

Claudio Povolo

The Emergence of Tradition
Essays on Legal Anthropology
(XVI-XVIII Centuries)

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Claudio Povolo,
The Emergence of Tradition. Essays on Legal Anthropology (XVI-XVIII Centuries)

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INTRODUCTION

In the introduction to his volume *Inventing Popular Culture*, John Storey observed that the identification of a popular culture, considered eminently as *folk culture*, is in reality the product of a complex institutional, economic and political process that more or less intentionally hid the changes in the relations among social groups and classes between the 18th and the 19th centuries, in order to promote single *national cultures* or to develop the science of *primitive man*:

The collectors of folk culture idealized the past in order to condemn the present. The rural worker - the peasant - was mythologized as a figure of nature, a “noble savage” walking the country lanes and working without complaint the fields of his or her betters - the living evidence of, and a link to, a pure and more stable past ... Whereas the middle class could be encouraged to connect to a more organic past by embracing folk songs, the working class would have to be forcefully schooled in folk song in the hope of softening their urban and industrial barbarism¹.

The formulation of this concept of *popular culture* clearly evidenced new representations of social relations, at the same time as it showed a substantial misunderstanding of the past in many of its most significant aspects. As Storey himself noted, this misunderstanding would be further consolidated in the second half of the 19th century with the institutionalization of what would be definitively classified as *high culture*:

Although the distinction between high and popular culture, organized by practices of aesthetic evaluation, is of recent origin, it is often presented as hav-

¹ J. Storey, *Inventing Popular Culture. From Folklore to Globalization*, Malden 2003, pp. 10-11. Storey employs the political concept of *hegemony* formulated by Gramsci: “hegemony is used to suggest a society in which, despite oppression and exploitation, there is a high degree of ‘consensus’; a society in which subordinate groups and classes appear to actively support and subscribe to values, ideals, objectives, cultural and political meanings, which ‘incorporate’ them into the prevailing structures of power”, pp. 48-49.

ing been in existence since the beginnings of human history. It is not difficult, however, to demonstrate that high culture started to become a significant institutional space only in the second half of the nineteenth century. This was the result of two causes: the selective appropriation by elite social groups of aspects of what had been until then a shared public culture, and certain features in the development of the cultural movement we think of as modernism².

With the delineation and formulation of disciplines, genres and styles, this selective appropriation would as a whole involve every aspect of culture³. As Roger Chartier has noted:

In the late nineteenth century the strict division that was established among genres, styles, and places split up this 'general' public, reserving Shakespeare to the 'legitimate' theatre and a smaller audience and sending off the rest of the audience to more 'popular' entertainments. Changes in the actual form in which Shakespeare's plays were presented (but the same was true of symphonic music, the opera, and works of art) played a large part in the constitution of a 'cultural bifurcation' and a time of mixed and shared offering was succeeded by a time in which a process of cultural distinction produced a social separation⁴.

In the field of art history, these observations in a certain sense echo those made some years back by David Freedberg in an important study in which he stressed the inextricable relationship between the power of images and their fruition⁵.

In some cases that are hugely significant for their ideological implications, this appropriation was accompanied by actual repression. A meaningful example can be found in the second half of the 16th century, with the cam-

² Storey, p. 32.

³ A useful historiographical summary of this subject is found in D. Lederer, *Popular Culture*, in J. Dewald (ed.), *Europe 1450 to 1789. Encyclopedia of the Early Modern World*, V, New York 2004, pp. 1-9. As Lederer has noted, "the exact nature of popular culture is so difficult to pin down because it is applied in broad terms, to include rituals, art, literature, and cosmology. Many popular beliefs, rituals, and customs of the ordinary people were also shared by members of the social elite, clouding the boundaries between the two traditions. Tentatively, we can summarize popular culture as an expressive and shared system for the production, transmission, and consumption of cohesive yet simple values readily accessible to and accepted by most members of a given society at any given time, simultaneously fulfilling both normative and practical social interests. In the end, however, popular culture continues to elude precise definition. Perhaps the very ambivalence of the terms renders it so theoretically flexible and at the same time dangerously seductive", (p.3).

⁴ R. Chartier, *The Order of Books. Readers, Authors and Libraries in Europe between the Fourteenth and the Eighteenth centuries*, Stanford 1994 (Paris 1992), p. 15.

⁵ D. Freedberg, *Il potere delle immagini. Il mondo delle figure: reazioni ed emozioni del pubblico*, Turin 2009 (Chicago 1989), especially pp. 3-12.

paign against cultural practices that were considered veritable magic rites⁶. The phenomenon of magic has been interpreted by historians in the light of sometimes contrasting hypotheses. These include that of Jules Michelet, who identified in the mythical world of magic the remains of ancient forms of pre-Christian religiosity; that of Alan Macfarlane and Keith Thomas, who starting from the 1970s stressed not so much the repressive action conducted from above as the tensions inside the rural world itself; and the most recent feminist perspectives, which see in witch hunts an especially significant mode of aggression against women by a patriarchal society. What is certain, as has been noted by James Sharpe, is that the perception of the variegated world of magic changed substantially starting from the 18th century, especially as regards European elites. While in over the course of the 17th century repressive action had favored the surfacing of this widespread cultural phenomenon, though marginalizing it in a demonic dimension, in the following century the attitude of intellectuals, philosophers and jurists changed radically:

A number of factors ran together to create the elite retreat from belief in witchcraft and magic over western and central Europe in the decades around 1700, but perhaps the most potent of them was straightforward snobbery. Among the lower orders, fear of the malefic witch, trust in the cunning man or woman, and a religious mentality imbued with the old Christianity of wonders and direct divine intervention in human affairs persisted throughout the nineteenth and into the twentieth century⁷.

Similar observations could be made concerning the attitude of religious and secular authorities towards the variegated cult of saints and martyrs, starting above all with the reformed churches' corrosive criticism of the traditional attitude of the Catholic Church towards a form of piety which, in the second half of the 18th century, was perceived as eminently *popular*⁸.

⁶ As has been observed by James Sharpe, despite the publication in 1486 of the famous *Malleus Maleficarum*, it is not possible to speak of true witch hunts until the 1550s: "It is impossible not to see this development as operating within the context provided by the Reformation and the Counter-Reformation. Correct religious beliefs were now being more rigorously defined, these definitions were being more rigorously enforced, and there was a widespread acceptance that, either in the face of a purified Christianity or as a consequence of the knowledge that the world was near its end anyway, the devil and his minions were becoming more active", J. A. Sharpe, *Magic and Witchcraft*, in R. Po-chia Hsia (ed.), *A Companion to the Reformation World*, Malden 2004, p. 444.

⁷ *Ibid*, p. 442. See the same essay by Sharpe for an in-depth study of the historiography on the world of magic and the repression of witches.

⁸ See, in particular, on certain important aspects of this question, E. Cameron, *Enchanted Europe. Superstition, Reason and Religion, 1250-1750*, Oxford 2010; A. Shell, *Oral Culture and Catholi-*

However, it is on the juridical level that the operation of *appropriation* played a leading role, also because of its inevitable institutional and constitutional implications. In the course of the 19th century, the affirmation of nation states and the adoption of highly symbolical codes overshadowed the vast juridical pluralism that had distinguished medieval society and the early modern period. As in other fields, this phenomenon was characterized both by the institutionalization of university chairs and a vast jurisprudence that characterized legal teaching and practice, and by the equivalence of the dimension of law and that of the state⁹. On the historiographical level, this *appropriation* meant the underestimation not only of the vast juridical pluralism that had existed prior to the affirmation of the state of law, but also the complex cultural and anthropological dimension that had constituted its foundation and *raison d'être*¹⁰.

With the affirmation of legal anthropology, historical investigation was able to appreciate the complexity of societies characterized not only by evident political fragmentation, but also by the use of practices and procedures in which both formal and informal aspects interacted¹¹. In this context we need only think of the complex inter-relations between the system of the feud, widespread among all social groups and regulated by custom and the language of honor, and the legal procedures introduced in the late Middle Ages by jurists of the Roman school¹². Or of a legal system which, in the course of the modern period, was considerably transformed in the wake of decidedly new political and social expectations, but which at the same time seemed loath to abandon a tradition strongly imbued with the values of peace, honor and distinction¹³.

cism in Early Modern England, Cambridge 2007.

⁹ See especially L. Ferrajoli, *La cultura giuridica nell'Italia del Novecento*, Rome-Bari 1999.

¹⁰ A.M. Hespanha, *Introduzione alla storia del diritto europeo*, Bologna 1999 (Lisboa 1997). As Hespanha notes, the evolutionary historical model brought with it a view of the history of law as an imperfect product in continual development. In reality, medieval law and that of the *ancien régime* were characterized by the complexity of their religious, moral and anthropological contents, pp. 9-27.

¹¹ See above all N. Rouland, *Antropologia giuridica*, Milan 1992 (Paris 1988). For the Middle Ages, see the very pertinent observations of T. Kuehn, *Conflict Resolutions and Legal Systems*, in C. Lansing and E. D. English (eds.), *A Companion to the Medieval World*, Malden-Oxford 2009, pp. 335-336.

¹² See the theoretical reflections contained in P. Stein, *Legal Institutions: the Development of Dispute Settlement*, London 1984. For an analysis of the European context, I refer to my *Faida e vendetta tra consuetudini e riti processuali nell'Europa medievale e moderna. Un approccio antropologico-giuridico*, in *Our daily crime. Collection of studies*, ed. by G. Ravančić, Croatian Institute of history, Zagreb 2014, pp. 9-57

¹³ H. Kamen, *Early Modern European Society*, London-New York 2000, pp. 189-190; C. Black,

The essays contained in this volume¹⁴ deal with some important questions concerning the relationship between the world of custom and the world that can be most precisely defined as cultivated, which found its expression in writing. For the medieval and modern periods, these questions involve a close relationship between the educated, elaborated and tendentially abstract viewpoint expressed through writing, and the one substantially tied to social practices, intimately connected to oral tradition and custom. It is not by chance that customs played a primary part in the hierarchy of sources which a judge theoretically had to take into consideration in his jurisprudential activity¹⁵.

As we can see in an interesting legal conflict that took place in Friuli in the early 16th century, or in the activity of the *consultori in iure* at the service of the most important Venetian magistracies, this was certainly not a simple, linear relationship. And not so much because customary norms belonged to political structures highly diversified in regard to social classes and groups. When the common law system (for continental Europe common law refers to *ius commune*), in its most theoretically and doctrinally developed aspects, came into contact with the variegated world of custom, the operation of mediation performed by the jurists seems to reveal a kind of *irreconcilability* between these two worlds. Typical of the professional orders was the need for abstraction and classification. They wanted to see the complex system of

Early Modern Italy. A Social History, London 2011, pp. 194-196; J. R. Ruff, *Violence in Early Modern Europe, 1500-1800*, Cambridge 2004, pp. 73-83; C. Povolo, *L'intrigo dell'onore. Poteri e istituzioni nella Repubblica di Venezia tra Cinque e Settecento*, Verona 1997.

¹⁴ These are essays written starting from the early 1990s and republished here, in some cases with substantial additions and necessary adjustments and corrections. In the order in which they appear in this volume, they comprise: *Eredità anticipata o esclusione per causa di dote? Un caso di pluralismo giuridico nel Friuli del Cinquecento*, in *Padre e figlia*, ed. by L. Accati, M. Cattaruzza and M. Verzar Brass, Turin 1994, pp. 41-73; *Polissena Scroffa, fra Paolo Sarpi e il Consiglio dei dieci. Una vicenda successoria nella Venezia degli inizi del Seicento*, in *Studi offerti a Gaetano Cozzi*, Venice 1992, pp. 221-233; *Giovan Maria Bertolli: l'ascesa di un giurista nella Venezia della seconda metà del Seicento*, in *300 anni di Bertoliana. Dal passato un progetto per il futuro*, Vicenza 2008, pp. 19-51; *La piccola comunità e le sue consuetudini*, in *Tra diritto e storia. Studi in onore di Luigi Berlinguer promossi dalle università di Siena e Sassari*, II, Catanzaro 2008, pp. 591-642; *Laura Maria Ghellini Colocci. Lettere*, Vicenza 1996; *In margine ad alcuni consulti in materia matrimoniale (Repubblica di Venezia, secoli XVII-XVIII)*, in "Acta Histriae", VII (1999), pp. 279-328; *Uno sguardo rivolto alla religiosità popolare: l'inchiesta promossa dal Senato veneziano sulle festività religiose (1772-73)*, in *Il culto dei santi e le feste popolari nella Terraferma veneta*, ed. by S. Marin, Venice 2007, pp. XIX-LXIV.

¹⁵ The bibliography is obviously vast. I limit myself here to mentioning two texts that treat these subjects, though in many ways from notably different perspectives: M. Bellomo, *The Common Legal Past of Europe, 1000-1800*, Washington D.C. 1995; H. J. Berman, *Law and Revolution*, vol. I: *The Formation of the Western Legal Tradition*; Cambridge (Mass.) 1983; vol. II: *The Impact of the Protestant Reformations on the Western Legal Tradition*, Cambridge (Mass.)-London 2003.

judiciary case history set within a precise theoretical framework, through an abstract and classifying type of legal reasoning. But this orientation was ill-suited for appreciating the essence of the customary world, pragmatically grounded as it was in mediation and in the social dimension of the law. And so, starting from the late 18th century, even when institutions or legal professionals turned their gaze to the customary world, viewing it from a dominant external standpoint, this tendential *irreconcilability* clearly took on the features of an irreversible cultural gap. As we can see, for instance, in the great inquiry conducted by the Venetian Senate concerning the so-called *popular religious holidays*, inappropriately distinguished from obligatory holidays.

In fact, the contact with the world of custom and tradition allows us to see some of its most significant features, above all in the many judiciary cases produced by the ever more intrusive and classificatory activity of the ecclesiastical and secular institutions. As we have said, it is possible to appreciate this aspect in many spheres of social and political life; however, it comes out most clearly in the complicated matter of marriage.

