

THE PRIEST BARBIUS AND HIS CRIME BEFORE THE STATE AND CHURCH  
AUTHORITIES OF MEDIEVAL DUBROVNIK

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The last days of August or early September of 1284 witnessed a crime that caused quite a stir among the citizens of Dubrovnik (Ragusa) and sealed the fate of both the perpetrator and the victim.<sup>1</sup> The crime took place on the road to the Benedictine monastery of St. James at Višnjica (*in via sancti Jacobi de Visiniza*), located east of the city and overlooking the island of Lokrum. Today a popular promenade to the green oases surrounding the monastery, wedged between two urban zones, the area was once a road leading to Župa and further, to the borders of the Ragusan district (Astarea) and the hinterland.<sup>2</sup> At the time, the whole area between the city walls and the St. James monastery was uninhabited.

Indeed, a commoner and a noblewoman – a priest and a Benedictine nun – happening to run into each other in 1284 at such a secluded spot can hardly be described as chance, the violent outcome suggesting that these two persons were not strangers. A crime of passion? There is little reliable evidence on the personal relationship of the two people involved and the events underlying this incident, leaving much room for speculation. Of all the places where the Benedictine nun Mira might have been expected to be, this certainly was not one of them. At that time Dubrovnik had

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<sup>1</sup> Primary sources are published in: Tadija Smičiklas, (ed.), *Codex diplomaticus Regni Croatiae, Dalmatiae et Slavoniae* [hereafter: *CD*], vol. 6 (Zagreb: Jugoslavenska akademija znanosti i umjetnosti [hereafter: JAZU], 1908), 499-500, doc. 416; 510-1, doc. 427; 545-7, doc. 463; Josip Lučić (ed.), *Spisi dubrovačke kancelarije* (Registers of the Ragusan chancery) [hereafter: *SDK*], vol. 3, Monumenta historica Ragusina, vol. 3 (Zagreb: JAZU and Zavod za hrvatsku povijest, 1988), 195, doc. 508; 196, doc. 509; 199-202, doc. 513. Documents from *CD* have recurrently been referred to in older historiography, most comprehensively in: Dušanka Dinić-Knežević, "Prilog iz života kaluderica u srednjeevropskom Dubrovniku" (Contribution to the life of nuns in medieval Dubrovnik), *Istraživanja Instituta za istoriju* 6 (1979): 325-6. However, it was not until the publication of the complementary sources from *SDK* that many important and interesting aspects of this case came to light.

<sup>2</sup> Vinko Foretić and Ante Marinović, "Natpis iz XIV stoljeća na Dupcu kod Dubrovnika" (A fourteenth-century inscription from Dubac near Dubrovnik), *Anali Histojskog instituta Jugoslavenske akademije znanosti i umjetnosti* 8-9 (1960-61): 172.

seven Benedictine nunneries (St. Andrew, St. Bartholomew, St. Simon, St. Mary of Kaštel, St. Peter the Minor, St. Nicholas *de l'ave* and St. Thomas), all of which, except for the last, were located inside the city walls, even in *Kaštel*, the core of early Dubrovnik built on the cliffs above the sea.<sup>3</sup> Although the monastic ideal was permeated with the ideals of modesty, retreat from the world, and contemplation, neither the Rule of St. Benedictine nor monastic practice insisted on strict enclosure. At the time this case took place, preparations were at an early stage for the drawing up of the decretal *Periculoso*, by which Pope Boniface VIII forbade nuns to leave the cloister.<sup>4</sup> Even if Mira were allowed to leave the cloistered space, it does seem odd that a woman, moreover of noble birth and a nun, should find herself alone, outside the city walls and well beyond the bounds that both physically and symbolically encircled her social community.

Mira was a nun of St. Andrew's convent, which was located on the western edge of the *sexterium* of *Kaštel*, close to the walls enclosing the city from the sea. The monastic complex had been severely damaged in the Great Earthquake of 1667 and was never reconstructed.<sup>5</sup> The size of Mira's coenobitic community cannot be established with exactitude. Evidence from the mid-fourteenth century bears witness to four Benedictine nuns, this number remaining stable in the latter half of the same century.<sup>6</sup> At the time, Benedictine nunneries in Dalmatia were generally small in size,<sup>7</sup> and it is plausible that Mira shared her cloistered life with but a few nuns.

Unlike the Franciscan convent of St. Clare, established in 1290 and staffed exclusively by patrician daughters,<sup>8</sup> the Benedictine nuns made no such distinction and equally admitted plebeian girls. With regard to Mira, however, we have conclusive evidence that she was a noblewoman (*nobilis domina*). Mira evidently belonged to the patri-

<sup>3</sup> *SDK*, vol. 4 (Zagreb: Hrvatska akademija znanosti i umjetnosti [hereafter: HAZU] and Zavod za hrvatsku povijest, 1993), 279, doc. 1296; Ivan Ostojić, *Benediktinci u Hrvatskoj* (Benedictines in Croatia), vol. 2 (Split: Benediktinski priorat Tkon, 1964), 474-85.

<sup>4</sup> VI 3.16.1: Aemilius Pinedberg, ed., *Corpus iuris canonici*, vol. 2, *Decretalium collectiones* (Leipzig 1879, reprint Graz: Akademische Druck- u. Verlagsanstalt, 1955), 1053-4; Jean Leclercq, "La clôture: points de repère historiques," *Collectanea Cisterciensia* 43 (1981): 370-1; Elizabeth Makowski, *Canon Law and Cloistered Women: Periculoso and Its Commentators 1298-1545*, Studies in Medieval and Early Modern Canon Law, vol. 5 (Washington: The Catholic University of America Press, 1997), 1-3.

