ritual takes human emotions and redirects them toward some acceptable goal, permitting even the bloodiest ritual, when commonly shared, to become a transcendent experience. The pagan *Taurobolium* (a purification rite in which the blood of a bull was used to wash away sin usually associated in classical Rome with the worship of the goddess Cybele) and the Eucharistic ceremony are replete with blood, even the blood of God, but the ritual context transcends the brutality of the symbolism. A similar transcendence occurs in highly stylized, ritualistic state ceremonies.

When the state is acting as a church, what could be more effective than ritual executions which, in their brutality, reinforce the basic tenet of that religion that Venice is a stable society and will provide order and security? Just as the blood and body of the resurrected son of God convey the reality of human salvation to those who believe, so too, the ritual mutilation and execution convey, in a graphic way, the basic promise of stability to the state.

The abundant details in Jacobo Bertaldo's contemporary account of the ideal Venetian procession also showed this sacred character of state justice. The doge was to present himself to the people ("*popolo*") as the representative of state custom and usage ("*consuetudinem atque usum*") in order to teach the people to shun evil and strive for the good. To do this, he first displayed the majesty of the ducal office by the rich and splended clothing which he wore, demonstrating the rewards of just living. On his right he displayed the judge as the representative of his full power ("*merum imperium*") to judge criminals. Seeing the judge at the right hand of the doge, Bertaldo claimed, would once more teach the people to avoid evil because of the fear of being themselves judged ("*terrore iudicii iudicum spaventati*"). Also, the doge displayed his sword ("*spata domini ducis*") which was carried immediately behind him, to remind the people of his avenging power ("*vindicta potencia*").[30]

[29] A.S.V., Adv., *Raspe,* Reg. 2, f.314r-v (1360).

[30] Bertaldo was Venetian chancellor at the turn of the fourteenth century and included this description in his panegyric to Venetian political perfection. *See* SPLENDOR VENETORUM CIVITATIS CONSUETUDINEM 12–13 (F. Schupfer ed. 1901). This text which I have paraphrased above is extremely significant and reads like an explanation of the significance of the religious ritual, which to a great extent it is:

Primo enim ostenditur mayestas glorie ducalis in apparatu et ornamento precioso et splendido sue persone, ut doceantur boni de splendor gracie, per suam bonitatem largiter remunerari et iusta desideria obtinere. Secundo, ostenditur iudex in dextra iudicandi malefactores, ut iudice viso, ipsi doceantur declinare a malo et sibi cavere de faciendo malum, terrore iudicii spaventati. Tercio ostenditur ensis sive spata domini ducis, que post eum aportatur, ut doceantur de vindicta potencia et fortitudinis ducalis ad penas iudicantis incisione memborum graviter infligendas. Et debet post dominem ducem ensis sive spata portari, quia vindicta malefactorum post iudicum fieri debet. Et nota, quod ubicumque spata portatur in publicio, iudex in dextra debet interesse. . . .

Ritual execution, however, was used with restraint, being reserved only for those serious crimes where there was general accord with the goals of the state. In times of doubt, such as conspiracies against the government, where there was some question about the sympathies of the people, executions were carried out quietly. In 1355, for example, when the doge was accused of fomenting a conspiracy to overthrow the nobility and establish himself as a popularly supported despot, he was quietly and efficiently dispatched in private. In such cases there was perhaps a lesson, but no ritual. This was true of most treason cases handled by the Council of Ten, a secret police force primarily concerned with political crime.[31] They preferred silence and efficiency to public lessons. Ritual was saved for moments of public consensus.

When these public mutilations and executions are perceived in ritual terms, we need no longer view the public as a bloodthirsty mob. No one would argue that the Roman Catholic Church is particularly bloodthirsty because of the Eucharistic ceremony. The difference in both cases is the transferral that is made by the believing spectator or participant. The ritual heightens and transfers the emotions that are normally associated with death. Murder becomes purification. If the ceremony is successful, one witnesses not cruelty but the triumph of justice. In societies less attuned to ritual, like our own, these connections are, for the most part, lost. How many people would identify with the ritual significance of an execution, and how many would identify with the immediate fact that a person was being killed?[32] In Early Renaissance society, much more attuned to ritual and pageantry, the transferral was natural. Many onlookers must have seen the triumph of state order more vividly than the death.