The action of control and containment performed by the ecclesiastical and secular institutions allowed the emergence of social practices that had continued almost undisturbed for centuries, playing a primary role in a society characterized by distinctions of rank, the language of kinship and political fragmentation. A significant example in this sense is the so-called *secret marriage*: first the Counter-Reformation and later, in the course of the 18th century, the control exercised by secular institutions contributed to the emergence of this institution out of the vague world of custom. Similarly, the very classification of *clandestine marriage*, as formulated by canon law both before and after the Council of Trent¹⁶, seems to present social practices like voluntary abduction that were animated by the idiom of honor and by an idea of marriage closely tied to values of kinship and lineage, but that called for considerable regulation. And the interest paid to these social practices

¹⁶ The doctrinal and institutional problems of Catholic countries can also be seen in the countries of the Reformation, as is revealed in Rebecca Probert's interesting research on the *Marriage Act of 1753*, which regulated clandestine marriages: R. Probert, *Marriage law and practice in the long eighteenth century. A reassessment*, Cambridge 2009, in particular pp. 340-346. According to this scholar, the *Marriage Act* did not constitute a real break with the past, its main relevance being legal: "To a generation used to a wide choice of wedding venues the options available under the *Clandestine Marriages Act* may seem limited indeed, and its approach unduly prescriptive. Yet the Act should not be viewed from the perspective of a twenty-first-century bride or groom, but from that of their eighteenth-century counterparts, for whom marriage in church was the norm. All that the Act did, in essence, was to reinforce the requirements of the canon law by invalidating those marriages that failed to comply with its key provisions", p. 243.

by the secular institutions suggests that, taken together, they involved fundamental values of a society based on a different conception of property, the economy and heredity.

The *emergence of tradition*, understood above all in the sense of custom and of a legal order characterized by orality and mediation, is therefore a historical and cultural phenomenon filtered in the modern period through the activity of secular and ecclesiastical institutions that aimed at regulating and constraining it within legal parameters reflecting new social and political instances. And the interpretative tool of legal anthropology helps the historian understand its scope and meanings. This collection of essays essentially intends to follow this line of interpretation, in an attempt to grasp through a varied and complex selection of judiciary cases the emergence of social practices that had long been grounded in custom and oral transmission.

This volume has come to light thanks to the initiative of the European *Shared Culture* project and to the collaboration between the University of Venice and that of Capodistria. I thank all the Slovenian colleagues with whom I have collaborated over the years. My special thanks go to my friend, Prof. Darko Darovec, to whom I am joined in an ongoing mutual collaboration since the first years of the 1990s. I also wish to thank my Venetian collaborators, who have done their utmost with scrupulousness and passion to make this volume possible: Laura Amato, Eliana Biasiolo, Lia De Luca and Martino Ferrari Bravo. Without their decisive contribution, it is unlikely that I could have given adequate coherence to research that has been carried out intermittently in the course of my teaching.

A CONFLICT IN FRIULI IN THE 16TH CENTURY

In the first half of the 1500s the jurist and scholar Antonio Belloni, a notary from Udine, was well known for his profound knowledge of the habits and customs of Friuli. Not surprisingly, the patriarchal Curia of Udine had turned to him to clarify the complex matter of wedding rituals and traditions. This was a subject that Belloni knew well, both thanks to of his practice, which involved drawing up many dowry contracts, and to the correspondence he had previously had with jurists on the subject. He even wrote a pamphlet on the matter, based on the considerable number of dowry agreements drawn up in his day and in previous decades.

However, Belloni's investigation in the end ran aground, as he himself had to admit, because of the wide diversity of local conditions and the extreme complexity of rituals and traditions that were not easy to sum up as a uniform, easily recognizable set of customs¹. The apparent inconclusiveness of Belloni's research is understandable if we consider the great political and institutional variety existing in Friuli in the Venetian period. This was a region largely characterized by the presence and vitality of feudal jurisdictions and the persistence of legal traditions of Lombard origins, only slightly affected by the ideological and political penetration of a city center that might gain clear supremacy over its *contado*².

In Udine, in the wake of other Italian cities, a class of jurists had come to the fore. These were men with a technical language and jurisprudential knowledge whose substance and ideological features were inspired by the spirit

¹ G. Marcotti, *Donne e monache*, Florence, 1884, pp. 81-82.

² On the origins of the *regional state* in Friuli cf. P. Cammarosano, *L'alto medioevo: verso la formazione regionale*, in P. Cammarosano (ed. by), *Storia della società friulana. Il medioevo*, Udine, 1988, p. 103 and ff. As regards the spread of feuds in the Venetian age, cf.: S. Zamperetti, *I piccoli principi. Signorie locali, feudi e comunità soggette nello stato regionale veneto dall'espansione territoriale ai primi decenni del '600*, Venice, 1991. On this as on other problems of an institutional nature cf. P.S. Leicht, *Breve storia del Friuli*, anast. reprint, Tolmezzo, 1987; P.S. Leicht (ed. by), *Parlamento friulano*, 2 voll., Bologna, 1955.

of common law, which over the centuries had imposed itself in all the most important urban centers of central-northern Italy. But if, as we have said, this general phenomenon had managed to take root in Udine³, things were different in the rest of the territory of Friuli. Here, in fact, the vitality of oral customs was accompanied by the substantial absence or irrelevance of a class of professionals who could merge densely symbolical knowledge with the political power from which it derived legitimacy.

Actually, despite its apparently negative results, Belloni's investigation did uncover some hints of novelty. Above all, it revealed the need for clarification and reflection felt by those who belonged to a class of intellectuals and professionals with a *forma mentis* grounded in common law. And this need most likely aimed to redefine, according to a set of uniform jurisprudential parameters and on the basis of a written legal tradition, the complexity of a multifaceted social reality⁴. But the main interest of Belloni's research and reflections lie in their judiciary implications in the dialectic between different views of how to regulate social and economic relations, which, almost inevitably, more and more frequently flowed into the city courtrooms, turning their backs on the traditional modes of conflict resolution.

In the first half of the 1600s, judiciary conflicts were still far from taking the paths that would, in following centuries, increasingly lead them beyond customary jurisdictional boundaries to the superior courts of the dominant center⁵. The feudal jurisdictions still held almost intact a coercive political power that legitimized the exercise of civil and criminal justice. But even in the feudal enclave of Friuli, the influence of a legal culture focused on the figure of a learned jurist as the interpreter and mediator of jurisprudential knowledge was starting to be influential⁶. Rather than expressing itself through *consilia* and treaties⁷, this town culture tended to impose it-

³ On the establishment of the *Collegio dei dottori* in the 16th century cf. V. Joppi (ed. by), *Statuta collegii doctorum Patriae Forijulii*, Udine, 1880. On the affirmation and spread of common law in Europe cf. A. Cavanna, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico*, Milan, 1982.

⁴ On these problems cf. A. Mazzacane, *Lo stato e il dominio nei giuristi veneti durante il "secolo della terraferma"*, in G. Arnaldi - M. Pastore Stocchi (ed. by), *Storia della cultura veneta. Dal primo Quattrocento al concilio di Trento*, 3/1, Vicenza, 1980, pp. 577-650.

⁵ G. Cozzi, *Repubblica di Venezia e stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Torino, 1982; C. Povolo, *Il giudice assessore nella Terraferma veneta*, in C. Povolo (ed. by), *L'Assessore. Discorso del signor Giovanni Bonifaccio*, Pordenone, 1991.

⁶ The employment of city jurists even by some feudal lords to carry out justice in their jurisdictions is attested by G. Perusini, *L'amministrazione della giustizia in una giurisdizione friulana del Cinquecento*, in "Memorie storiche forogiuliesi", 40, 1953, pp. 205-218.

⁷ Also very widespread. Cf. G.V. Giorio, *Un parere legale del giureconsulto F. Mantica per i consorti di Tolmino*, in "Memorie storiche forogiuliesi", 45, 1945, pp. 155-167; G. Fabris, *Un giureconsulto*

self through local judicial institutions, thereby endorsing the ideology of the classes in power⁸. Therefore, it was almost inevitable that in those decades, characterized as they were by significant economic and demographical growth, the emerging rural elites were encouraged to direct their local conflicts towards the city courts, where their interests could be better represented and defended.

Thus, more than a confrontation between custom and written law, the paths taken by conflicts and their judiciary resolution had already begun to express a political dialectic that emphasized the social role of the emerging wealthy families even in rural areas, with a view to assuring the inviolability of their patrimony. Matters of an exquisitely civil nature, such as dowry contracts and testamentary succession, were the most frequently met with along these alternative paths. Within the city courtrooms, the management of conflicts was invested with a new ideological significance; the contending parties confronted each other in an arena where a legal dialectic fueled by contrasting interests inevitably emerged⁹.

In a legal-anthropological perspective, the political significance of judiciary conflicts and the paths they took, dictated by institutional hierarchies but also endowed with considerable judiciary autonomy, are elements that can lead the scholar closer to an intimate understanding of some important issues in the study of family history today. In other words, disputes and conflicts regarding certain basic issues such as hereditary succession and dowry contracts become extremely relevant, not only and not so much in discerning the relationship between judiciary practice and legal theory, as in exploring the deep bonds that connected the family's institutional form with its underlying economic structures and with the social role it occupied. In short, through judiciary conflict it is possible to grasp the pluralistic dimension of the law that far too often the regulations and treatises tended

friulano del secolo XVI, in "Memorie storiche forogiuliesi", 7, 1911, pp. 127-140; P. Antonini, *Cornelio Frangipane di Castello. Giureconsulto, oratore e poeta del sec. XVI*, Florence, 1882. On the spread of *consilia* in Italy cf. M. Ascheri, *Tribunali, giuristi e istituzioni dal medioevo all'età moderna*, Bologna, 1989.

⁸ On this decisive problem cf. M. Sbriccoli, *L'interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell'età comunale*, Milan, 1969.

⁹ These problems have been dealt with by B. Lenman - G. Parker, *The state, the community and the criminal law in early modern Europe since 1500*, in *Crime and the law. The social history of crime in Western Europe*, ed. by V.A.C. Gatrell, B. Lenman, G. Parker, London 1980, pp. 11-48. In the Italian territorial states, the relationship between the *law of the community and that law of the state* was greatly complicated by the great political autonomy enjoyed by the cities and local jurisdictions. On this point, cf. G. Chittolini - D. Willoweit (ed. by), *Statuti, città, territori in Italia e Germania tra medioevo ed età moderna*, Bologna, 1991.

to overshadow, as regards both the emergence of state legislation and the ideological affirmation of common law¹⁰.

The affair under examination here is taken from the records of a trial dating back to 1538-39. The trial was ordered by the Archdiocesan Curia of Udine¹¹ and it regarded a question of succession that took place in Forni di Sopra, a small town of Carnia, whose jurisdiction, along with that of the nearby village of Forni di Sotto, belonged to the Savorgnan family. While the criminal justice system was managed by the local feudal lords through their representative in Osoppo, the administration of civil justice was almost exclusively the prerogative of the two communities, who also enjoyed the reciprocal privilege of appealing judgments delivered by the two villages¹². Civil justice was, then, administered by the elders of the community on the basis of existing local customs. As we shall see, this was a procedure whose most salient and traditional features the trial of 1538-39, having been ordered by an external court, would bring to the surface¹³.

The protagonists of this judiciary conflict were members of the Corradazzo family. The Corradazzos were one of the oldest families of Forni di Sopra, and was certainly a family whose wealth and social role that gave it a prominent status in this isolated village in the mountains of Carnia¹⁴. The trial began at the request of Caterina Corradazzo, the daughter of Matteo. Since 1536 she had been married to Floriano Cacitti, a man from a nearby village. Two years

¹⁰ A perspective problematically examined by N. Rouland, *Antropologia giuridica*, Milan, 1992 (Paris 1988).

¹¹ The trial file has reached us through a copy of the original document transcribed by G. Gortani at the end of the 19th century. Gortani probably had use of the voluminous extract that the patriarchal Curia of Udine issued to the parties, which however lacked the initial phase (presentation of the headings) and the sentence. His transcribed copy is in Archivio di Stato di Udine (= A.S.UD.), *Archivio Gortani*, busta 22, fasc. 325, cc. 1-109, from here on indicated as Processo. There is also a brief summary of the trial written by the this Friuli scholar in A.S.UD., *Archivio Gortani*, b. 10, f. 141.

¹² F. Bonati Savorgnan d'Osoppo, *I due forni Savorgnan della Carnia e i loro statuti*, in "Memorie storiche forogiuliesi", XLVIII, 1967-68, pp. 115-135. On the Savorgnan family, L. Casella, *La Casa Savorgnan: considerazioni sul potere della famiglia aristocratica nel XVII secolo*, in *Strutture di potere e ceti dirigenti in Friuli nel secolo XVII*, Udine, 1987, pp. 13-32; Eadem, *I Savorgnan delle piccole corti*, in C. Mozzarelli (ed. by), *«Familia» del principe e famiglia aristocratica*, 2 vol., Rome, 1988, vol. II, pp. 391- 413.

¹³ The two Savorgnan Forni, being feuds of this ancient Friuli family, also conserved ample autonomy in relation to Tolmezzo, the political and economic center of Carnia, cf. *Tolmezzo. L'arengo e il consiglio*, Tolmezzo, 1890; G. Ventura (ed. by), *Statuti e legislazione veneta della Carnia e del Canale del Ferro (sec. XIV-XVIII)*, Udine, 1988.

¹⁴ The trial reveals that the Corradazzo family was one of the wealthiest in Forni. They were real merchants, who sold in Udine the wool produced in that part of Carnia, purchasing cereals which they then sold in their places of origin, cf. A.S.UD., *Archivio Gortani*, b. 10, f. 141.

after her marriage, the young woman, as the only daughter of Matthew Corradazzo, had claimed the estate that had belonged to her father. Caterina had been an orphan since her childhood and lived with her aunt and uncle until the day she married.