<sup>5</sup> Lukša Berčić, "Ubikacija nestalih građevinskih spomenika u Dubrovniku" (On the location of unpreserved monuments in Dubrovnik), *Prilozi povijesti umjetnosti u Dalmaciji* 10 (1956): 72-4; Ostojić, *Benediktinci*, 477-8.

<sup>6</sup> State Archives of Dubrovnik [hereafter: SAD], *Distributiones testamentorum*, ser. 10.2, vol. 1, ff. 159v-160r; vol. 2, f. 19v; vol. 5, f. 130r.

<sup>7</sup> Ostojić, *Benediktinci*, 30.

<sup>8</sup> Zdenka Janeković Römer, *Okrvir slobode: dubrovačka vlastela između srednjovjekovlja i humanizma* (The framework of freedom: the Ragusan patriciate between the Middle Ages and Humanism) (Zagreb and Dubrovnik: Zavod za povijesne znanosti HAZU u Dubrovniku, 1999), 215.

cian clan of Mlascagna (Mlascogna), descendants of the Naimeri/Maineri family,<sup>9</sup> judging from the fact that Marinus Mlascagna was determined to avenge himself on Barbius for the shame inflicted upon him (*ad vindicandum ontam meam*).<sup>10</sup>

The social and family background of the male participant in this case can be traced with utmost accuracy. The priest, Barbius, was born into a non-noble family of merchants and artisans by the name of Longo.<sup>11</sup> While the highest church positions (e.g., in the chapter) were distributed among the ecclesiastics of patrician origin, the Ragusan diocesan clergy stemmed mainly from the non-noble ranks.<sup>12</sup> Before this violent incident, Barbius appears in a document from 1282 concerning an exchange of communal plots between Pasqua de Volcassio and the confraternity of St. Stephen. *Fraternitas S. Stephani* was, at that time, one of the most revered confraternities, receiving a considerable number of legacies.<sup>13</sup> In this legal act, carried out in front of the archbishop, Barbius represented the confraternity as one of its two administrators,<sup>14</sup> which indicates that he was among the more distinguished ecclesiastics. In the sentence passed by the archbishop's court he is referred to as a "vile person" (*vilis persona*) not on account of his low origin but because of the horrible crime he had committed.

On the road outside the city Barbius mutilated Mira by cutting off her nose (*se dicte domine Mire... nasum incisisse*). This violent act is also the key to what may have preceded it, for it bears very clear social implications. One might say that Mira's permanently disfigured face served Barbius as a medium for broadcasting a certain message.

Mutilation in the form of cutting off the nose was the punishment inflicted on women whose behaviour seriously undermined the concept of honour.<sup>15</sup> This form of

<sup>9</sup> For the Mlascagna clan see Irmgard Mahnken, *Dubrovački patricijat u XIV vijeku* (The Ragusan patriciate in the fourteenth century), Posebna izdanja SANU, vol. 340 (Belgrade: Srpska akademija nauka i umetnosti, 1960), vol. 1, 349-51 and vol. 2, table II. For valuable assistance in genealogical matters I am indebted to Nenad Vekarić.

<sup>10</sup> In the documents related to Barbius' case, Marinus is also mentioned under the surname of Maynero (*SDK*, vol. 3, 199, doc. 513).

<sup>11</sup> Gregor Čremošnik (ed.), *Istorijski spomenici Dubrovačkog arhiva. Kancelarijski i notarski spisi g. 1278-1301* (Historical documents from the archives of Dubrovnik. Chancery and notary volumes, 1278-1301) (Belgrade: Srpska kraljevska akademija, 1932), 52; *SDK*, vol. 3, 76, doc. 230; 251, doc. 708; 333, doc. 1072; 337, doc. 1098; *SDK*, vol. 4, 89, doc. 308; 150, doc. 582; 162, doc. 665; 182, doc. 788; 223, doc. 1048; 228, doc. 1079; 324, doc. 1378. The family is traced in a series of documents from the fourteenth century (Mahnken, *Dubrovački patricijat*, vol. 1, 47).

<sup>12</sup> Zdenka Janeković Römer, *Maruša ili suđenje ljubavi: Bračno-ljubavna priča iz srednjovekovnog Dubrovnika* (Maruša or the trial of love: a story on marriage and love from medieval Dubrovnik) (Zagreb: Algoritam, 2007), 193-4.

<sup>13</sup> Cf. *SDK*, vol. 4, 255-351.

<sup>14</sup> *SDK*, vol. 2 (Zagreb: JAZU and Centar za povijesne znanosti Sveučilišta u Zagrebu, 1984), 194, doc. 852.

<sup>15</sup> See especially Valentin Groebner, *Defaced: the Visual Culture of Violence in the Late Middle Ages* (New York: Zone Books, 2004), 60-86. Apart from women, this form of punishment was also intended for passive homosexuals (*ibidem*, 73-80).

punishment is mentioned in Roman literature, and it later appeared in Byzantine law and the penal system of the Italian cities.<sup>16</sup> Ragusan laws from 1299/1300 and 1366 employed this form of punishment to threaten female thieves unable to pay the fine or maids who entertained men in their master's premises at night, and the judicial practice of fifteenth-century Dubrovnik had actually witnessed such sentences.<sup>17</sup> By cutting off the nose, judicial authorities attained a two-fold stigmatisation: a lasting mark on the uncovered part of the body that reminded viewers of the crime also aimed to degrade the woman and diminish her social prospects.<sup>18</sup>