This argument bears ultimately on the question of how cruel the men and women of the Renaissance were. It is frequently assumed that the acceptance of brutal spectacles is proof that members of that society were inured to bloodshed, suffering, and death. But this is not necessarily the case. Ritual violence loses much of its negative character when participants believe in the ritual. It would be unwise to conclude that Early Renaissance man was habituated to violence because he was able to accept such ritual, just as it is an error to contend that Catholics accept cannibalism because they regularly eat the blood and body of a god-man. The violence of the state, in Venetian executions, was transformed into a religion of state.

In Venice, capital punishment was reserved for the most serious crimes such as murder, robbery and the infrequently prosecuted crimes of counterfeiting and homosexuality. Most other crimes were punished with jail or fines. In contrast with Calisse's view, cruelty was not seen as an effective deterrent. More measured penalties were preferred, suggesting that the Venetian nobility was quite careful in meting out the amount and types of repression needed to control crime.

If ritual executions tended to emphasize the religious and the symbolic side of social control, jail sentences and fines tended to emphasize the rational and schematic side. This has already become apparent from the discussion of patterns of use for each penalty, and the relation to social position. These patterns provide the fullest illustration of the rational use of penalties to control

[31] The Council of Ten was created in 1310 to deal with the danger-laden social tensions following the unsuccessful Querini-Tiepolo conspiracy. It continued, however, to meet as a virtually unrestricted secret committee concerned with state security and gained progressively in power, status and reputation for acting ruthlessly. Prosecutions were mainly concerned with speech crimes, illegal associations and conspiracy and were handled almost exclusively within the council. Membership was generally drawn from the most powerful families in Venice. Social clout, nebulous responsibility, and an extremely fluid style of operation made the Ten a very potent organization and one essentially beyond legal restraint. On the Ten's growth to power see, G. Ruggiero, The Ten: Control of Violence and Social Disorder in Trecento Venice 134–265 (1972) (unpublished doctoral dissertation in the University of California at Los Angeles Library). For the execution of the Doge Marino Faliero in 1355 the work of Vittorio Lazzarini is still basic. *See* V. LAZZARINI, MARINO FALIERO (1963).

[32] In line with this same analysis, the trend towards more and more emotionless executions that fits so well with liberal penology, by removing what little ritual there was left in such ceremonies, made it even more difficult to live with capital punishment. This, of course, is not to suggest a return to Venetian style show executions; in fact if anything the opposite seems to be the conclusion to be drawn. In a society where the state is no longer involved theoretically in winning the support of its citizenry through the rituals of state, but rather through the rational consent of the governed, such rituals no longer have much meaning and what in another social situation was justice, without the context of ritual, seems more and more like murder. It is not strange to find, therefore, that often those who support the use of capital punishment are those who visualize government as something to "believe in," as a type of latter day faith, or those less sincere who wish to convey that impression. Executions in the context of a state religion that promises a type of divine justice on earth are much more easily accepted than rational executions to rid the state of a problem or as acts of vengeance.

crime.[33] When fines and jail sentences are considered together, it is clear that there was a definite tendency to use moderate or even light penalties for all but the most serious of crimes.

The problem arises of finding a scale by which we may compare jail sentences and fines, because these are obviously very different types of penalties. Fortunately, there are contemporary records of equivalencies that the courts of Venice themselves saw between fines and jail sentences. In its simplest form, this equivalency may be expressed as "one year in jail equals 200 *lire piccole*" (the *lire piccola* was pegged to the small coinage of everyday use and the primary currency in which fines were assessed.)[34] But to avoid confusion and an appearance of absolute equivalency, rather than converting fines to jail time or *visa-versa*, a neutral point scale for penalties is perhaps most useful. It keeps to the fore the reality that we are using an artificial scale of comparison, based to be sure upon equivalencies established in the Venetian documents of criminal penalties, but still artificial. If we equate ten *lire piccole* with one point (ten *lire piccole* is about the minimum fine), then one year in jail would equal twenty points. Though other monies besides the *lira piccola* were in use in Venice, the *lire piccola* was by far the most prevalent currency for fines, and those few fines in other currencies can be pegged to the *lira piccola* by using contemporary exchange rates.[35] The result is a point scale that allows comparison of penalties for most violent crimes, because virtually all penalties were either fines, jail sentences, or a combination of the two.