Her legal claims were asserted against the four brothers of her father – Giovanni, Floriano, Costantino and Sebastiano Corradazzo. According to the ancient prerogatives of Forni di Sopra, the case should have been judged by the community elders. In fact, since the records of the initial part of the trial are missing, we do not know whether Caterina Corradazzo and her husband had initially filed their claim with that court. What is certain is that with the cross-examination of the witnesses presented by the parties, the trial was immediately transferred to the court of the patriarchal Curia of Udine, as one of the four brothers, Sebastiano Corradazzo, was a clergyman, and had served as the priest of Forni di Sopra for years. This aspect is particularly important for our understanding of the trial, since it is obvious that the judiciary conflict that followed takes on a different interpretative significance for us if it was indeed the Corradazzo brothers to have used the ecclesiastical law in their favor to get the trial moved to Udine from Forni di Sopra.

The procedural debate took place according to standard adversarial procedure, characterized by the initiative of the parties who aimed to make their own reasons prevail on the basis of the more or less detailed argumentation of a series of ‘headings’ presented by each side, which were corroborated by witnesses¹⁵. This procedure was characterized by judicial cross examination, where the role of the judge is essentially limited to pronouncing the final sentence¹⁶. It was the parties involved who determined the development and duration of the proceedings. This is the second point which I think it is important to dwell on before going on to analyze the contents of the trial. Indeed, as has been recently pointed out, in this particular form of conflict resolution, procedural law acquires its own profile and its autonomy from substantive law. In it, form ends up by prevailing over substance, and the verdict itself is in the end justified by the proceedings and the forensic

¹⁵ A. Pertile, *Storia del diritto italiano dalla caduta dell'impero romano alla codificazione*, VI/1, *Storia della procedura*, Bologna, 1966. On the relationship between the so-called procedure ‘of the three persons’ and the inquisitory system in which the role of the judge becomes determining cf. M. Sbriccoli, “*Tormentum idest torquere mentem*”. *Processo inquisitorio e interrogatorio per tortura nell'Italia comunale*, in J.C. Maire Vigueur - A. Paravicini Bagliani (ed. by), *La parola all'accusato*, Palermo, 1991, pp. 17-32.

¹⁶ In realty, as we shall see in this case, the judge could have a determining role in the way and timing of the acceptance of witnesses, cf. Pertile, *Storia del diritto...*, p. 374 ss.

conflict¹⁷. In presenting their arguments and supporting them through testimony to confirm them, the quarrelling parties sought to highlight their own perception of the question at issue. It is the confrontation of these arguments, debated according to the standard procedure of headings and corroborating testimony, that reveals the actual dimension of this legal dispute and its social relevance.

The lawsuit of the Corradazzo family that was held in the archbishop's court in Udine followed standard adversarial procedure, with dozens of witnesses summoned at the request of both parties. As already mentioned, the records are lacking the early stage of the proceedings, and so we also lack the exact wording of the headings that the parties presented to the Archbishop's chancellor to support their claims. Their content, however, is clearly deducible from the answers that the many witnesses gave, not only in regards to the headings on which they were questioned, but also to the terms of the requests for clarification that the patriarchal notary asked them.

Catherine and her husband, Florian Corradazzo Cacitti, presented the following headings to support their claims on Matteo Corradazzo's estate. In order to have an idea of the actual objectives of the parties it is useful to list these headings:

- that the deceased Tommaso Corradazzo had seven children, five of whom are still living;
- that in Forni di Sopra there exists a custom that envisages that daughters, in the absence of brothers, are entitled to succeed *ab intestate* to their father, excluding any other male ascendant;
- That Corradazzo brothers, sons of the late Tommaso, have property worth 200 ducats.

The argument presented by don Sebastiano Corradazzo and his brothers were more detailed. The first twelve aimed at highlighting the vast expenses they had incurred in the aftermath of an accident in 1522 and other subsequent contingencies. In addition, Don Sebastian Corradazzo had enjoyed, and still did, some personal incomes, which had in part been used to help his brothers. But it was above all last heading that touched on the controversial issue:

- Forni di Sopra belongs to the Patria of Friuli, and as such the Constitutions of the Patria of Friuli are applied here;
- in Forni di Sopra neither legal experts nor notaries exist; sentences are issued by the steward and are kept in the memory of the elders;
- Forni di Sopra is several miles from Udine and consequently from the place where there are legal experts who know the Constitutions of the Patria of Friuli;

¹⁷ M.R. Damaška, *I volti della giustizia e del potere. Analisi comparatistica del processo*, Bologna, 1991, pp. 179-182 and *passim*.

- if the sentences carried out in Forni di Sopra had gone against what was provided for in the Constitution, this had been done more out of ignorance than “*ex certa scientia*”;
- both in Forni di Sopra and in Forni di Sotto, both in first instance and on appeal, it was ruled that the granddaughters of a predeceased son are excluded from the grandfather’s inheritance in favor of the paternal uncles;
- it is common knowledge that females do not inherit when there are males present.

As we had said, the phrasing of the headings is extremely interesting because it reveals the objectives that the parties had set out to achieve. The subsequent examination of witnesses was meant to bring out the aspects of the truth most favorable to each party involved. Theoretically, the ruling of the court would then merely conform to the propositions of the party which had best presented the justice and strength of its arguments. The juridical and formal relevance of the issue debated in this way defined its ambiguities and complexities under the pressure of the contending forces.

The few headings presented by Catherine Corradazzo and Floriano Cacitti show that, at least in principle, their claims were backed up by a strong social consensus in 16th-century Carnia. This was repeatedly confirmed by the numerous witnesses who were questioned by the patriarchal vicar during the trial¹⁸. The presumed legal validity of the claims of the two spouses is also indirectly supported by the several headings that don Sebastian Corradazzo and his brothers had drafted to support their arguments. These arguments aimed to show on the whole that the capital and property of the family had been significantly reduced following a series of disasters, but above all to stress that in Forni di Sopra the Constitutions of the Patria of Friuli were ap-

¹⁸ Giovan Mauro Corradazzo held that in Forni Superiore “*viget talis consuetudo quod filie femine, non existentibus masculis eorum fratribus, successerunt et succedunt eorum patribus sive eius paternis defunctis sine testamento in bonis et hereditate eorum patrum; et ipse femine filie excludunt patruos suos masculos vigore dicte consuetudinis...*”. Still more precise was Daniele Callegaro who confirmed that “*in hac villa Furni Inferioris filie femine, non existentibus fratribus ipsarum filiarum masculis, succedunt patribus defunctis sine testamento in bonis et hereditate paterna et excludunt patruos suos masculos; et ita ipse testis vidit observari semper a memoria sua citra; tamen dixit nescire quod fuerit super hujusmodi causa iudicatum, quia nullus contradixit...*”. Many of the witnesses called to take the stand by don Sebastiano Corradazzo, though confirming the influence of the Friuli Constituions in the two small Carnia localities, could not hide the diffusion of this practice. Floriano Di Pauli was among the most explicit: “*in my opinion, though I know of no use of this in Forno, I think that it must want that a maid should succeed in the inheritance and paternal property rather than other relatives and cousins of this maid; dicens se nescire que et qualia statuta observantur in alijs locis et replicans quod nescit esse aliquod statutum seu consuetudinem in Furno Superiori super hoc disponentem, tamen quod ita videtur sibi testi equius et honestius fore quam aliter...*”, A.S.UD., *Processo*, cc. 11, 25, 49.

plied. This last point backs up our initial hypothesis: i.e. that it was probably the Corradazzo brothers who wanted the lawsuit to be brought to Udine, as their arguments might easily have been less readily accepted in the courts of the two Forni Savorgnan.

What were the actual points of friction between the two parties? Even though Caterina Corradazzo had received the customary dowry from her family of origin, she was claiming for herself the possessions that had belonged to her father. According to her, being the only daughter and having no brothers, the customs in force from time immemorial in Forni di Sopra guaranteed her this right over that of her paternal uncles. This was a statement that the Corradazzo brothers totally rejected. They replied that in the presence of male relatives a female had no right to inherit. This rather general statement was supported on the grounds that Forni di Sopra belonged to the Patria of Friuli, and therefore that the Constitutions of Friuli applied there. If at times this principle had not been followed, it had been due to the pure ignorance of local judges, and certainly not through an explicit choice. After all, in that village there were no jurists or notaries, who were the guardians of the laws applied throughout Friuli.

Thus, on the one hand Caterina Corradazzo and her husband sustained their claim by stressing the distinctive customs of their Carnia village, which according to them had a particular regard for the female line of succession; on the other hand, don Sebastiano Corradazzo and his brothers based their argument on the extensive authority of the Constitutions of the Friuli Patria, which in questions of inheritance emphasized the importance of lineage. Undoubtedly, the brothers had in mind the chapter of the Constitutions which opened the section on the matter of succession *ab intestato*. This was an important chapter in which the importance of the principle of agnation was unambiguously declared¹⁹:

Ut paternae et ceterorum masculorum superiorum diviciae in masculorum posteritatem perveniant, per quam honor familie solet conservari ac avorum plerunque fieri longa memoria, antiquis constitutionibus inherentes statuendo sancimus: quot si quis masculus sine testamento vel abintestato aut intestatus decesserit, ad ipsius successionem et hereditatem admittantur primo ipsius de-

¹⁹ *Ab intestato* succession was what the law envisioned but could be modified, within certain limits, by testamentary succession. Cf. C. Giardina, voce *Successioni (Diritto intermedio)*, in *Novissimo digesto italiano*, XVIII, Turin, 1971, pp. 727-751. The principle of agnation favored relations in the paternal line, or patrilineal filiation, in contrast with the principle of cognation, in which lineage could be transmitted indifferently in the paternal or maternal line, cf. on kinship relations F. Zonabend, *Della famiglia. Sguardo etnologico sulla parentela e la famiglia*, in *Storia universale della famiglia*, ed. by C. Lévi-Strauss e G. Duby, 2 vol., Milan, 1987 (Paris 1986), vol. I, pp. 15-76.

functi filii masculi, deinde caeteri descendentes masculi nati ex linea masculina defuncti... Et si dicto ascendenti ut supra defuncto sine testamento filii aut descendentes masculi ut supra ex linea masculina non extarent, tunc si supersint ascendentes masculi ex linea masculina - et dicto defuncto supersint fratres eius masculi ex utroque parente vel ex patre tantum coniuncti - tum dicti ascendentes proximiores in gradu una admittantur cum dictis fratribus defuncti ad eius hereditatem... Si vero non supersint dicti ascendentes masculi nec descendentes masculi ex linea masculina nec etiam defuncti fratres masculi, tunc si extant fratrum filii ipsi admittantur ad hereditatem defuncti patrum...²⁰

An unambiguous affirmation of the male line of succession, therefore, that privileged in first instance the descendants of the deceased and then the ascendants and collaterals. Moreover, the principle of agnation was reaffirmed in the rights of the nephews of the deceased, who inherited in the absence of other relatives. The total exclusion of women was fully explained in what followed:

...quibus casibus filiae eo modo defuncti, ut superius dictum est, et caeterae feminini sexus eo descendentes ac descendentes ex eis mulieribus cuiuscumque sexus existant ac masculi ex ipsis feminis descendentes, ad successionem vel hereditatem, seu aliquam partem ipsius hereditatis predictae personae eo modo defunctae, nullatenus admittantur...²¹

Thus, the Corradazzo brothers had a precise interest in citing the Constitutions of the Patria, which without any shadow of a doubt excluded women from any right to the family estate. We can, therefore, in all likelihood assume that don Sebastian Corradazzo had availed himself of the prerogative

²⁰ *Constitutiones Patrie Foriulij cum additionibus noviter impressae*, Udine, 1524, pp. 54-55. After the fall of the patriarchal government, the Friuli parliament set about reforming the constitutions approved in the years 1366-1386. The decree of promulgation of the new constitutions was made in 1429, but the process of revision continued for the entire century. The first printed editions came out in 1484, 1497 and 1524. On this argument see the brilliant study by P.S. Leicht, *La riforma delle costituzioni friulane nel primo secolo della dominazione veneziana*, apparso nel vol. XXXIX of the "Memorie storiche forogiuliesi" later included in the second volume of *Il parlamento friulano*.

²¹ *Constitutiones...*, p. 56. As Leicht observed, these norms were introduced in the second half of the 1300s by initiative of the city of Udine and despite the strong opposition of the patriarch Marquardo and the feudal families favorable to feminine succession, which better guaranteed the continuity of their privileges and jurisdictions. On this and other problems the action of the merchant classes of Udine was determinedly directed towards the introduction of regulations inspired by common law, and by the ranks of jurists who had by then affirmed themselves almost everywhere in northern Italy. The reform of the Constitutions of Friuli of the venetian period was deeply influenced by this tendency, even if several institutions of Lombard origin that better represented the interests of the feudal families were maintained cf. Leicht, *La riforma delle costituzioni...*, pp. 80-81.

to be tried by the ecclesiastical court of Udine on his own initiative. But we can also imagine that there were to be further complications. This can be surmised from the penultimate chapter presented by the Corradazzo brothers, which stated that a young woman could not inherit her father's estate if he had died before the grandfather. This was precisely the situation of Caterina Corradazzo, whose father Matteo had died during an avalanche a few days before Tommaso, her grandfather. According to the Corradazzo brothers, in the two villages of Forni Savorgnan judiciary practice followed this custom. But why even make this argument? If, as they claimed, in Forni the *Costituzioni della Patria* were applied, what was the use of this statement, which might seem more a legal quibble than anything else?

As a matter of fact, the argument presented by the Corradazzo brothers leads us to think that even in a small locality like Forni di Sopra the procedure regarding succession was far more complex than what both parties suggested in their claims.

What is more, in the background there was a question that could hardly be avoided, even if it hadn't been explicitly brought up in the arguments presented by the two sides: was the dowry given to daughters at the time of their marriage to be considered an advance on their inheritance, equivalent therefore to the legitime they were entitled to, or was it instead to be considered an exclusion intended to favor the agnatic line? In the chapter regarding the dowry, the Friuli Constitutions once again stressed the primacy of agnatic kinship and the patrilineal line. If a father died without being able to provide a dowry for his daughters, the only obligation of the male agnate heirs (descendants, ascendants and collaterals) was to provide the dowry "secundum qualitatem et quantitatem hereditatis ac etiam statum et conditionem maritandarum"²². This was the principle of the *congrua* (congruous) dowry, which had been introduced in the statutes of Italian cities to safeguard the patrimony of lineage and patrilineal descent. This principle clearly opened the way to using the dowry in order to exclude women from the paternal inheritance. The inviolability of the family estate was also guaranteed through the institution of *fideicommissum*²³.