Cutting away the nose may also be traced in the out-of-court social practice as a retribution for misconduct, suspected or real, for a woman who had dishonoured her family, particularly by committing adultery or some other form of sexual misbehaviour.<sup>19</sup> Its verbal equivalent – where the actions did not go beyond threat – was a stream of abuse inflicted upon women in everyday situations. Records of the medieval Ragusan Criminal Court bear witness to cases involving mere threats, but also to those in which a man actually cut off his wife's nose if he believed that he had been dishonoured by her behaviour.<sup>20</sup> The meaning of Barbius' violent act against Mira might be elucidated with a

<sup>16</sup> For the Byzantine law see Lujo Margetić, "O nekim osnovnim značajkama pokretanja kaznenog postupka u srednjovjekovnim dalmatinskim gradskim općinama" (On some elements of the initiation of criminal procedure in medieval Dalmatian cities), *Rad HAZU* 475 (1997): 28; for southern Italy see the code of Frederick II from 1231, III, 14 in Domenico Maffei (ed.), *Un'epilome in volgare del 'Liber Augustalis'* (Bari: Laterza, 1995), 182; for Venice see Guido Ruggiero, "Constructing civic morality, deconstructing the body: civic rituals of punishment in Renaissance Venice," in *Riti e rituali nelle società medievali*, ed. Jacques Chiffolleau, Lauro Martines and Agostino Paravicini Bagliani (Spoleto: Centro italiano di studi sull'alto medioevo, 1994), 180; for Bologna, Sarah Rubin Blanshei, "Criminal Law and Politics in Medieval Bologna," *Criminal Justice History* 2 (1981): 19-20, note 7.

<sup>17</sup> See Valtazar Bogišić and Constantin Jireček (ed.), *Liber statutorum civitatis Ragusii compositus anno 1272*, Monumenta historico-juridica Slavorum Meridionalium, vol. 9 (Zagreb: JAZU, 1904), 127, 136-7 (VI, 4 and 33); Josephus Gelcich (ed.), *Libri reformationum*, vol. 4, Monumenta spectantia historiam Slavorum Meridionalium, vol. 28 (Zagreb: JAZU, 1896), 53; Constantin Jireček, "Der ragusanische Dichter Šiško Menčetić," *Archiv für slavische Philologie* 18 (1897): 30-1; Riste Jeremić and Jorjo Tadić, *Prilog za istoriju zdravstvene kulture starog Dubrovnika* (Contributions to the history of public health in old Dubrovnik), vol. I (Belgrade: Biblioteka Centralnog higijenskog zavoda, 1938), 127-8; Ilija Mitić, "Prilog proučavanju kazne sakaćenja na području Dubrovačke Republike i u nekim dalmatinskim gradovima" (A contribution to the research into the mutilation penalty on the territory of the Republic of Dubrovnik and in some Dalmatian towns), *Zbornik Pravnog fakulteta u Zagrebu* 32, no. 1-2 (1982): 144.

<sup>18</sup> Cf. Guido Ruggiero, *Violence in Early Renaissance Venice* (New Brunswick: Rutgers University Press, 1980), 108.

<sup>19</sup> Groebner, *Defaced*, 72-3.

<sup>20</sup> *SDK*, vol. 3, 178, doc. 476; *SAD, Lamenta politica*, ser. 11, vol. 2, f. 37v, 319r; *SAD, Lamenta de intus*, ser. 51, vol. 21, f. 57; *SAD, Lamenta de intus et foris*, ser. 53, vol. 1, f. 175rv; Bariša Krekić, "Dubrovnik's Struggle Against Fires," in idem, *Dubrovnik: a Mediterranean Urban Society, 1300-1600* (Aldershot and Brookfield: Variorum, 1997), section VI, 13-4; Slavica Stojan, "Mizoginija i hrvatski pisci 18. stoljeća u Dubrovniku" (Misogyny in the works of eighteenth-century Croat writers in Dubrovnik), *Analiza Zavoda za*

case that occurred the same year: the nobleman Johannes de Crossio ordered Bratuša, his mistress, to undress, took her earrings, had her nose cut off, and put her aboard a ship to Dalmatia, the crew being given permission to sell her or act as they willed.<sup>21</sup> Barbius' violent act labelled Mira as a dishonoured woman, too. We can presume that he attacked and mutilated her because something in their relationship led him to believe that he had been betrayed. Had they been related, one might speculate that Barbius punished Mira on account of her intercourse with a third person. This not being the case, he evidently sought revenge for something that included no other person but themselves.

Having committed the act, Barbius decided to flee, but not in haste or panic towards the Republic's border, a couple of hours' walk from the city, as might have been expected. Surprisingly, he took refuge with the pious women who dwelled next to the church of St. Blaise at Gorica, overlooking the western sea access to Dubrovnik. These recluses (*recluse*) was a typical female form of medieval piety and paramonastic religious life. At the time of Barbius' escape, there were about twenty of them in Dubrovnik, located close to the city churches or those in the city environs. The solitary dwelling next to the small church of St. Blaise at Gorica was a most important one and usually provided a home for several anchoresses. Here Barbius not only found much-needed refuge, but also obtained aid for his escape. In this sanctuary he remained as long as sixteen days, during which the recluses did their best to help him flee Dubrovnik by sea. Several futile attempts finally resulted in engaging Andreas de Vixi, who was about to sail his ship from the island of Koločep to Venice, to fetch "some of their things to be transported." Carefully cloaked, Barbius was accompanied down the Gorica cliff, smuggled into a small boat and then aboard the ship, which set out for Venice.<sup>22</sup> Did the recluses know the true identity of the man they offered shelter to? Since a decision to flee the Republic was not taken lightly, they must have realised the gravity of the situation. We shall never know if Barbius told them the truth or if the recluses gathered the details of the incident from some other source. Contrary to what their name suggests, the recluses communicated freely with the outer world, and, accordingly, may have learnt about the background of Barbius' escape. In any event, the determination of these women to defy the church and state authorities by helping the fugitive earned them a pivotal role in this Ragusan case.