With this point scale, we have a convenient mechanism in Graph I for comparing fines and jail sentences for particular crimes. For all but the most serious violent crimes, penalties tended to be either very mild or very severe, reflecting what seems to have been a purely rational application of state power. This is reflected graphically by a typical reverse J-curve. Fines and jail sentences were kept minimal, in order to limit the crowding in jails while still guaranteeing penalties for all offenders. Occasionally, however, the judges reacted very strictly to a crime. The vast majority of penalties cluster at the bottom end of the point scale; then there is a wide range of penalty possibilities that are little used, followed by a much smaller grouping of very severe penalties. This pattern holds for most crimes of violence except the most serious

[33] This distinction between rational manipulation of penalties and ritualistic use of penalties should perhaps be clarified a bit. Essentially the rational penalty is a calculated force designed to counterbalance violence. Ritual executions certainly have this element also, but what sets them apart is that they operate on another plane as well. Basically they teach not by means of proof but by means of the emotions elicited by ritual. Thus one learns about God by studying theology, which is a rational approach to understanding; one may also however experience God through the ritual of a religion, which is a basically non-rational approach to awareness. In the same way one may learn about the meaning of a government in any number of rational ways, but one may also experience some aspects of the state through its ritual. In the renaissance state for all its rationality of organization, the latter aspects of ritual were still extremely important.

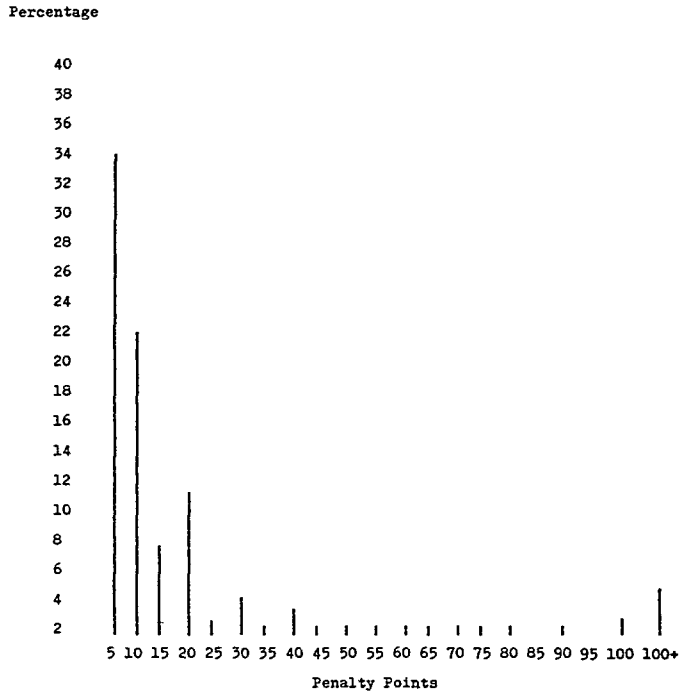
[34] This equivalency is based upon the actual penalties imposed when judges gave a criminal a choice between a fine or a jail sentence. Rough but remarkably consistent, this equivalency in 50 cases, where an option was given, finds a deviation between total points for jail sentences and fines of less than five percent from the perfect balance that would be expected if the judges were being scientifically consistent in their equation of jail sentences and fines. This is amazingly consistent when one realizes we are considering a period of more than eight decades and our judges were often little more than amateurs. In 15 cases, generally the major ones, the equivalency is exact: A.S.V., Adv., *Raspe*, Reg. 1, f.168v, 173r, 175v, 175v, 181r (one year equals £ 200p.), 202v (six months equals £ 100p.), 203r-203v (one year equals £ 200p.); Reg. 2, f.78r (six months equals £ 100p.), 84v (one year equals £ 200p.), 105r (six months equals £ 100p.), 106v (three months equals £ 50p.), 145r (six months equals £ 100p.), 164r (three months equals £ 50p.), 164r (three months equals £ 50p.). On the whole then for an equivalency based upon contemporary perceptions, the equation of a one year jail sentence with £ 200p is remarkably consistent.