²² *Constitutiones...*, p. 49. On inheritance law and the dowry system in Friuli cf. also F. Lenardi, *Regime patrimoniale tra coniugi nel diritto friulano*, in "Studi goriziani", XVII, 1955, pp. 19-55; XVIII, 1955, pp. 7-38; A. Nicoloso Ciceri, *Tradizioni popolari in Friuli*, II, Udine, 1982, pp. 190 ss.

²³ E. Besta, *Le successioni nella storia del diritto italiano*, Milano, 1962, pp. 64-65; Idem, *La famiglia nella storia del diritto italiano*, Milan, 1962, pp. 148-149; N. Tamassia, *La famiglia italiana nei secoli decimoquinto e decimosesto*, Roma, 1971, pp. 291-293. On the *exclusio propter dotem* and therefore on the relation between the obligation to provide a dowry and the right of inheritance cf. especially M. Bellomo, *Ricerche sui rapporti patrimoniali tra coniugi. Contributo alla storia della famiglia medievale*, Milan, 1961, pp. 163-185. This scholar associates the phenomenon with the necessity "felt by families, who organized themselves within the commune and governed its

The argument of the Corradazzo brothers emphasizing that Caterina's father had died before his father probably shows their fear of a loophole in the principle of agnation as affirmed in the Constitutions. Indeed, in the matter of succession *ab intestato*, the laws added that when the exclusion of a daughter from inheritance rights was on the part of ascendants and collaterals of the deceased, she could claim "*de Hereditate defuncti in question Agitur off its east quantum legitima de jure communi in ipsa legitima computatis dote constituta*"²⁴ Thus, when only ascendant and collateral members were left to compete against daughters for an inheritance, the preeminence of the principle of agnation was partially encroached on by that of ancestry²⁵. The cross-examination of the two parties was extremely interesting, as from the very start of the proceedings it showed the opposition between local customs and outside law. The witnesses called by the conflicting parties were meant to uphold this opposition, on which their respective legal claims were based. In reality, the trial that took place in this isolated mountain village of Carnia in 1538 presented a very complicated scenario, where the dialectic between oral custom and written law was enriched by unforeseen instances and motivations.

The first witnesses to be questioned were those called by Caterina Corradazzo to support her arguments. Almost all of them stressed the geographical isolation of Forni di Sopra. There were no notaries in the village, not to mention jurists, so the population had to turn to those in Cadore or in Tolmezzo. But, as the great majority of the witnesses observed, in the village of the Carnia people did not much feel the need for a notary. Lawsuits had no written records, and the judgment issued by the steward and the three local jurors were conserved in the memory²⁶.

When a case was appealed in Forni di Sotto, the steward instructed the el-

activity, to structure the family organism in new forms, that would facilitate not only the management and activity of industrial enterprise, but also the achievement of goals of political power, thanks to the stability and cohesion of the family patrimony over time" (*ivi*, p. 184).

²⁴ *Constitutiones...*, p. 55.

²⁵ The 18th-century edition of the Constitutions was even more explicit: "But if these females are excluded by collateral descendents, the dowry may not be less than the legitim, which is intended only in this case as half of the paternal estate...", cf. *Statuti della Patria del Friuli rinnovati*, Udine, 1773, p. 133.

²⁶ "... et quod villa Furni et loca circumvicinia posita sunt in locis muntuosis et sterilibus, in quibus habitant et consueverunt habitare persone rurales et idiote et penitus juris ignare Constitutionis Patrie et tamen ipsa loca sunt in Patria Forijulij et sub ista Patria, prout semper dici audivit, sed nescit quod hic regnavit juxta Constitutionem Patrie quod ipse testis sciat, sed regnavit secundum consuetudinem, idest de consueto et la usanza del paese et che in questo logo non è alcuna Constitutione della Patria, ma certi statuti", A.S. UD., *Processo*, c. 12, test. di Bartolomeo di Orsola.

ders of the community to communicate the contents of the judgment to the jury the appeal was addressed to. Only if the case went on to Udine would a notary from outside be called in. His task was to put in writing what had been decided by the jurors of the two communities²⁷. The widespread oral legal tradition of Forni di Sopra was also attested by the ample diffusion of agreements and conciliations that regulated the divisions and conflicts within local families without the need for written records²⁸. It was claimed that Forni di Sopra had never seen a copy of the Constitutions of the Patria, although, as stated by some witnesses of the opposing party, the content of those laws was well known in the village and some jurors²⁹ had mentioned them in their verdicts³⁰.

In any case, almost all the witnesses opposed the customs of Forni to the Constitutions, though they constituted an oral tradition that none of them knew how to define exactly. At the request of the patriarchal vicar to define this legal tradition, a witness replied, "*consuetudinem esse id quod fit a posteris*

²⁷ The proceedings were very well described by the parish priest of the nearby center of Invilino, called to take the stand by Caterina Corradazzo: "... locum Furni superioris distare a Terra Tulmetij per viginti milliaria et a Plebe Cadubrij quindecim, in quibus locis reperiuntur notarij tantum; a civitate vero Utini abest quadraginta quinque millibus passuum, in qua et notarij et jurisperiti turmatim inveniuntur. Et quod notarij Cadubrij non habent aliquam notionem Constitutionis Patrie, nam utuntur proprijs et separatis legibus; et quod propter huiusmodi defectum notariorum tam in Furno Superiori quam Inferiori, quando interponitur aliqua appellatio a sententijs ibi factis ad Magnificum Dominum Locumtenentem, conducitur eo aliquis notarius pet appellantem, qui notarius accedit ad iudicium dicti Furni in quo lata fuit sententia et relata sibi per gastaldionem et juratos tenore sententie appellate, medio eorum sacramento in manibus ipsius notarij prestito, sententiam ipsam in notam sumit et eam in appellatione producit". (*ivi*, c. 38).

²⁸ Abundantly attested by the large number of cases cited by the witnesses to support their statements.

²⁹ The jurors were the three community elders who acted as judges along with the steward, a local representative also elected by the community, but who had to be approved by the feudal lords. Instead, the Captain responsible for trying and judging criminal matters was elected by the feudal landholders and resided in Osoppo, cf. A.S.U.D., *Archivio Gortani*, b. 10, f. 141.

³⁰ Floriano De Pauli, the first witness to be called by request of don Sebastiano Corradazzo, stated that "verum esse quod Furnus Superior est in Patria Fori Julij et quod scit Constitutionem Patrie Fori Julij observari in dicto loco Furni Superioris, dummodo cognoscatur et allegetur, nec ignoretur, et iudicat quod in totum ipsa Constitutio Patrie sit in viridi observantia in dicto loco Furni superioris". The priest of Invilino shrewdly recalled that though the inhabitants of Forni and nearby centers lived in mountainous, isolated places, yet "sunt malitiosi et Constitutionis Patrie prorsus ignari et quod si sentiunt injuriam sibi fieri per iudicium dicti loci, appellant et provocant ad tribunal Clarissimi Domini Locumtenentis Patrie et quod omnes de Furno tam Inferiori quam Superiori utuntur Constitutionibus Patrie, dummodo sciant..." (*ivi*, cc. 47 and 38).

*ad imitationem maiorum suorum uno et eodem modo*³¹. Custom, understood as myth connecting the present to the past, was experienced by the inhabitants of Forni as repetitive practice dating back to their ancestors. Its legendary and repetitive features were also linked to its spontaneity. Asked to define the custom of the community, an old man answered the vicar that “*consuetudo est illa quando in hac villa semper aliquid consuevit fieri uno et eodem modo et nescit que et quot substantialia requirantur ad faciendam consuetudinem quia ipse est homo de monte et rudis et non potest hoc scireun*”³². Thus, the combination of custom and orality was profoundly embedded in the life of the community. It found its deepest justification in the complex network of individual relationships which, though organized according to specific hierarchies, acknowledged a common political, geographical and social field³³.

The appeal to the customary oral tradition as opposed to written laws (the *Costituzioni* the Coradazzo brothers wanted to base their case on) though used here to support a specific thesis, was unequivocally validated by judiciary practice based on oral tradition and its community and arbitrational specificity. In advocating the validity of oral practice and even its predominance over external written law, the witnesses called to testify stressed the juridical specificity of the community and the concreteness of the social relations whose legitimacy was grounded in this specificity. Thus, it was not by chance that arbitrations and compromises in line with this oral tradition were so widespread in the two villages.

The appeal to tradition, especially by the witnesses summoned to testify on the part of Caterina Corradazzo, obviously was meant to support the thesis that in Forni di Sopra in absence of male siblings the fathers' inheritance went to the daughters. To what extent could this appeal be considered instrumental on the judiciary and conflictual plane to contrast the litigants appealing to an outside legal authority?

As previously mentioned, the answer is partly and indirectly given in the arguments presented by the Corradazzo brothers, who were anxious to

³¹ *Ivi*, c. 35. Another witness specified: “...it is a usage and a style that is held for a long time in a village, and when questioned said: *si siando seguiti doi et tre casi et più da una usanza et stilo, quelli provano la dicta consuetudine et usanza et per suo creder queste cose ricercano a far la consuetudine...* (according to two witnesses worthy of trust proven two and three cases and more being followed by a usage and style, those prove the aforesaid custom and usage and for its belief these things seek to make custom)...” (*ivi*, c. 95).

³² *Ivi*, c. 25.

³³ Rouland, *Antropologia giuridica...*, p. 198. Asked to specify “*quot substantialia requirantur ad faciendum observantiam et consuetudinem juris effectum habentem*”, the priest of Invilino replied “*requiri universalem consensum et usum faciendi rei de qua fit consuetudo, quodque nemo consueverit facere in contrarium*”, A.S.U.D., Processo, c. 37.

demonstrate the effective authority of the Constitutions of Friuli in the territory of the two Forni Savorgnan. As a matter of fact, their claim that the *Costituzioni* had not been enforced because of the absence of experts in law or simply out of ignorance indirectly endorsed the validity of local customs regarding matters of succession. And in reality, as many of the witnesses examined declared, in Forni di Sopra daughters did enjoy extensive rights to their father's estate.

A few decades before, the two communities had drafted some statutes which regulated appeals, and in particular certain matters related to pasturage and retail sales. One of the headings concerning weights and measures even opened with an explicit reference to the Patria of Friuli³⁴. Some of these passages allow us to understand that the statutes had probably been drawn up to respond to the interference of the Savorgnans in the internal affairs of the two communities. The rules did nothing more than give written sanction to some ancient local customs threatened by the feudal lords. Thus, written norms and the implicit appeal to external laws were being used by the communities to defend their juridical autonomy.

Was it therefore possible to see in the choices of the Corradazzo brothers an anti-customary attitude, as the formulations of their arguments seemed to show? Ultimately could the custom-orality pair be taken as a touchstone, opposed to outside written law, to justify the alleged legitimacy of daughters to inherit the paternal estate in conflict with the lineage? Could the choice the Corradazzo brothers made against their niece Catherine really be considered totally foreign to the social context of Forni and its traditions?

These are questions which the trial records can answer only in part, considering the complexity and ambiguity underlying the apparent simplicity of a simple questions —do daughters inherit or not? In reality this question lent itself to being answered or manipulated by the many and various patrimonial and family situations found in the social context where the conflict had originated. After all, the witnesses who were examined at the request of both parties, pointed to a broad range of cases to support their arguments. This could hardly facilitate the work of the judge, though he often interrupted their testimony to ask for further explanations and clarifications. Some of the same precedents were even cited by witnesses on both sides to corroborate their respective arguments.

Evidently, these cases, once removed from the patrimonial and family context that had produced them, could be easily manipulated at the judiciary

³⁴ “cum sit quod predicti homines et comunia sint sub Patria Forijulii habeantque dominos suos commorantes in patria dicta... volentes pariter in omnibus se regere et gubernare cum dicta patria, ne aliqua in parte remoti videantur...”, see Bonatti Savorgnan d’Osoppo, *I due Forni Savorgnan*, p. 130, statutes of 1497.

level. For example, many of Caterina Corradazzo's witnesses spoke about the case of Orsula, the daughter of Appollonio Poli, who had claimed hereditary rights to her father's estate against her father's brothers. A compromise had settled the matter, and Orsula had obtained a plot of land, although her father had died before her grandfather. However, Baldassarre Corrisello added that he was unable to say whether the arbitrators had assigned this to the woman "*ratione dotis sue vel successionis in bonis paternis*"³⁵.

Floriano de Pauli, an elder of the community, called to testify by Don Sebastian Corradazzo, also remembered the case of Orsola Poli but highlighted other aspects of the story. This witness pointed out that the woman had obtained a negative verdict both in the first instance in Forni di Sopra and in the appeal court of Forni di Sotto. The steward and the elders of the two communities had ruled fully in favor of Orsola's uncles³⁶. However, Floriano forgot to add that when faced by the woman's threat to pursue the cause in the Court of the Lieutenant of Udine, her uncles decided to come to a compromise³⁷. In this case, therefore, despite the alleged disposition to consider the rights of daughters in regard to their father's patrimony, the elders of the two communities had ruled in favor of the lineage of origin. In fact, only the threat of an appeal to the tribunal of Udine had convinced the winning party to accept a compromise. In this case the contrast between custom and written law was, as it were, the reverse of the Corradazzo case. Behind the various ploys of regulatory language and judiciary pathways, we can appreciate the complexity of the legal discourse manipulated by the interested parties.

The examination of witnesses had thus gradually led the trial to the central question that opposed Caterina Corradazzo to her paternal uncles: could the dowry given to a woman in fact be seen as a final instrument of exclusion from the paternal estate, or was it to be considered a legitimate quote due to her? In the first case, obviously, the relations of inheritance with her father or the family of origin were to be interrupted when the dowry was assigned. In the second case, the legal relationship promised to be much more complex, and appeared to be underpinned by a series of interfamily relations subject to profound changes in the course of time.

³⁵ *Ivi*, c. 22

³⁶ *Ivi*, c. 49.