At the request of the Ragusan count (*comes*), the Venetian authorities seized Barbius and extradited him to Dubrovnik, where he was to face trial before the criminal court. The unsettling news that Barbius' would shortly arrive at the city gave rise to

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*pojave i znanosti HAZU u Dubrovniku* 39 (2001): 446-7. On the protection of women against violence and preservation of their "sexual chastity" as a component of male honour see Groebner, *Defaced*, 81-2.

<sup>21</sup> *SDK*, vol. 3, 180-1, doc. 481; 210, doc. 520.

<sup>22</sup> *SDK*, vol. 3, 196, doc. 509.

widespread speculation about his punishment, apparently only a fine of 75 perpers. Indeed, such a fine was in accordance with the Statute regulations: 50 perpers for serious injury of the face, plus half the amount for an escape.<sup>23</sup> It should be noted, however, that this sum was more than a trifle: the current price of Bosnian female slaves, sold by Ragusan merchants, ranged between 6 and 15 perpers.<sup>24</sup>

The penal system of Dubrovnik in the late thirteenth century was based on fines,<sup>25</sup> similar to the legal practice of Venice and the Italian cities of the day.<sup>26</sup> However, the drastic disproportion between a violent crime and the monetary punishment could easily give way to a feeling of injustice and consequently lead to friction. This can be seen in the case of Barbius. A group advocating on Mira's behalf pointed out the distinctive meaning of the terms *ratio* (law) and *iusticia* (justice). In their view, justice ought to target Barbius' person and not only his purse. The retribution or deserved punishment was felt to be social honour; the position of the victim and her family could be restored only by dishonouring the perpetrator's body. Having no "healing effect" in kind, money was of little help here.

The avengers were headed by Marinus de Mlascagna, most likely in his thirties at the time, apparently a well-established merchant and nobleman.<sup>27</sup> Judging by his passionate approach to the matter, he might have been related to Mira by blood, even a brother, cousin or nephew. Aware of the possible implications of his intentions, he sought advice and support from noblemen he trusted<sup>28</sup> Grubeša de Ragnina,<sup>29</sup> a man of the world from whom Marinus sought advice, disapproved of hasty decisions and suggested a "moderate approach" – that is, "to find companions more prudent than himself" (*inveniat socios... sapientiores quam ipse*) and go before the count to seek justice the legal way. Gervasius de Martinusii<sup>30</sup> also advised Marinus "not to distance himself from the government" (*non moveas te a dominatione*). Succumbing to his impulsive nature, Ur-

<sup>23</sup> SDK, vol. 3, 200, doc. 513; Bogišić and Jireček, *Liber statutorum*, 125-6 (VI, 3).

<sup>24</sup> SDK, vol. 2, 252-79.

<sup>25</sup> Nella Lonza, "Coram Domino Comite et suis Iudicibus: Penal Procedure in Early-Fourteenth-Century Dubrovnik," *Criminal Justice History* 15 (1994): 17-9; for a longer time span cf. eadem, *Pod plavšem pravde: Kaznenopravni sustav Dubrovačke Republike u XVIII. stoljeću* (Under the veil of justice: criminal justice in the eighteenth-century Republic of Dubrovnik) (Dubrovnik: Zavod za povijesne znanosti HAZU, 1997), 190.

<sup>26</sup> Guido Ruggiero, "Law and Punishment in Early Renaissance Venice," *Journal of Criminal Law & Criminology* 69 (1978): 247; idem, "Politica e giustizia," in *Storia di Venezia dalle origini alla caduta della Serenissima*, vol. 3, *La formazione dello stato patrizio*, ed. Girolamo Arnaldi, Giorgio Cracco and Alberto Tenenti (Rome: Istituto della Enciclopedia italiana, 1997), 393-4 and 402-3.

<sup>27</sup> For the age estimate and other biographical data I thank Nenad Vekarić.

<sup>28</sup> SDK, vol. 3, 195, doc. 508; 199, doc. 513.

<sup>29</sup> Mahnken, *Dubrovački patricijat*, vol. 1, 379.

<sup>30</sup> On the clan see *ibidem*, 305.

sacius de Villarico<sup>31</sup> readily offered to cut off Barbius' nose and hand on condition that Marinus promised to pay the fine prescribed for such a crime.<sup>32</sup>

True, some of Marin's confidants proved wiser and more reasonable than himself, as Grubeša de Ragnina had thoughtfully recommended, yet he turned a deaf ear to their advice. Did he believe that the chances of the court abandoning the legal framework and reaching a harsher punishment than that prescribed by the law were very slim?<sup>33</sup> Or did he think that the only way to "wash out" the shame inflicted was to act personally?

While the count's entourage waited for Barbius to disembark in the city port and to then escort him to the Communal Palace, an angry crowd obstructed passage shouting: "Let him die, let the devil die" (*morietur, morietur diabolus*), stirring up revenge. It was then that Marinus de Mlascagna drew a knife and attacked the priest in an attempt to cut off his leg. In so doing, he called his kin and friends to join him in revenge (*si habeo parentes et amicos meos, veniant nunc ad adiuvandum me vendicare ontam meam*). Young Helias de Bonda<sup>34</sup> joined in by trying to trick the guards into placing Barbius in his custody, claiming that the count had given his consent to lynching (*Dimitite presbiterum, quia ego scio quod dominus comes vult quod interficiatur*). The court records testify to a serious commotion, in which the count's guards managed to overpower the assaulter. It was not until the arrival of Deacon Gregorius de Cernelio that the situation was finally controlled. Once he had soothed the guards' fear and persuaded them to hand Mlascagna over to him (*Dimittatis dictum Marinum mihi. Nolite timere*), the social tensions abated and Barbius was escorted to the count.