[35] This conversion of values can become extremely complex. Nicolo Popodopoli outlined the major conversion rates for the period 1345-53. On the basis of his figures £ 10p equals 3.12 ducats, and

£ 10p equals 12.3 *lire a grossi a moneta*
£ 10p equals .3 *lire di grossi a moneta*
£ 10p equals 12.3 *lire a grossi a oro*.

Rather than attempting to plot continuously the fluctuating rates between these currencies, which are not really adequately worked out, it was decided to stick with these ratios for the period under consideration. This decision was made somewhat easier by the fact that fines become more and more standardized in *lira piccola* as the century progresses. A decade by decade breakdown shows this pattern: 1320s—9 fines in other currencies; 1330s—12; 1340s—11; 1350s—22; 1360s—12; 1370s—11; 1380s—1; 1390s—1. In fact most penalties in other monies cluster around the period presented by Papodopoli. It should be noted as well that these 78 fines in other currencies are a very small part of the total statistical picture, actually approximately 90% of all fines imposed in this period for speech, assault, rape and murder were in *lira piccola*. As £ 10p equals one point, each unit in the above scale is worth one point. *See* N. PAPODOPOLI, SUL VALORE DELLA MONETA VENEZIANA LETTO NELL' ADUNANZA DEL R. ISTITUTO DI SCIENZE, LETTERE ED ARTI DI VENEZIA 17 (1885).

Graph I: Average Penalties



noted earlier, where the penalty was usually death or major mutilation. This is evidence of a common approach to the punishment of crimes of violence. It reflects a rational, almost technical, response to the problem Venetian society faced in using these types of penalties—that of overcrowded jails.[36] To clear the jails, yet consistently penalize the criminals, the state was forced to tailor fines to the criminals' ability to pay, within the context of the seriousness of the crime and the need to keep jail sentences to a minimum. Fines that were too high meant jail time, often considerable given the travail of the *gratia* procedure discussed earlier, just as surely as regularly imposed jail sentences. Moderation was the only answer, short of returning to wholesale mutilations or banishments. The latter alternative was unlikely in a city with a labor-hungry merchant marine and nascent industrial development.

[36] This problem was compounded by the fact that unlike most later uses of jails in the pre-modern period, Venice paid for the jails and the jailors out of state revenues. *See* A.S.V., Adv., *M.C.*, Reg.21/4, f.148r and Reg.22/5, f.45v both of which refer to adjustments in state paid salaries to jailors.

Graph I presents an overview of the phenomenon. The penalties for 1,100 prosecutions fall, in a majority of cases (56%), in the minimal ranges of up to ten points: 100 *lire picccole* or six months in jail. By the time penalties reach thirty points, eighty-four percent of all fines, jail sentences, or combinations of the two are included. Yet a meaningful proportion of the remainder falls at the far right of the scale, at or beyond 100 points (44% cf the remainder of 8% of the total). Most penalties involved six months or less in jail, or an equivalent fine; but in a small but significant number of cases (eighty-two out of 1,100), the penalties were very stiff, demanding five or more years in jail or its equivalent.

This balance between the moderate and the severe is seen more clearly if we check the variation from the average penalty curve presented in Graph I for each crime. Table IV reveals that for major assault, attempted rape, rape and speech crimes there is surprisingly little variation from the average indicating that aside from diversity in the very light categories penalties for each crime fall into a very similar pattern. Assault, even when divided into major and minor, tends to follow this same

Table IV: Penalty Variations from Average Reverse J Curve

Penalty Points	Average %	Variation Minor Assault	Variation Major Assault	Variation Attempted Rape	Variation Rape	Variation Speech
5	34	+12	-22	-2	-1	+6
10	22	- 2	+ 1	+1	-3	+3
15	8	+ 2	+ 1	+4	-1	-3
20	12	0	+ 1	-1	0	-4
25	3	- 1	+ 1	0	0	-1
30	5	- 1	+ 4	+1	+1	-4
35	1	- 1	+ 2	-1	0	-1
40	4	- 1	+ 1	-2	+2	-2
45	1	0	0	-1	0	-1
50	1	- 1	+ 2	-1	+1	0
55	1	- 1	- 1	-1	-1	-1
60	1	0	0	0	+2	-1
65	1	- 1	- 1	-1	0	-1
70	1	- 1	0	0	0	0
75	1	- 1	- 1	-1	-1	-1
80	1	- 1	0	+1	-0	0
85	0	0	0	0	0	0
90	1	- 1	- 1	-1	0	-1
95	0	0	0	0	0	0
100	3	- 2	+ 1	-2	0	+4
100+	5	- 5	+ 7	+3	-3	-1
Mean Penalty	--	11.9	40.0	22.8	22.6	22.5