³⁷ The husband of Orsola Poli, called on to testify by don Sebastiano Corradazzo, added that the arbitrators assigned only forty liras of the 150 ducats that in fact his wife had claimed from the paternal inheritance, "et non so né mi ricordo se ei me havessero dati tali denari... per conto de dotta o vero per vigor de ditta succession hereditaria, qual mi pretendeva haver (and I don't know or remember if they gave me that money ... as a dowry or in truth in force of the aforesaid inheritance, which I expected to have)" (*ivi*, c. 53).

Thus, the question presented in the court conflict that broke out in this small center in northern Italy has indubitable great historical depth, for it touches deeply on the entire matter of the patrimonial and cultural organization of the family in medieval and modern times. Though what was involved *in primis* was the hereditary system and alliances among family lineages, within the more concrete realm of the legal relations governing the transition from one generation to the next what emerges is the significance of the father – daughter relationship.

Credit for having highlighted the close relations between the institution of the dowry and female inheritance goes to the British anthropologist, Jack Goody. This scholar of North African populations, who subsequently turned to the history of the European family, has highlighted the fact that the Mediterranean world was already characterized at an early stage by a devolution of property that he has called *divergent*. According to Goody, the dowry was considered an advance on the inheritance. In stable, sedentary agricultural societies women's rights tended to affirm themselves, and so they had the same rights as males to inherit their father's estate³⁸.

Goody's statement was of great consequence, as the traditional historical view had always considered the dowry as a tool used essentially to limit or exclude the rights of women to the paternal estate. This consideration has to be related to the strong exogamous tendency that manifested itself in European society with the affirmation of Christianity. How could families permit their patrimony to be dispersed through female inheritance?

Goody's argument was taken up in a lengthy essay that the English scholar Diane Owen Hughes dedicated to the rise of the institution of dowry during the medieval and modern periods. She pointed out that among the civilizations that developed in the Mediterranean, the offerings given by the groom to his wife tended to be less than the contribution that the woman received from her family when entering the new union. In barbarian societies, the morning gift (*morgengabe*) that the groom had to pay to the bride as a sign of acknowledgment of her virginity was soon replaced by the so-called bride-price the husband paid to the woman's family for exercising the *mundio*. This donation grew until it became one-fourth of a man's patrimony³⁹.

³⁸ J. Goody, *Inheritance, property and women: some comparative considerations*, in *Family and inheritance. Rural society in Western Europe, 1200-1800*, ed. by J. Goody - J. Thirsk - E.P. Thompson, Cambridge, 1976, pp. 10-36; Idem, *Famiglia e matrimonio in Europa. Origini e sviluppi dei modelli familiari dell'Occidente*, Milan 1984.

³⁹ D. Owen Hughes, *From brideprice to dowry in Mediterranean Europe*, in "Journal of family history", n. 3, 1978, pp. 262-296. The *mundio* was marital authority over the woman that the husband acquire with marriage, cf. A. Pertile, *Storia del diritto italiano*, 3, Bologna, 1986, pp. 302-303.

According to Hughes, around the 9th century in certain areas of Mediterranean Europe the rights of a woman to alienate part of her husband's patrimony were consolidated to the point of becoming a custom. Furthermore, the claim of widows to possess their *morgengabe* wound up by limiting the traditional inheritance rights of the husband's family. In places like Languedoc, this phenomenon favored actual forms of commonality of property between spouses. In populations of Roman origin it was more likely for the morning gift came to be associated with the *controdotte* (dower). Hughes points out that the consequence of the consolidation of the morning gift was that the marriage was no longer based, as in ancient Rome, on consent between the parties or as among the Germans on the right of purchase. Therefore, the focal point became the sexual act, which became so important that by the early Middle Ages formal consummation sanctioned the validity of the marriage and the *morgengabe* was its most visible symbol⁴⁰.

The reappearance of the dowry around the 11th century reduced the importance of the morning gift, which became strictly usufructuary, making its value depend on that of the dowry. The gift of the morning was replaced by the dower, which was generally much lower than the dowry. Throughout the Mediterranean world, Hughes observes, women began to depend less on the generosity of their husbands than on that of their kins⁴¹. In all the cities jurists and governments underscored the relationship between the dowry and inheritance rights, and the woman's right to receive a dowry to substitute of their father's patrimony became the most common rule in the statutes of northern Italy⁴². But while for young women of humble origins there existed a close relation between dowry and their share of the paternal inheritance, for those of rich families the relation was not to be taken for granted⁴³.

The introduction of the dowry system in the Mediterranean world drew attention away from the marital bond to the relationship between the couple and the wife's relatives, whose rights over the children born in the new marriage were guaranteed by the dowry. Moreover, also through the institution of the dowry, the father became the main guarantor and protector of the sexual purity of a young woman. The dowry became a mechanism of alli-

⁴⁰ Hughes, *From brideprice...*, pp. 271-272. The dower was the contribution that the husband assigned to his wife at the time of marriage. A sort of insurance on his property so that in case she remained widowed and childless she was guaranteed a quote equal to half or a third of the dowry cf. P. Torelli, *Lezioni di storia del diritto italiano. Diritto privato. La famiglia*, Milano, 1947, p. 122.

⁴¹ Hughes, *From brideprice...*, p. 278.

⁴² F. Niccolai, *La formazione del diritto successorio negli statuti comunali del territorio lombardo-tosco*, Milan, 1940.

⁴³ Hughes, *From brideprice...*, p. 290.

ances and social mobility. If among great aristocratic families the dowry carried the significance of disinheritance⁴⁴, a sort of consolation for exclusion from inheritance, its connection with the family status accentuated the mutual dependence between fathers and daughters⁴⁵. As the scholar J. P. Cooper acutely observed, the dowry encouraged the full integration of the daughters in the lineage, because during the 1600-1700s there was everywhere in Europe a preference for daughters in terms of succession, who were favored over male collateral relatives⁴⁶.

Since the status of lineages seemed to depend on the amount of the dowry, they ended up becoming a sign of status, rather than simply part of the inheritance system. Only where the status involved was minimal, as among the lower and middle strata of society, was the dowry understood as part of the inheritance. It was in these cases, where the dowry was still by and large balanced by dower that the contribution of the husband remained important⁴⁷.

While agreeing with Jack Goody on the basically bilateral nature of European society, Dianne Hughes has nonetheless noted that in medieval times the dowry became prominent as a form of disinheritance among powerful family groups whose internal organization had become "less bilateral"⁴⁸. Paradoxically, only the enlargement of the dowry ended up by allowing daughters to acquire more rights in their patrilineal descent. However, when the aristocracy began to distance itself from bilateral principles, the marital contribution was eliminated. In the end, where the dowry triumphed the sexual power of husbands declined, and the figure of the *cavalier servente* came onto the scene.

These assumptions were taken up recently by two English-language scholars who have gone further in analyzing the relationship between father and daughter from an anthropological and legal perspective. In his *The History of the Family*, the English scholar James Casey confirmed the relationship existing between the emergence of the dowry and the strengthening of the rights

⁴⁴ A point which always had some margins of uncertainty and in the course of the modern period would not cease to be frequently contested. See for example for France F. Laroche-Gisserot, *Pratiques de la dot en France au XIX siècle*, in "Annales E.S.C.", 43, 1988, pp. 1433-1452.

⁴⁵ Hughes, *From brideprice...*, pp. 284 ss.

⁴⁶ J.P. Cooper, *Patterns of inheritance and settlement by great landowners from the fifteenth to the eighteenth centuries*, in *Family and inheritance...*, pp. 302-303.

⁴⁷ As for instance among the Genoese artisans, for whom the dower played a determining role in the formation of the nucleus of the new family, cf. D. Owen Hughes, *Struttura familiare e sistemi di successione ereditaria nei testamenti dell'Europa medievale*, in "Quaderni storici", n. 33, 1976, pp. 929-952.

⁴⁸ Hughes, *From brideprice...*, pp. 289 ss.

of lineage. He also stressed the particularity of the English case, where the decisive weight of the dower permitted the affirmation of the autonomy of the marital relationship. While in that situation the husband's authority was very strong, the dower assigned to the wife guaranteed her a certain level of security in case of widowhood. In line with Cooper, Casey also corroborated the fundamental role played by the dowry system in favoring the transition from a society based on the hierarchy of honor to one based on the hierarchy of wealth⁴⁹.

In his collection of essays on Renaissance Florentine society, the American scholar Thomas Kuehn further studied these issues, constantly relating the wording of laws, the interpretation of jurists and the daily praxis of conflict. In the section of his book dedicated to women Kuehn emphasized the role of parental authority even when the woman was married⁵⁰. By questioning the traditional view that saw in marriage the moment of separation from the family of origin and, through the dowry, the exclusion of women from paternal property, Kuehn has emphasized the continuity of parental authority. If the husband's control of the woman was active, the father's control can be defined as passive, in the sense that it was implied by the legal rules that regulated wider family relationships.

Parental authority imposed on the married daughter restrictions as regards inheritance. It also prevented her from carrying out certain legal acts such as drafting a will, disposing of a property or taking part in a criminal proceeding without parental consent. But parental authority also imposed limits on the father: as long as he remained a father he could not deal with his daughter as an equal, he could not make a formal contract with her and there could be no exchange of property between them. And, of course, these limits were also a burden on others. The emancipation of married women was an instrument for creating legal capacity and situations that could be used by everyone involved.

However, it is about alleged exclusion because of the dowry that Kuehn forwarded some of his most interesting remarks. In particular, he focused on the interpretive and interceding role played by lawyers, who on the one hand wanted to safeguard the principle of agnation and on the other wanted to legitimize the various requests of their clients. He has showed that there was no clear dichotomy between a male conception of kinship like agnation and that of consanguinity. In fact, there existed strong ambiguities between the principle and of agnation and that of cognation. Women could consider them-

⁴⁹ J. Casey, *La famiglia nella storia*, Bari, 1991 (Oxford 1989).

⁵⁰ T. Kuehn, *Law, family and women. Toward a legal anthropology of Renaissance Italy*, Chicago, 1991, pp. 197-211.

selves agnates, and on the legal plane they could exploit this notion of kinship when it was to their advantage, as for instance against their more distant male relatives⁵¹.

Thus, in this line of historiography, which pays closer attention to the legal framework and its anthropological implications, the father-daughter relationship has become one of the central themes of family history. The institutions of the dowry and the dower have been examined in a perspective aimed at assessing their impact and real significance within a complex network of interfamily relationships. In this context, laws and court cases have become essential for ascertaining the true historical dimension of the institutions that over a long period regulated the life of the family.

From the very start the judiciary debate of the trial held in Forni di Sopra in 1538 was grafted onto a legal dialectic that the interested parties had instrumentally begun to achieve their goal. Caterina Corradazzo claimed the prerogative of the local custom to assert her rights of succession to her father's inheritance in the absence of any brothers. Customs, which, as she claimed, guaranteed extensive rights to daughters even over male members of the paternal lineage. In her arguments there was no mention of the dowry that she had received, and obviously none to its constituting a share of the hereditary quote. Could it be possible that in Carnia the dowry was essentially related to the patrimonial relationship between spouses and, consequently, that daughters freely enjoyed the legitim of their father's estate? ⁵²

⁵¹ *Ivi*, pp. 238-256.

⁵² Alice Sachs portrays the following situation: "In Carnia and the more mountainous areas, girls received a much smaller dowry than that of women of the same social condition in Friuli. Instead, they were left a part of the estate of the head of the family on his death. These dispositions might show the greater consideration in which women were held in northern Friuli. Like men, they could inherit by testament, the small dowry assigned at the moment of marriage represented a present from relatives, like wedding gifts and the trousseau. The woman felt to be equal to her brother was really equal as a worker. The notarial deeds of the various parts of Friuli show this growth or diminishing of dowries according to altimetry, the wealth of the dowry varies from contour line to contour line, so that we might almost conclude that, where the beast of burden cannot arrive, women were used to help the men and the work they produced substitute the part of the family patrimony needed by that non-working women...". A. Sachs, *Le nozze in Friuli nei secoli XVI e XVII*, in "Memorie storiche forogiuliesi", p. 15. This contradictory statement was perhaps taken by the scholar from an oral tradition, which in reality was probably motivated by the complexity of mountain society and economy, which highlighted the apparent distinction between dowry and legitim. This oral tradition was also examined, though with a different emphasis, by P.S. Leicht, who noted that in these mountainous areas "there is a general preference given to males over females in succession, and the idea that to the married daughter, after she leaves home with her trousseau and some part of the paternal property, further rights should not be recognized also seems to be deeply rooted". This scholar also adds that "the condition in which the woman finds herself in Carnia cannot be defined as a legal custom, because the husband certainly does not have a right that

Contrary to the witnesses of Caterina Corradazzo, those called to give evidence by Don Sebastian Corradazzo entered directly into the burning question of the relationship between dowry and inheritance. Osvaldo Venier was one of the most explicit:

It is the usual custom in Forno di Sopra and di Sotto that when a girl remains, you give her a dowry according to the possibility of what her family has and she has no other reason besides this dowry because the things are her father's as long as he lives, and then after his death they are of the living male children: and if any of his [male] children die before him who have left granddaughters after him, those granddaughters can demand nothing other than the dowry ...⁵³

Similarly, Floriano Sclavins observed that

semper vidit quod silicet femine, existentibus masculis, in loco Furni Superioris non succedunt quemadmodum et in reliqua Patria et quod dantur eis tantummodo prestamenta et earum dotes constituunt solummodo in pezzamentis et prestamentis et non in alijs bonis, neque in pecunijs...⁵⁴

For these witnesses the dowry given to the young women of the two communities covered every other right to inherit the paternal estate. From their statements the dowry, detached from whatsoever connection with the legitim, also took on the typical traits of exclusion⁵⁵. It was almost like hearing a recital of the words of the Constitutions of Friuli, which, according to them, were widely applied in Forni di Sopra as in the rest of the Patria of Friuli. So, what were the points of contact between the two sides, which apparently were not at all compatible? Obviously, if Caterina Corradazzo had argued that no matter what, the dowry had to comprehend the legitim, she would have had to show that what she had received from her uncles at the time of her wedding was not sufficient to guarantee her rights. In the deeds of the

permits him to force his wife ... to do the heaviest work... But who would dare say that such a custom does not have legal effect?..". P.S. Leicht, *Note sulle consuetudini giuridiche d'alcune zone alpine friulane*, in *Studi vari di storia del diritto italiano*, Milan, 1948, pp. 352-355.