This, apparently, was not the only case of attempted lynching that Dubrovnik witnessed in medieval times,<sup>35</sup> but it certainly attracted great attention and resulted in an official inquiry. Barbius enjoyed the status of an arrested person under the jurisdiction of the state and/or ecclesiastical authorities, thus any attempt at revenge on him was necessarily interpreted as defiance of the official institutions. Therefore, two parallel trials were initiated: one investigating Barbius' assault on Mira, and the other Marinus' assault upon Barbius. The action against Marinus de Mlascagna lasted about a week and included hearing eleven witnesses, with bail being set at the high amount of 200 per-

<sup>31</sup> On the Villarico/Gullerico family see *ibidem*, 286.

<sup>32</sup> *SDK*, vol. 3, 200, doc. 513.

<sup>33</sup> Although the principle of legality in the modern sense of the word was not at work at the time, the Statute allowed the application of custom, interpretation by analogy and, as a last resort, free judgement of the court only for actions not covered by the law. Cf. Bogišić and Jireček, *Liber statutorum*, 2 and 27 (*proemium*, II, 4).

<sup>34</sup> Mahnken, *Dubrovački patrijarat*, vol. 1, 159.

<sup>35</sup> Nella Lonza, "Tužba, osveta, nagodba: modeli reagiranja na zločin u srednjovjekovnom Dubrovniku" (Settling disputes in medieval Dubrovnik by court proceedings, revenge or out-of-court settlement), *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 40 (2002): 88-92.

pers.<sup>36</sup> Although Marinus denied all the accusations ("I did not draw a knife, nor have I done anything wrong, nor have I been talked into doing anything of the kind"), the witnesses gave a detailed account of the events, sufficient for the court to bring a guilty verdict and a fine of 30 perpers. This was by no means a small fine, considering that the assault went no further than an attempt. The court evidently decided on the highest punishment possible in order to demonstrate that defiance and mob rule would not be tolerated.

At the same time, without delay, Barbius was brought to trial. Since the defendant was a cleric, his case came before the ecclesiastical authorities.<sup>37</sup> Given the nature of the crime, this personal immunity did not protect Barbius from forcible acts of the state institutions,<sup>38</sup> and his arrest was never questioned. The process was initiated in the late September of 1284 by the archbishop of Dubrovnik, a learned Franciscan, Bonaventura of Parma, who had sat in this high ecclesiastical position for several years.<sup>39</sup> At that time, this office was tranquil and offered little opportunity for its holder to ensconce himself on the throne; but shortly after Bonaventura's arrival in Dubrovnik his entourage had been attacked by a group around the cleric Johannes de Prodanello and the archbishop's palace was also stoned.<sup>40</sup>

Barbius faced inquisitorial procedure (*inquisitio*), a kind of procedure in use in the ecclesiastical courts, introduced by the decision of the Fourth Lateran Council in 1215.<sup>41</sup> By the rules of this procedure, the court was authorised to indict someone *ex officio* and examine the evidence without having to wait for the plaintiff to press charges and submit evidence against the defendant. Although the inquisitorial procedure had formally maintained its subordinate place, in practice it proved to be a simpler, more flexible and more efficient form than the paradigmatic accusatorial model, and quickly spread in the practice of the state courts.<sup>42</sup> It is interesting to note that while making the

<sup>36</sup> On the court structure and the criminal procedure of the early fourteenth century cf. Lonza, "Pred gosparom knezom," 28-47.

<sup>37</sup> Paul Fournier, *Les officialités au Moyen Âge: Étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France de 1180 à 1328* (Paris, 1880, reprint Aalen: Scientia, 1984), 65-73.

<sup>38</sup> *Ibidem*, 70-2.

<sup>39</sup> He accepted the archbishopric in 1281, and arrived in Dubrovnik shortly afterwards. On him see Daniel Farlati and Jacobus Coleti, *Ecclesiae Ragusinae historia* (Venice: Sebastianus Coleti, 1800), 115-6; Serafino Razzi, "Narrazioni o vero storia degli arcivescovi di Raugia," in *Povijest dubrovačke metropolije i dubrovačkih nadbiskupa (X.-XVI. stoljeće)* (History of the archbishopric and archbishops of Dubrovnik, 10<sup>th</sup> - 16<sup>th</sup> c), ed. Stjepan Krsić and Serafino Razzi (Dubrovnik: Biskupski ordinarijat Dubrovnik, 1999), 119.

<sup>40</sup> *CD*, vol. 6, 426-7, doc. 362; 476-7, doc. 394; 504-5, doc. 421.

<sup>41</sup> Canon *Qualiter et quando* was included in X 5.1.24 (Friedberg, *Corpus iuris canonici* II, 745-7).