pattern, with a significant deviation only in the one to five and 100+ point range. Thus the minor assault curve would start at a higher point than the other crimes, reflecting a higher percentage of lower penalties and would push the reverse J-curve to the left. We find a sizable group of penalties (6%, or sixteen out of 281) requiring at least two years in jail or 400 *lire piccole*, (forty points or more). Major assault would merely move this pattern to the right, with a greater emphasis on strict penalties. Still, more than half of the cases are included in the five to twenty point range (58%), meaning that in most cases jail sentences were not longer than a year. At the severe end of the scale, however, the seriousness of the crime required a somewhat greater concentration of penalties with approximately fifteen percent of those convicted receiving penalties of 100 points or more.

Despite the similarities, it is clear from this division between major and minor assault that we are dealing with two different crimes, even though we could search the mass of data for examples of matching penalties. This points up the need for doing statistical analysis for the pre-modern period, because even when the statistics are imperfect they prescribe important limits for the historical imagination. Major and minor assaults were quite different crimes, even though there was a significant overlap in penalties at the lower end of the scale. Another lesson that these data reveal is the danger in using the mean as a normative indicator for crimes that follow a reverse J-curve. A look at Table IV reveals just how atypical a figure the mean can be. Indeed, only five percent of all penalties imposed for major assault fall on the mean point. Almost three-fourths (74%) of all cases fall below the mean. The primary lesson remains, however, that penalties were remarkably restrained for both major and minor assaults.

Rape penalties also deviate very little from the average. Moreover there is very little difference between attempted rape and successful rape, both the means and the deviations being relatively similar. For both, a majority of cases (55% for attempted rape, 52% for rape) are within the first ten points of the scale, and the bulk of all penalties

(87% for attempted rape, 80% for rape) are within the first thirty points. It is evident that both rape and attempted rape were considered to be minor crimes to an equal degree. The hook on the reverse J would be found here as well, with nine percent and five percent of the penalties falling on or beyond the 100 point mark. Once more, the courts were punishing culprits either very mildly or, occasionally, very strictly, but not making much distinction between the attempted crime and the successful one.

Each of the crimes we have discussed so far had its penalties imposed by the Forty, but the pattern continued even into crimes of speech which were the responsibility of the Council of Ten, thus strengthening the interpretation that this was a general pattern in Venice for crimes other than murder and robbery. As Table IV shows, the majority of speech cases (69%) are included in the one to ten point range; and a full eighty-five percent of the penalties fall within the first thirty point range. The right hook of the reverse J would be sharply present, placing eleven percent of the total on or beyond the 100 point mark. For speech, and for all the other crimes discussed, time in jail was minimized. Even the Ten used severe penalties only in unusual cases.

Although Carlo Calisse believed that the "rationalized" approach to crime control in the Renaissance meant stiff and often bloody penalties, in Venice this generalization is not supported by data for typical violent crimes. The reason for this in the broad perspective was that the Venetians had more to consider than striking fear into the hearts of potential criminals. For serious crimes like robbery and murder, the state could be punitive in both a bloody and symbolic way. But for other crimes, technical considerations kept the response at a milder level than the Calisse theory would suppose. The continued need for labor, plus a desire to keep the incarcerated population from becoming unmangeably large and costly, meant that payable fines and short jail sentences, were the normal penalties for violence in Venice. These penalties, sure but not destructive, were the most rational of all. The bureaucratic state that was Venice operated by that logic, but also did not neglect the state as church, as the recurring sharp right hook of the reverse J-curve demonstrates. State as church and state as bureaucracy combined effectively in the penalty process. The law, rather than limiting the judges, freed the judges to match punishment with crime in a manner responsive to the nuances of societal need.