⁵³ A.S.U.D., *Processo*, c. 75.

⁵⁴ *Ivi*, c. 58; but see also on the type of dowry assigned c. 54.

⁵⁵ Giacomo Bisulitti recounted what had happened some years before in his family. One of his uncles, being without male children, left as his heir his only daughter, Agnese, and his son-in-law, who lived with him. His two other brothers appealed this testament in Forni, emphasizing "eius dementia et ruditate ingenij". The jurors and the steward of Forni "participato prius consilio cum egregio ser Christophoro Angelo notario Tulmetij, intelligentiam Constitutionis habente", decided in favor of the uncles of the young woman, who instead had the right to "dotem congruentem secundum consuetudinem dictorum locorum in pezzamentis" (*ivi*, c. 84).

first notary of Forni di Sopra, who took service around the middle of the century, the so-called “remissions” that accompanied dowry inventories were frequent⁵⁶. With this formal act of renunciation the bride who had received a dowry, made commitment towards her siblings and parents “to make an end, renunciation, quittance.” In short, the couple waived all future claims on the family estate of her family⁵⁷.

The value of the dowries assigned varied greatly and evidently depended on the worth of the property and the kind of work the woman had done in the family of origin.

But it would be risky to consider these agreements as evidence that the dowry was always considered a form of permanent exclusion of the woman from the paternal patrimony. Its correspondence to the legitim was related to the economic situation and the conformation of the family at the time it was determined. The remission was intended primarily to safeguard the rights of male children after the death of the person, generally the father, who was responsible to provide for the dowry. Therefore, the congruence of the dowry, which could be more or less closely related to the legitim, depended on the family’s cultural and patrimonial organization⁵⁸.

As David Sabeau has observed, legal formulations must in any case be set in the context of what he defined as the time-dimension. When trying to understand the nature of the family, it is misleading to focus merely on only one moments of its life. The establishment of a new family patrimony must be correlated in relation to the situation that will be created with the death of the spouses’ parents⁵⁹. Thus, the economic and patrimonial relationship established between the spouses at the time of and throughout their marriage, as well as the bonds of the same nature they kept with their families of origin, are highly significant.

The acts of remission signed in Forni di Sopra generally contained an explicit statement by the groom and his family that not only would the dowry not be

⁵⁶ Tolmezzo, Biblioteca Gortani, *Archivio Roia*, b. 102.

⁵⁷ In realty, as a notary from Carnia wrote in the second half of the 18th century, acts of *fineremissione*, were meant to commit the spouses “never to demand anything else on the account and title of a dowry...”, cf. *Formulario per l’uso delli notaj di villa*, Udine, 1781, p. 48. As N. Tamassia noted, the customary pacts that envisioned the renunciation of future paternal succession by a woman who had been given a dowry was forbidden by the law (N. Tamassia, *La famiglia italiana...*, p. 292), but evidently, if in the general view the dowry was considered the equivalent of the legitim, renouncing the right to ask for something more as dowry in the end meant the definitive abandonment of all inheritance claims.

⁵⁸ N. Tamassia, *La famiglia italiana...*, pp. 290 ff.

⁵⁹ D. Sabeau, *Aspects of kinship behaviour and property in rural Western Europe before 1800*, in *Family and inheritance...*, pp. 105-106.

encroached on, but that it would be guaranteed by a suitable dowry, which in reality amounted to an increase in the dowry that the woman, in case of widowhood, could recover along with the dowry itself.⁶⁰ The existence of the dowry is evidence of the evolution that the more ancient marital contributions had undergone by the late 16th century⁶¹. This institution signified that in Forni di Sopra emphasis was put mainly on the newly established conjugal union rather than on the constraints of an agnatic nature and of kinship structured by lineage. However, it was due to this latter perspective that the dowry had rapidly shaped its exclusionary features, according to which the woman's lineage represented a possibility of control and influence over the new couple⁶².

Wherever the dowry was balanced by the dower it is very likely that its value was close to, or even corresponded to, the share of the legitim owing to the young woman leaving the family home. It is conceivable that in these circumstances, the waiver enshrined on a more or less formal level the final separation of the bride from her family of origin.

In a society like that of Carnia, characterized by a constant, intense emigration of males, it is likely that dowries and the size of the legitim had a hard time fitting into a regulatory framework that stably defined legal relationships among the various family members⁶³.

It is likely that throughout the 16th century, following the sharp demographic and migratory upswing registered all over Europe, the family unit became

⁶⁰ Tolmezzo, Biblioteca Gortani, *Archivio Roia*, b. 102, in which are also housed various acts of recovery of dowries and dowers requested by widows from their husband's families, cf. e.g., the acts of 12 June and 21 October 1574. In the stipulation of the acts of renunciation mention is made of the customs of Forni, which envisioned a dower of 15 per cent of the dowry. In reality, the real value of the dower was generally around a third of the dowry.

⁶¹ In the Friuli Constitutions, as Leicht observed, the ancient marital allowance that directly derived from the Lombard period were still remembered cf. P.S. Leicht, *La riforma...*, p. 78.

⁶² Thus, women had the right to a dowry, but not to inherit the *ab intestato* paternal estate. The legitim disappeared in the state law to be replaced by the dowry, which however "did not acquire the character of an exact, rigorous proportional relationship to the paternal estate", cf. M. Bellomo, *Ricerche...*, pp. 176-177.

⁶³ Over the whole course of the modern period, the Carnia mountains were marked by a vast migratory movement, which often turned into prolonged or even final absence. The routes were above all towards the Veneto mainland and the Germanic states. This emigration was made up mainly of pedlars, merchants and shopkeepers, who were profoundly influential in Carnia's social and economic structure, cf. the interesting study by F. Bianco, *Una doppia identità: cramars e contadini nella montagna carnica (secoli XVI-XVIII)*, in *Cramars. L'emigrazione dalla montagna carnica in età moderna. Secoli XVI-XVIII*, ed. by F. Bianco and G. Molfetta, Udine, 1992, pp. 9-125. It is likely that in a period of strong demographic growth, the heavy flow of migration in the end significantly influenced the redefinition of relations of inheritance among the various members of the family.

more unstable, and the exclusion of sons (and daughters) who had received a dowry was frequently re-discussed after the death of the father of the family, in the end becoming a custom accepted by the entire community⁶⁴. Considering this, Caterina Corradazzo's appeal to local customs seemed plausible. Although provided with a dowry, she now claimed a share of her father's estate. On her side, there was a consolidated practice that allowed a daughter, after the death of her father and in the absence of brothers, to redefine the share of the legitime that had been previously assigned to her. Through an explicit request of her legitime she could actually come into possession of a conspicuous share of her father's patrimony. She came from an extended family, in which the agnatic bond was tied to the common estate. In order to invalidate Caterina's claims, her uncles endeavored to stress in their penultimate argument that their brother Matteo had died a few days before their father Tommaso. Through the shared ancestry, Matteo's quote of the patrimony thus merged into that one of the Corradazzo House, vanifying all claims on the part of Caterina, who had already received a dowry and left the Corradazzo household in Forni. But the few days between the death of Matteo Corradazzo and his father Tommaso stressed by the Corradazzo brothers seemed clearly a legal quibble⁶⁵. Indeed, Caterina had lived with her uncles from an early age, and they had taken over the duty of providing her with a dowry. The dowry given to her could presumably be considered a sort of exclusion from all her rights to the family patrimony as long as the Corradazzo brothers enjoyed joint ownership of property⁶⁶. The *congruity* of

⁶⁴ Basing himself on the general framework of rules traced by J. Yver, some years ago E. Le Roy Ladurie portrayed the various systems of succession in existence in France. Starting from the early 16th century, some French and European regions registered interesting legal changes. Starting from that period, children with a dowry who before were excluded from succession were now admitted. In any case, at the death of the father, they had to choose either for the dowry they had received or the quote of the inheritance owing them cf. E. Le Roy Ladurie, *Système de la coutume. Structures familiales et coutume d'héritage en France au XVI siècle*, in "Annales E.S.C.", n. 27, 1972, pp. 825-846. However, see also the reservations expressed by David Sabean on Yver and Le Roy Ladurie's approach, cf. Sabean, *Aspects of kinship behaviour...*, pp. 104-105.

⁶⁵ Nicolò Celta, witness for Caterina Corradazzo and one of the community elders observed: "If I was *zuraro* (judge) and a case came before me that the father was dead and had not made a will and had not left male children, but only females, I would judge in favor of the females that they should inherit the property of their father; still if the father had living brother, so that the paternal ancestor did not survive the death of the son; and this because I have always heard that this is the way it has been observed in this place of Forno... If the father's living after the death of his son Mathio should not win priest Sebastiano and his brothers, in my opinion this priest Sebastiano and his brother are wrong for everything I have heard tell always in this village..." (*ivi*, c. 4).

⁶⁶ As Tamassia observes, the exclusion from inheritance was effective only as regards the

the dowry had most likely been modeled on the organization of the family estate with a view to protecting the interests of the agnatic line⁶⁷. This legal situation had in effect frozen the relationship created between the niece and the uncles after the death of Matteo Corradazzo. But in 1538, due to strong internal disagreements, the Corradazzo brothers had separated. It was no mere chance that Caterina Corradazzo had forwarded her claims after the separation of her uncles. From that moment, she was no longer dealing with a solid family unit that had excluded her following its own internal logic. She was now facing various pieces of the original nucleus. The altered legal and financial position of the Corradazzo family had encouraged her claim on the property rights that had been taken from her on the grounds a family organization which, following principle of agnation understood in its broadest form, had found its own internal rule. Once this family organization was gone Caterina had seized the opportunity to forward her claims against her uncles. The uncles, clearly, looked to the Constitutions of Friuli and its city interpreters as the legal anchor that would allow them to reject any claim of their niece.

Thus, Caterina Corradazzo's appeal to the customs of Forni di Sopra in appearance took on a tone of judiciary instrumentality, since it deliberately ignored the complexity of the local situation and in particular of the family she came from⁶⁸. This instrumentality was, as we have noted, met by a corresponding irreconcilability of the opposing party's thesis, which was firm in denying any right whatsoever for the woman to inherit *ab intestatio*, even in the light of the altered financial situation created by the separation of the brothers.

To understand the exact implications of the claims of both parties, we have to examine more closely the legal discourse used by the litigants on both sides. Though the intrinsic substance of this discourse conformed to the aims of the two contending parties, its language was couched in terms that also showed the intervention of highly experience legal experts practicing in the courts of Udine. It was their duty to elaborate in legal terms the objectives of the contending parties, making them as plausible and convincing as possible. In reality, their approach followed the typical manner of learned, written law, characterized as it was by abstraction and the search for general principles. And the contrast between customs and the Constitutions of

person who had the duty to give the dowry. If the family group broke up, the woman found herself facing "a disintegrated group of relatives, each of whom had a different relationship of family and duties" towards her, N. Tamassia, *La famiglia italiana...*, p. 292.

⁶⁷ E. Besta, *Le successioni...*, p. 64.

⁶⁸ A situation that was, after all, widespread in Forni di sopra, e.g., A.S.U.D., *Processo*, cc. 21 and 75.

the Patria also drew its origin from juridical reasoning typical of the learned law employed by the lawyers of both parties.

In reality, the interpretation of custom (according to the numerous witnesses) was based on an extremely diversified set of cases. Only with great difficulty could these cases provide either an accurate definition of the features of this 'custom' or the standard formulations typical of learned law, based as it was on abstract and absolute principles, regarding questions of the presumed right of a daughter to inherit the paternal estate in competition with ascendants, or whether or not the dowry comprehended their hereditary rights (the legitim).

This set of cases, formulated in so full, various and contradictory a fashion by the witnesses, indirectly illustrated some of the most essential features of the existing customs of these two small Carnia villages – i.e., their extreme openness and adaptability in accommodating a great variety of conflicts so as to include them in the uniform *cultural code* with which the material life of the local population was imbued, and which, despite explicit references to a mythical tradition and the immutability of behavior, had the capacity of reinventing themselves to adapt to economic and demographic changes. The key element behind the spirit of customs and their ability to transform themselves and adapt to social changes without sacrificing the cohesive strength of tradition, was the absence of any form of *legal reasoning* aimed at justifying or endorsing innovation. The American sociologist Lawrence Friedman has pointed out that in customary contexts the judges (elders or sages, but in any case not legal *professionals*) do not appear to create new law, in that the law already exists and can be identified in practices, in customs, in the community. The law already exists and the judges are but its spokesmen. The rules of reasoning are open, because in the end the legal rules are the social practices themselves:

What lawyers call “legal reasoning”, strictly speaking, is a trait of closed systems from classical Roman law and the old book-religions to the continental codes and the common law. The idea of legal reasoning depends on a closed set of premises—the idea that some propositions are *legal* propositions and others are not and that trained men can winnow from the other. In a pure open system, there are no *legal* propositions as such, hence no such thing as a specialist in legal proposition—no lawyers or law-trained judges.⁶⁹

The 16th-century case we have studied reveals that the witnesses questioned by the patriarchal vicar were not able to provide an exhaustive definition of custom. For them, custom coincided with tradition and what

⁶⁹ L. Friedman, *The legal system. A Social Science Perspective*, New York 1975, p. 245.

this tradition had always legitimized. In any they identified this custom as an oral legal system alternative to a body of *learned* law represented by lawyers and notaries. The absence of any form of legal reasoning and the belief that the system was completely closed and worked on the basis of repeated practices was evidently functional to legitimatizing a society ideologically based on tradition, and where there was no significant stratification of status to differentiate it internally. Innovation was conveyed by social practices and the constant openness to mediation, but always as part of *cultural codes* that derived their legitimacy from tradition. As emphasized by the anthropologist Norbert Rouland, the link between *ideal order* and *the order of lived experience* is essential to grasp the characteristics of customary behaviors:

Every society possesses an ideal legal order that cannot remain intact when it comes into contact with the order of lived experience. The value given to harmony and equilibrium takes on meaning only when confronted with the tensions and conflicts of the real world; and, in the end, traditional societies are not exempt from conflict and tension, though they try to prevent or regulate them in the ways that are the least traumatic for the society. Similarly, social groups, whose complementarity is also endowed with significance, represent specific values that can be contradictory. In general one value prevails, while others persist, emphasized only by certain groups or expressed in veiled form. The social control exercised by the law in the order of lived experience is aimed to manage the conflicts that can come out of this state of fact, either by restoring the initial order or by creating a new one, while as far as possible respecting the ideal order⁷⁰

Thus, the animated legal debate characterizing this lawsuit can be understood in the context of a territory fragmented by geographical, cultural and political particularities, and which enjoyed a high degree of decisional independence from the dominant center. The legal discourse employed by the two parties almost inevitably recalled the institutional and legal complexity of the Patria of Friuli⁷¹.