<sup>42</sup> Fournier, *Les officialités au Moyen Âge*, 266-70; Richard M. Fraher, "IV Lateran's revolution in criminal procedure: The birth of *inquisitio*, the end of ordeals, and Innocent III's vision of ecclesiastical politics," in *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*, ed. Rosalio Iosephus Castillo Lara, *Studia et textus historiae iuris canonici*, vol. 7 (Rome: Libreria Ateneo Salesiano, 1992), 99-111; James Brundage, *Medieval Canon Law* (Harlow: Longman, 1995), 147-51; Massimo Vallerani, *La giustizia pubblica medievale*



formal accusation, the archbishop's court called upon the fact that the whole city of Dubrovnik was familiar with Barbius' crime (*fama publica deferente ad clamorem totius civitatis Ragusine*).<sup>43</sup> Here we are not dealing with a provisional rhetorical qualifier but with public opinion (*fama publica, clamor*) as a premise upon which the court could commence action *ex officio*.<sup>44</sup> At the time of Barbius' trial, legal doctrine took a consensual approach to the role of public opinion, best illustrated by *Tractatus de ordine iudicario*, composed by Aegidius de Fuscariis around 1260.<sup>45</sup>

Of the procedural acts concerning this case only the verdict has survived. Thus we learn that Barbius had spontaneously confessed to the crime (*de plano confessus fuerit*),<sup>46</sup> yet details concerning the motive for his assault on Mira, likely to have been woven into the defendant's testimony, failed to surface. As the confession was sufficient for a guilty verdict, the court did not have to go to the trouble of submitting other evidence, contributing most likely to an expedient and simple trial.

A historian accustomed to the examples of latent tensions and open jurisdictional controversies between ecclesiastical and state authorities might find it curious that Barbius was tried before the representatives of the chapter together with the full state court of five members presided over by the count. Although the sentence was eventually passed by the archbishop in his palace, it was not formulated by the notary Antonio de Carletis of Parma, at the time member of archbishop's staff,<sup>47</sup> but by the government chancellor, Tomasino de Saveri.<sup>48</sup> In the comparative literature I have not been able to trace similar examples of such cooperation between the church and state authorities,<sup>49</sup> yet I harbour doubts about the exclusiveness of the Ragusan practice. In his still-unrivalled study of the competence of medieval diocesan courts in France, Paul Fournier

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(Bologna: Il Mulino, 2005), 34-45. For Dubrovnik see Nella Lonza, "L'accusatoire et l'infrajudiciaire: la «formule mixte» à Raguse (Dubrovnik) au Moyen Âge," in *Pratiques sociales et politiques judiciaires dans les villes de l'Occident européen à la fin du Moyen Âge*, ed. Jacques Chiffolleau, Claude Gauvard and Andrea Zorzi (Rome: École française de Rome, 2007), 644-650.

<sup>43</sup> *CD*, vol. 6, 499, doc. 416.

<sup>44</sup> Vallerani, *La giustizia pubblica medievale*, 35-6.

<sup>45</sup> Ludwig Wahrmund (ed.), *Der Ordo iudicarius des Aegidius de Fuscariis*, Quellen zur Geschichte des Römisch-kanonischen Prozesses im Mittelalter, vol. 3.1 (Innsbruck 1916, reprint Aalen: Scientia Verlag, 1962), 156-9. On the author and his work see Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts*, vol. 2 (Stuttgart 1875, reprint Graz: Akademische Druck- u. Verlagsanstalt, 1956), 139-42.

<sup>46</sup> *CD*, vol. 6, 499, doc. 416.

<sup>47</sup> For instance, he wrote documents in *CD*, vol. 6, 477, doc. 395; 478, doc. 396; 504-5, doc. 421.

<sup>48</sup> *CD*, vol. 6, 500, doc. 416. On this chancellor see Constantin Jireček, "Die mittelalterliche Kanzlei der Ragusaner," *Archiv für slavische Philologie* 26 (1904): 187-8.

<sup>49</sup> Cf. Fournier, *Les officialités au Moyen Âge*. Paolo Prodi emphasizes that historiography should not examine the ecclesiastical and secular courts separately, considering their partial overlap in practice; Paolo Prodi, *Una storia della giustizia: Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto* (Bologna: Il Mulino, 2000), 129-37.

has outlined the gradual institution of ecclesiastical jurisdiction over the clergy, a process that occurred during the thirteenth century, providing a series of later examples which demonstrate the reluctance of the state institutions to observe clerical immunity.<sup>50</sup> It is also likely that elsewhere in Europe, in the general demarcation between the ecclesiastical and secular jurisdictions, overlapping and provisional institutional forms still emerged. A case from Dubrovnik's jurisprudence supports this assumption, the trial against Johannes de Prodanello mentioned above. It was presided over by the archbishop and conducted before several canons, the Ragusan count and his assistant, the full Minor Council (i.e., the government) with its eleven members, and numerous clerics and laymen. The representatives of secular institutions were not a mere audience witnessing a public trial, but were adequately appointed by virtue of their office. One might say that in late thirteenth-century Dubrovnik the church had predominant jurisdiction over the clerics, but still lacked a clear-cut boundary with the secular authorities.

With reference to some common rhetorical figures on the retributive and preventive implications of punishment (*volentes quod tantum malefictum maneat impunitum, sed quod pena istius sit metus multorum*),<sup>51</sup> Barbius Longus was to be deprived of all ecclesiastical honours and benefices (*privamus... omni officio et ecclesiastico beneficio*) and sentenced to life imprisonment (*ut penitentiam agat... perpetuis carceribus detineri*). The first component of the verdict did not deprive Barbius of his clerical status, but interfered deeply in his existence by leaving him without a stable source of livelihood; the second component seems even more serious, for it threatened life-long imprisonment, the harshest punishment that could be inflicted by the ecclesiastical court. The conditions of Barbius' punishment and penitence were defined in detail by the archbishop of Dubrovnik. Two months after the verdict, by a special decree – issued in the cathedral, again in the presence of the count and the secular court! – the archbishop specified the terms of Barbius' confinement.<sup>52</sup> The prisoner was thrown into the dungeon below the church of St. Saviour *de palude*, which stood opposite the Communal Palace. In the fourteenth and fifteenth century this cellar was occasionally used for keeping prisoners (women in particular), who, for some reason, could not be kept in one of the regular prisons.<sup>53</sup> Although located under a church, the dungeon was at the disposal of the government institutions. In these premises Barbius was to live on bread and water (*comedere debeat panem et aquam solummodo*), with both legs and one arm chained (*conpedibus et vinculis ferreis*

<sup>50</sup> Fournier, *Les officialités au Moyen Âge*, 65-6.