The legal dialectic between a unitary body of laws as elaborate as the Consti-

⁷⁰ N. Rouland, *Antropologia giuridica...*, p. 186. Rouland sees a close connection between myth and the *ideal legal order*: "Using the language of metaphor and analogy, myth creates a classification according to which communication among living creatures follows both a visible and an invisible order, so that disorder cannot prevail over order. Thus, the ideal legal order created by myth gives value to continuity and equilibrium, affirming the will of the traditional society to dominate time, individuals and things contemporarily. Mythic law is distinguished from modern law because it does not belong to a man or an organ, but to the whole society, in all the diversity of the groups that comprise it", cf. *ivi*, pp. 183-184.

⁷¹ G. Cozzi, *Repubblica di Venezia...*, pp. 285 ss.

tutions of Friuli, which were a direct emanation of the Parliament of Friuli, and the multiplicity of statutes and local customs had been an ongoing element of the political and institutional life of Friuli. Indeed, the last chapter of the reformed Constitutions reaffirmed without a shadow of a doubt the inviolability of local statutes⁷². In reality, the extreme institutional complexity, the multiplicity of the forces involved and the crucial role played by the Venetian Lieutenant contributed to the fact that the auxiliary function of the Constitutions was not always to be taken for granted⁷³.

As was later shown in high tensions in the Patria, these laws would be solicited by the castellans, who thought of them as an acknowledgment of their jurisdictional privileges, as well as by the city of Udine, which considered them an expression of its state sovereignty⁷⁴. Furthermore, the Constitutions represented the most direct legal reference of a class of professionals formed under the aegis of common law. Their interpretation, filtered by a uniform jurisprudential knowledge, was bound in the end to have a unifying effect⁷⁵.

We must also bear in mind that the trial had been ordered by the patriarchal Court of Udine at the request of one of the wealthiest families of Forni di Sopra. Indeed, the Corradazzos had been entertaining frequent exchanges with merchants from Udine for many years⁷⁶. Thus, their business activity put them into close contact with the political and economic center of Fri-

⁷² “Item constituimus quod statuta antiqua existentia et dudum observata in aliquibus locis iurisdictionem habentibus debeant in sua firmitate manere, nec in illis debeant derogari er per has constituriones presentes antiquis statutis municipalibus cuiuscumque loci non intelligatur ibidem ullatenus derogatum”, *Constitutiones...*, p. 68.

⁷³ Already in July of 1429, faced by a contrasting initiative taken by the Lieutenant, which had caused the reaction of the Parliament, Venice had been forced to intervene. The Senate had ambiguously deliberated “quod si inter ipsas constitutiones generales er iura municipalia sunt alique veritates seu discrepatio aliqua propter quas oriri viderur dubium ipsa dubietas declaretur ut nostri locumtenentes patrie, qui per tempora erunt, aperte sciant quid agere habeant et observari... ita quod inter ipsa capitula constitutionum et inter ipsos ordines municipales non sit diversitas vel obscuritas sed aperta et clara concordantia...” (*ivi*, cc. 68-69: ducal addition to the edition of 1524). In reality, already in the following *ducale* of 9 May 1436 in the approval of some chapters presented by the Parliament the Venetian Senate clarified that “non intelligatur derogatum neque derogetur statutis particularibus alicuius loci Patrie” (*ivi*, cc. 69-70: ducal addition to the same edition).

⁷⁴ On this problem cf. A. Stefanutti, *Giureconsulti friulani tra giurisdizionalismo veneziano e tradizione feudale*, in “Archivio Veneto”, CVII, 1976, pp. 75-93.

⁷⁵ On this class of professionals cf. A. Liruti, *Degli illustri giureconsulti ed oratori friulani*, Udine 1836; G. Occioni Bonaffons, *La scuola d’“Instituta Iuris” fondata in Udine nel secolo XV*, Udine, 1884.

⁷⁶ Cf. A.S.UD., *Processo*, cc. 87-89.

uli. Don Sebastian Corradazzo, who promoted the transfer of the lawsuit to Udine, was the curate of Forni di Sopra and therefore held a prominent role within the community. The prestige of the family and the influential role of the priest presumably were a determining force in gathering the support and consent of witnesses willing to uphold their thesis, whose ambiguity allowed it to be easily manipulated⁷⁷. But apart from the immediate conflict at issue, this thesis, which too openly questioned the political and social reality they themselves were born into, also reflected their ambivalence or, better, a double identity that leaned too far outside.

The administration of civil justice as managed by the two communities of Carnia allowed them to resolve their contradictions while maintaining a strong cultural and political cohesion that not even the Savorgnan family had managed to weaken significantly. The initiative of the Corradazzos, though involving a personal matter, was set in a context highly predisposed to legal confrontation. But ultimately its formulation constituted a challenge to the social and political cohesion of the two communities.

The legal argumentation of the lawyers of Caterina Corradazzo, which evidently followed the same line of reasoning, thus appeared to be largely justified. In the eyes of the witnesses, the appeal to oral customs and tradition that formed the cornerstone of Caterina Corradazzo's arguments could hardly fail to become an assertion of the autonomy of local politics. This meant first and foremost the protection of a shared sphere of decision-making and regulation that was threatened by an initiative deliberately based on written law and interpreted by legal professionals. If orality meant giving value to the connections among individuals within the community, custom constituted its indispensable legitimacy⁷⁸. Its interpreters were, in fact, the community elders, who were the unique custodians of the cultural tradition and the political structure. Through oral tradition, they preserved and transformed cultural values in the light of the myth of custom⁷⁹. Compromise and arbitration made up the most distinctive elements of a conflicting praxis that was an interlocutory and instrumental

⁷⁷ It is interesting to note that after the first phase, in which the witnesses on both side were cross-examined in Forni di Sopra, despite the opposition of the attorney for the opposing party, don Sebastiano Corradazzo was permitted by the patriarchal vicar to produce new witnesses.

⁷⁸ N. Rouland, *Antropologia giuridica...*, pp. 195 ff.

⁷⁹ Bartolomeo di Orsola replied to the notary's questioning "quod consuetudo vulgariter dicitur ua local custom, idest che sè consueto de fare una cosa sempre cusì et quando homines sunt in vicinanzia et allegatur e lè cusì la usanza, la detta visinanza conferma et non vole romperla", A.S.UD., *Processo*, c. 12.

aspect of judiciary institutions still bearing the mark of the ancient *placito*⁸⁰. How could the witnesses not answer such an appeal? And how could the judges not pay attention to a consolidated practice that took on the very semblance of law?

The recourse to external written law pursued by the Corradazzo brothers appeared all too clearly a way of questioning the normative values of the community and their political content. The insertion of the written law, with its great capacity for abstraction and diverse control over time and things⁸¹, would end up by challenging the society of a community hierarchically organized according to an internal coherence made up of tightly interrelated elements. The very power of the community elders to transmit customary traditions orally would be fatally challenged by the diverse probative value carried by the written law and writing.

It is likely that the Corradazzo brothers' initiative came out of the community's inability to handle its internal contradictions in the face of the emergence of families whose interests were strongly oriented outside of the community, organized with the aim of imitating kin groups that had settled in the towns. It is certain that the trial of 1538 was part of a more general phenomenon which was to lead everywhere to the growth of the *learned* legal dimension and its appropriation by a specialized technical personnel⁸². And after all, what were the notary acts that began to be drafted in the second half of the century in the community of Forni di Sopra itself if not the obvious weakening of the blend of orality and custom that had for centuries formed its cultural and political backbone?

As previously stated, the verdict of the trial is missing, and we do not even know if the suit was resolved, as sometimes happened in similar cases, through an arbitrated settlement. The examination of tens of witnesses in all likelihood did not enable the patriarchal vicar to get a clear idea of the inheritance practices in use in those remote mountain villages of Carnia. And these same conclusions were also reached by the notary Antonio Belloni in those very years.

When all is said and done, perhaps this is not the crucial point. However, I do not think it risky to assume that in a context so full of particulari-

⁸⁰ The *placito* was a form of decision made by an assembly presided over by the community elders, cf. M. Leicht, *Giudizi feudali del Friuli*, Venezia, 1883. And also P.S. Leicht, *La riforma...*, pp. 77-78.

⁸¹ Cf. J. Goody, *Il suono e i segni. L'interfaccia tra scrittura e oralità*, Milan, 1989.

⁸² As has been observed by J.A. Maravall, the movement to formalize through writing went side by side with juridical unification, denoting "a modern bourgeois mentality whose economic needs find their correspondence in the juridical renewal requested", cf. J.A. Maravall, *Stato moderno e mentalità sociale*, 2 vol., Bologna, 1991 (Madrid 1972), II, p.508.

ties and judiciary autonomy Belloni could not easily ignore such a strong and obvious appeal to local custom. Though this appeal was made by an unknown country woman from Carnia who was claiming her rights to her father's inheritance, it was indirectly upheld by the system of common law which he himself, by training and *forma mentis*, unquestionably belonged to. Within the complex framework of that law, customs also enjoyed dignity, and through their vitality justified its constant inclination towards particularism.

POLISSENA SCROFFA, BETWEEN PAOLO SARPI AND THE COUNCIL OF TEN: INHERITANCE IN VENICE IN THE EARLY 17TH CENTURY

On the 2nd of March 1612 the notary Medoro Rigotto drafted Vincenzo Scroffa's will¹. Even though Scroffa had never practiced any activities which in his time would have qualified him for one of the various categories of the legal profession, he was certainly not a man ignorant of law². He must surely have been aware of the testamentary procedures in use at the time, both in his native city of Vicenza and in Venice, where he had lived for several years. During that second decade of the 17th century, the hereditary practices of the cities of the Veneto mainland were still deeply inspired by ancient norms and customs, grounded chiefly on both in municipal statutes and Romanist-inspired jurisprudence³.

Vincenzo Scroffa belonged to one of the oldest aristocratic lineages in Vicenza, which at the time still enjoyed an important leading role in the political and administrative life of the city⁴. Each of these lineages could claim for one or more of its relations a membership in the local Board of Judges. Moreover, in this period the archives of these prestigious families began to grow, filling up with documents and case files, along with family trees that attested to both the illustrious past of the house and its property relations. In his will, however, Vincenzo Scroffa showed far more than the superficial knowledge of the law to some degree common among the members of the

¹ Vincenzo Scroffa's will is housed in Vicenza, Archivio di Stato (in seguito ASVi), *Notai di Vicenza*, b. 9356. For further information on this Vicentine aristocrat see G. Mantese, *Lo storico vicentino p. Francesco da Barbarano O.F.M. Cap. 1596-1656 e la sua nobile famiglia*, in "Odeo olimpico", IX-X (1970-73), pp. 129-34.

² G. Mantese, *ibid.*, p. 127, cites a sentence of arbitration pronounced by Scroffa in 1608 to settle a controversy about a dowry.

³ Antonio Lorenzoni has gone into this subject, though with particular reference to Vicenza, in his *Istituzioni del diritto civile privato per la provincia vicentina*, 2 tomi, Vicenza 1785, I, pp. 69-234.

⁴ On the Scroffa family cf. Vicenza, Biblioteca Civica Bertoliana (in seguito BCBVi), Giovanni da Schio, *Personne memorabili in Vicenza*, ms. 3397.

aristocracy he belonged to. Furthermore, it is highly unlikely that a will such as his could have been suggested by one of the many legal experts that the courts of his city and of the Dominant were crowded with. The terms and provisions contained in the will could only come out of the *forma mentis* of a man possessing both profound knowledge of the spirit of the law and unique personal experience⁵.

Ab intestato succession had been regulated in its fundamental principles at the end of the third chapter of the cities' statutes⁶. As in other cities of Central North Italy, for persons who died without leaving a will, the municipal laws of Vicenza provided that their assets were to pass to their heirs, clearly favoring legitimate, natural male descendants. Only a few vague passages were dedicated to testamentary succession, though greater and far more qualified attention was given to it in the jurisprudence elaborated by legal experts referring more directly to common law⁷.

The emphasis in the municipal statutes on intestate succession came from a centuries-old tradition of Germanic origin, where the vast powers previously exercised by the Roman *pater familias* had given way to a strong personal patrimonial cohesion exercised by the family line, which had gradually replaced the will in the population of Latin origin and culture as well. The intricate tangle of aristocratic lineages in Italian municipal towns formed the economic and political substratum that substantially allowed the continuity of an inheritance system decidedly inspired by ideological values centered on the "house" and on blood ties. The succession through the legitimate clearly guaranteed the economic and political cohesion of the family against any excesses or abuses by its members. The principle of agnation and patrilinear descent, which led to the exclusion of women from legitimate succession when there were male children, were only partly tempered by the dowry, which was in theory supposed to correspond to their quote of the legitimate portion⁸.

⁵ On this problem cf. num 46 (1991) of the "Annales E.S.C.", dedicated to *La culture généalogique*, in particular the article by R. Bizzocchi, *Culture généalogique dans l'Italie du seizième siècle*, pp. 789-805.