<sup>51</sup> Drawn from Roman law, this formula specifically echoes the decretal *Ut fume* from 1203 (X 5.39.5). See Richard M. Fraher, "The theoretical justification for the new criminal law of the high Middle Ages: 'Rei publicae interest ne crimina remaneant impunita,'" *University of Illinois Law Review* 3 (1984): 577-8.

<sup>52</sup> CD, vol. 6, 510-1, doc. 427.

<sup>53</sup> SDK, vol. 3, 135, doc. 407; Bentić, "Ubikacija," 61-2; Nada Grujić, "Knežev dvor u Dubrovniku prije 1435. godine" (The Rector's Palace in Dubrovnik before 1435), *Prihvat porijesti umjetnosti u Dalmaciji* 40 (2003-2004): 157.

*ad pedes et unam manum*), and only in the case of poor health could these terms be alleviated.<sup>54</sup> In fact, this was the harshest punishment cloaked in penitence that the diocesan court was empowered to impose,<sup>55</sup> being considerably closer to the “just punishment” which had been demanded than that the secular court could have passed. However, the implementation of such penalties tended to dilute the strict verdict because the criminal’s subsequent repentance almost inevitably opened the door to a merciful pardon.<sup>56</sup>

Judging by the evidence, Barbius showed no resistance to the trial: apparently, he lodged no objection of either a procedural or material nature, and we know for certain that he confessed to the crime. Captivity, however, contributed to a change of his attitude, adding a new chapter to the story. Eventually, Barbius filed an appeal to the pope, claiming that the state authorities were not authorised to keep him imprisoned. As I have noted earlier, the sentence was passed by the archbishop, but the “secular-based” elements of the trial and the execution of punishment helped Barbius build his appeal around the court’s disregard for the immunity that he, as a cleric, was entitled to. As the appeal procedure entailed the local institutions,<sup>57</sup> the fact that this case would be reconsidered by the bodies of the papal curia soon became the talk of the town. This turn of events led the Ragusan count to refute custody (*refuto custodiam*) before the archbishop, the decision being properly formulated and drafted on 2 July 1285.<sup>58</sup> This was merely a formal act of transferring jurisdiction to the church authorities, aimed to counteract Barbius’ vexatious proof of the immunity violation, but it failed to open the door of his cell.

The papal curia acted in accordance with the regular procedure: the case was assigned to a high ecclesiastic to act as judge delegate (*iudex delegatus*).<sup>59</sup> In Barbius’ case it was the archbishop of Bari, whom the pope’s letter authorised threatening with excommunication if Barbius was not set free, on the condition that the statements in the appeal were true, commonly phrased as *si est ita*. For further dealings in this case the prelate appointed the priest Rogerius de Lupizo and furnished him with concrete instructions. Maintaining the right to act directly in this case, Rogerius demanded that

<sup>54</sup> CD, vol. 6, 531-2, doc. 450.

<sup>55</sup> Joseph Blötzer, “Inquisition,” in *The Catholic Encyclopedia*, vol. 8 (New York, 1910, online: <http://www.newadvent.org/cathen/08026a.htm>; consulted on 17 July 2008); Bernard Hamilton, *The Medieval Inquisition* (London: Edward Arnold, 1981), 49-54; Jean Dubabin, *Captivity and Imprisonment in Medieval Europe 1000-1300* (New York: Palgrave, 2002), 144-5, 151-2.

<sup>56</sup> Dubabin, *Captivity and Imprisonment*, 157.

<sup>57</sup> Wahrmond, *Der Ordo iudiciarius des Aegidius de Fuscariis*, 146; Charles Duggan, “Papal Judges Delegate and the Making of the ‘New Law’ in the Twelfth Century,” in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), 174.

<sup>58</sup> CD, vol. 6, 531-2, doc. 450.

<sup>59</sup> On this procedure see Duggan, “Papal Judges Delegate,” 174-6.

Barbius be released from prison, that the Ragusan authorities vouch for his personal security, and that all the actors in this “sacrilege” be expelled from the government until they had submitted to the church demands. Rogerius arrived in Dubrovnik in the early spring of 1286 carrying two letters from his superiors, most formally styled but of hypothetical nature – his first task was to establish whether Barbius’ clerical immunity had actually been violated.

Acting in conformity with his accountable office, the Ragusan count summoned all those who, in one way or the other, participated in authority – secular or ecclesiastical. Thus, the whole Major Council (all adult male patricians), the chapter and its dignitaries, the Ragusan clergy, and representatives of the Dominican and Franciscan Orders gathered in the largest building, St. Mary’s cathedral. After the letters Rogerius had brought were read out, the count replied “in his name and that of the whole commune and the Ragusan community” (*nomine suo et vice et nomine totius comunis et universitatis Ragusii*) that he did not have Barbius arrested and kept in custody, as was commonly known and evidenced by archbishop’s verdict and other documents. The count’s statements were not completely true, but allowed manipulation because the local secular and church authorities held a shared view of Barbius’ case. As no one felt the need or interest to refute the count’s words, the absence of dissenting voices provided poor grounds for Barbius’ appeal.

The ensuing legal actions, if any, and the fate of Barbius are unknown. Did he meet his end in the dark cellar of St. Saviour’s? Or was he eventually pardoned and walked out a free man, although deprived of his clerical benefits? His life remains in the obscurity of unrecoverable past events. Equally obscure is the fate of Mira. Probably she spent the rest of her life in the convent of St. Andrew, her disfigured face a constant reminder of Barbius.

The background of Barbius’ story anticipates a number of themes which I aim to address in the conclusion. Firstly, the judiciary still had difficulty in winning a dominant position among the devices designed to resolve social conflicts, and thus stood small chance in competition with revenge. Additionally, the penal system, based on fines, created principally to provide revenues and finance the count as well as the commune, not only failed to fulfil the lust for revenge of a certain social group but did not fit the understanding of articulated communal government, justice (*iustitia*) – granting each person due reward – being among its civic virtues. Most importantly, in the complex social tectonics surrounding “the case of Barbius” the deepest fissures did not emerge where one expects them the most, on the edge separating the competence of the secular and church institutions. The main tensions built on other issues: the state authorities faced the problem of having to bridle a serious vengeful attempt of a patrician group, while the church had to deal with the wilful action of the recluses. However, the question of jurisdiction over Barbius did not give rise to any friction between the

two authorities during his escape, arrest, trial or imprisonment. In this case, the ecclesiastical and state authorities exhibited exemplary cooperation on the local level, moreover, they acted side by side.

(translated by Vesna Baće)

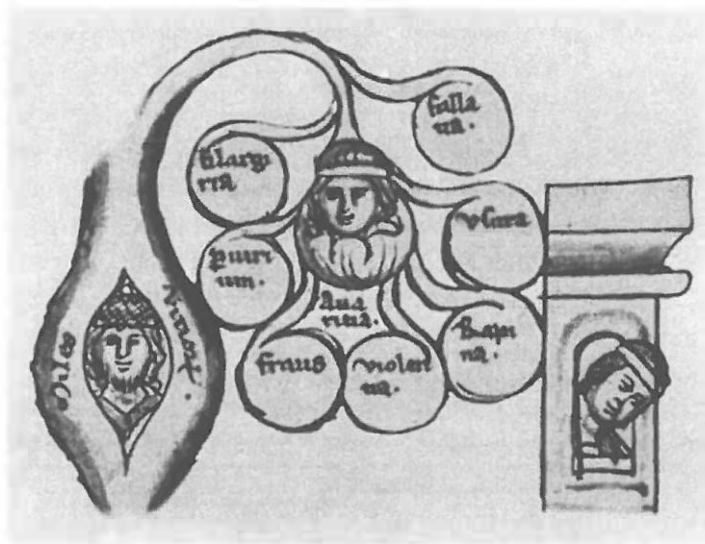
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## PREFACE

Studies of the Apostolic Penitentiary and its role and function for all strata of late medieval society have become an important field of research at the international level. The requests of Christians for grace to be granted by the papal curia offer information about a variety of problems and needs that confronted both clerics and lay-people and made petitions to the pope necessary or, at least, advisable.

Since 2001, the Department of Medieval Studies of Central European University has been concentrating on comparative research in the East Central European data of the Penitentiary Registers. This has led to intensive cooperation with other scholars in the field, to a number of international meetings and the publication of their results.<sup>1</sup> The most recent of these workshops was held in Dubrovnik in 2008 and dealt with a research question for which the Penitentiary registers contain rich material: "Coping with Violence, and the Medieval Clergy (from the Local Settlement of Dispute to Approaching the Apostolic Penitentiary)."

In recent decades research into violence in the Middle Ages has seen a particular boom. In a large number of studies historians discovered that violence was omnipresent in medieval society and affected all areas of life and the members of all social strata. Although one has to be careful with such generalizations, it can be stated that the surviving sources deal regularly with issues of violent actions, signs and results of violence, violent people and coping with violence. Members of the clergy played an important role in recording such evidence – as writers about violence and critics of violence, but also as perpetrators, victims, and witnesses. However, systematic analyses of the patterns of behaviour and the different functions and actions of clerics on these issues have not yet been realized often in a context-bound and comparative way. The Dubrovnik workshop aimed to contribute towards changing this situation and offer a forum to discuss questions about the various roles of medieval clerics in the attempts

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<sup>1</sup> The results of meetings at Bergen (2003) and Budapest (2004) were published in Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen (ed.), *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*, CEU Medievalia 8 (Budapest and New York: Central European University Press, 2005); selected papers of a workshop at Rome (2005) may be found in *idem* (ed.), ... et usque ad ultimum terrae *The Apostolic Penitentiary in Local Contexts*, CEU Medievalia 10 (Budapest and New York: Central European University Press, 2007).

and processes designed to cope with violence. Particular emphasis was put on the function of the Apostolic Penitentiary and its decisions in this context. This volume contains selected contributions from the meeting.

In his introductory paper, Peter Clarke offers an overview of the state of the art of research into the connection of the clergy and violence in the Middle Ages. Kirsi Salonen concentrates on violence at the Roman curia and its reflection in the Penitentiary records. Torstein Jørgensen and Etleva Lala deal with violence and the clergy in two peripheral areas of medieval Western Christianity, namely, Norway and Albania, and also include Penitentiary evidence in their analysis. Gerhard Jaritz studies the role of one important object in the violence-bound argumentation of the supplicants to the Penitentiary: the short bread-knife that was allowed to be carried by everyone and did not count as a weapon, but seems to have been used regularly as such. Gordan Ravančić and Nella Lonza offer analyses of problems of violence occurring in the clerical space of medieval Dubrovnik.

November, 2011

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