⁶ *Jus municipale vicentinum*, Venice 1567

⁷ On these questions, which we will give only some general information about here below, cf. E. Besta, *Le successioni nella storia del diritto italiano*, Padua 1935; C. Giardina, entry *Successioni (Diritto intermedio)*, in *Novissimo digesto italiano*, XVIII, Turin 1971, pp. 727-751; M. Bellomo, entry *Erede (Diritto intermedio)*, in *Enciclopedia del diritto*, XV, Milan 1966, pp. 184-95.

⁸ Cf. F. Zonabend, *Della famiglia. Sguardo etnologico sulla parentela e la famiglia*, in *Storia universale della famiglia*, ed. by C. Lévi-Strauss and G. Duby, 2 vol., Milan 1987 (Paris 1986), vol I, I, pp. 15-76. On these problems and the ongoing historiographical debate, see: J. Goody, *Inheritance, Property and Women: Some Comparative Considerations*, in *Family and Inheritance. Rural Society in Western Europe, 1200-1800*, ed. by J. Goody, J. Thirsk, E.P. Thompson. Cambridge 1976, pp. 10-

The jurisprudential elaboration of Roman law in the course of the Middle Ages attempted to restore the role and importance the will had possessed, attesting the strong doctrinal and political influence exerted by the ranks of qualified jurists. In reality, the legal provision for of a will in municipal laws in the will was mostly intended to foster and facilitate legitimate succession even in the most complicated and difficult situations.

The so-called *Institutio Heredis*, which in Roman law had been the essence of the will and provided for the universal transmission of the inheritance to the designated heir, lost much of its original meaning, in favor of the role played by legitimate succession in preserving and in transmitting the legacy of the lineage. Its loss of importance made the classical distinction between the will and codicils or entailments marginal. In 16th-century succession practice, the will no longer served primarily to appoint an heir, but rather to regulate a succession full of legacies and various other provisions, which could be changed or adjusted in subsequent codicils, whose legal nature, however, did not change⁹.

Moreover, the widespread use of legal institutions such as *fideicommissum* show the strong limits placed on the volition of the testator. The purpose of this institution was to ensure the integrity of the family patrimony through the future generations¹⁰. The ideological values implicit in the preeminence of the rule of legitimate succession were confirmed by the legal formalities which governed the drafting of wills¹¹. Unlike the rural world, where the so-called “nuncupative” will dictated by the testator to a notary, was widespread, in aristocratic circles it was very common to have recourse to the “solemn” will.

This procedure had to take place in the presence of seven witnesses. Once the notary had folded the will, they had to place their signature and seal on the back. This was the formal act that characterized the solemnity of the will, whether it was “secret”, that is when it was delivered already sealed to the notary, or when it was openly dictated to the notary by the testator in the presence of the seven witnesses. The essential consequence of the solemn will was that, once sealed, it was not already automatically conferred

36; D. Owen Hughes, *From Brideprice to Dowry in Mediterranean Europe*, in “Journal of Family History”, 3, 1978, pp. 262-296; T. Kuehn, *Law, Family and Women. Toward a Legal Anthropology of Renaissance Italy*, Chicago 1991.

⁹ A large set of cases concerning Vicenza is found in the works of G. Mantese, in particular *Memorie storiche della Chiesa vicentina*, 3/II, Vicenza 1964, and 4/I-II, Vicenza 1974.

¹⁰ M. Caravale, entry *Fedecommissa (diritto intermedio)*, in *Enciclopedia del diritto*, XVII, Milan 1968, pp. 109-14.

¹¹ A. Lorenzoni, *Istituzioni...*, I, pp. 86-90.

the legal requirements that would make it executive immediately upon the death of the testator, as was the case of nuncupative wills. Its ‘publication’ would then be brought about with “solemnity” with the opening of the will by the notary before the *podesta*’ of the city and in the presence of at least two of the seven witnesses, who were there to recognize their signature and seal. The legal approval given by the maximum legal representative of the city characterized the aristocratic will, thus ensuring, in compliance with the volition of the testator, the continuity of the cultural and ideological values of the lineage.

A third possibility, but not one very frequently used in the Terraferma, was to make a will by a simple codicil, was written and signed by the testator and then kept by him or delivered to a notary. This way of making a will was called the “*cedola alla veneta*” (Venetian entailment), and it acquired the formalities of the secret will when its delivery to the notary occurred in the presence of the customary seven witnesses¹². The complex and elaborate formal procedure of succession practices prevalent among the mainland aristocracy expressed on a ritual level the close interpenetration of the ideological values of the lineage and the symbolism underlying the testamentary act.

On the second of March 1612 in the house of Vincent Scroffa, located in the district of Saint Lucia just outside the walls of Vicenza, six members of the aristocracy were also present among the witnesses, in addition to the notary¹³. But Scroffa had not wanted to resort to the traditional solemn testament. In dictating his will to the notary, he announced that he had also prepared two secret entailments, one of which was to be opened upon his death and the other in January 1619, when his niece Polissena reached the age of fifteen. By employing a method that differed from the succession practices commonly used in his day, Scroffa was recovering the legal concept of the

¹² In any case, these “parol contracts” or entailments would have to be “published” at the *Ufficio del sigillo della città*, which would thereby act as notary. In an anonymous 18th-century document, it was observed that this form of will was “not of very frequent use”: BCBVi, *Archivio Torre*, b. 506, fasc. 4, cc. 1-2, *Circa li testamenti et ultime volontà ...* Obviously, the nuncupative will also required the presence of seven witnesses, whose names were reported by the notary. Lorenzoni also mentions the will by prayer-book, which was resorted to when there was risk of imminent death, and which was considered valid even the presence of only two or three witnesses. On this type of will, widespread in Venice, cf. E. Garino, *Insidie familiari. Il retroscena della successione testamentaria a Venezia alla fine del XVIII secolo*, in *Stato, società e giustizia nella Repubblica veneta (sec. XV-XVIII)*, ed. by G. Cozzi, II, Rome 1985, pp. 312-13.

¹³ The presence of the witnesses often marked the complex network of alliances that linked and divided urban aristocrats. Witnessing the testament of Vincenzo Scroffa there were present Eleno di Giovan Battista Fracanzan, Girolamo di Troilo Muzzan, Marzio di Francesco Muris, Conte di Giacomo Trissino, Lucio di Giuseppe Ghellini, and Marcantonio di Girolamo Borselli, all Vicentine nobles: ASVi, *Notai di Vicenza*, b. 9356.

will that jurisprudential law had elaborated on the basis of Roman law. “The foundation of wills is the naming of the heir” he announced from the very start, appointing as his sole heir his little granddaughter, Polissena.

The two secret codicils contained certain important provisions that were, however, subordinate to what was envisioned in the will itself¹⁴. By using formalities that were neither solemn nor secret¹⁵, Scroffa wanted to give symbolic connotation to his will through the *institutio heredis*. This institution had for a long time been generally superseded by inheritance practices full of legacies and various other provisions. However, that he had no desire to depart from the ideological values that the lives of the contemporary aristocracy were intensely imbued with was shown by other provisions included in the will.

The designation of the little Polissena as his heir was in fact accompanied by an ancient legal clause called “substitution of a ward”¹⁶, through which a father could name an heir to his son or to a descendant not yet pubescent, in the hypothesis that the son might die before being competent to make a will¹⁷. Thus, Vincenzo Scroffa announced that the naming of Polissena as heir was subject to a *fideicommissum*, whose conditions were made explicit in the terms provided in the second entailment¹⁸. Everything indicated that

¹⁴ Indeed, in his intentions “the aforesaid entailments and the present nuncupative will” were to constitute “one single will and not two, so that there can not arise any problem about this”: *ibid.*

¹⁵ Thus, his was a classic nuncupative will entrusted to the notary, and as such already endowed with the legal requirements, which would make it immediately executive after his death. This was not the case for the two secret entailments, which would require publication before the *podestà* and in the presence of some of the witnesses who had been present when they were handed to the notary. On the formal plane, then the secret will represented a further guarantee of reliability. But Vincenzo Scroffa’s intention was that his designation of the heir, being subject to secret clauses, should be made public. The recourse on the part of some aristocratic to the nuncupative will by and large had the aim of confronting immediately with his heirs. An interesting case, for example, is the will of Francesco Trissino di Ludovico, another important Vicentine aristocrat of the second half of the 16th century: cf. *ivi*, *Archivio Trissino*, b. 339, fasc. 453, 18 July 1587.

¹⁶ “Declares and wishes that with the present will, the soul being moved by good intentions of the aforesaid signor testator should be manifest that in the aforesaid entailments effects a substitution of ward to the aforesaid Mrs Polissena his granddaughter and being under his authority, and if she died before during her childhood it will be understood that she will die with the said testament that is the pupil substitution”: *ivi*, *Notai di Vicenza*, b. 9356.

¹⁷ V.R. Casulli, entry *Sostituzione ordinaria e fedecommissaria*, in *Novissimo digesto italiano*, XVII, Turin 1970, p. 973

¹⁸ “[He] declares also that in the case of her death in any case, either with children or without, either married or not, in the aforesaid entailment he has made a *fideicommissum* of the same content”: ASVi, *Notai di Vicenza*, b. 9356.

the change was intended to benefit the descendants of Polissena. In practice, she would become heir to all her grandfather's property, but she would have to leave it, untouched, to her sons¹⁹.

The spirit of the aristocratic house was therefore very much alive in Vincent Scroffa. He also recalled that Polissena was his only descendant, and as such should marry in consideration of his wishes. For that reason, he had prepared the second entailment, a copy of which was to be deposited at the Venetian ducal chancellery. If Polissena did not comply with what he had decided regarding her marriage, she would have to be satisfied with inheriting what the legitimate succession provided for. The destiny of his lineage together with that of his granddaughter was what most concerned this old Vicentine aristocrat. His fears and his hopes were enclosed in that second entailment, which nobody knew about yet. However, in his will there were already hints that his fear that his wishes would not be respected was well-founded:

because to the aforesaid signor testator it is very well known, as is known to the whole world, the generosity and compassion with which this *Serenissima Repubblica* wishes and commands that the will of testators be executed. But doubting that it might happen that when the signor testator is no more, by cunning or other means his will not be executed and that someone should make designs on the life or belongings of the aforesaid granddaughter, [he] humbly begs that after the death of this testator protection of this child be taken by the ill. et etc. Sig. Heads of the Most High Council of Ten.²⁰

Thus, Vincenzo Scroffa entrusted his final resolution to the heads of the Council of Ten, who were to provide for the unsealing of the second entailment, making sure that Polissena married the person he had chosen. Vincenzo Scroffa possessed an immense fortune, largely free of previous fideicommissum clauses, and perhaps the choice to recur in his will to the *institutio heredis* depended on the need to name his heir without any ambiguity. Moreover, the appeal to the ideological values of the lineage and the request for protection addressed to the heads of the Council of Ten showed that the distinction between will and codicils he had used in expressing his wishes expressed far more complicated considerations that went back to his past history.

¹⁹ Lorenzoni observed that the substitution of ward was not “properly other than a will that the father made for the son, which ceased as soon as the latter arrived at puberty”: cf. Lorenzoni, *Istituzioni...*, I, pp. 209-10.

²⁰ ASVi, *Notai di Vicenza*, b. 9336.

Vincenzo Scroffa was born in Vicenza in 1539, but he had to leave the city in 1568, after being involved in a serious quarrel which had broken out among some young people of Vicenza²¹. After his banishment, Vincenzo took refuge in Venice. There he met Gaspare Ribeira, a wealthy Jewish merchant from Portugal, who had converted to Christianity. Vincenzo married his daughter, Violante, and joined her father in trade. In 1580, Gaspar Ribeira was tried by the Inquisition for suspected Judaism, and the following year he died while the criminal proceedings initiated against him were still going on²². After the death of his wife Violante, Vincenzo Scroffa returned to Vicenza with his young son, Julius Caesar.

Vincenzo returned to his native city as the heir of Ribeira's immense fortune. After living in Venice for twenty years, in contact with a world whose location on the edge of cultural and religious values in many ways antagonistic to one another made it extremely complex, he returned to Vicenza enriched by his extraordinary experience. His new, prestigious economic situation was socially sanctioned by the marriage of his son Giulio Cesare to Paola Martinengo, a member of one of the most powerful families of the Venetian mainland.

The alliance with the rich family from Brescia, however, was abruptly cut off by the premature death of Julius Caesar. The surviving daughter, called Polissena, came under the guardianship of her grandfather²³. Vincenzo Scroffa possessed an enormous patrimony and had no male heir. He was well over seventy, and after a life full of adventure, he saw the recovery of the ideological values of his lineage as his final anchor – he would return to his origins, to the past from which the traumatic experiences that had so profoundly marked him had torn him away. The journey he had taken out of a spirit of initiative (and also spurred on by pure chance), leaving behind past experience, still influenced by the native city, its traditions and its balance of power, had proved to be unsuccessful²⁴.

²¹ On this episode cf. *Cronaca di Fabio Monza*, ed. Vicenza 1888, pp. 19-21.

²² On Gaspare Ribeira, his daughter and their relations with Vincenzo Scroffa cf. B. Pullan, *Gli ebrei d'Europa e l'Inquisizione a Venezia dal 1550 al 1670*, Ital. trad. Rome 1983. pp. 357-77 and *passim*.

²³ On the events of Vincenzo Scroffa's life cf. da Schio, *Persone memorabilia....*; at the time, da Schio had access to the Scroffa family archive.

²⁴ In the second secret entailment, Vincenzo Scroffa stated that it was his intention that his granddaughter should wed "in Vicenza, and I do not intend her to be married outside of this city in any way, it being my firm intention and for the good of my granddaughter, that she and my estate should remain in my native land; knowing and for experience seen all the heiresses who in my day have been wed outside of our city, the fate they have had and I can speak about this because I have had wide experience and blessed are those who learn at the expense of others. Prohibiting I say at any time absolutely and finally that she be wed outside

He was left with this one, precious little granddaughter, Polissena, on whom he count now to carry on the ancient prestige of the lineage. But how could he ensure this for the future? He had named her his heir, without any ambiguity and resorting to sophisticated legal mechanisms which enjoyed the authority of the most distinguished jurisprudence. But powerful and influential people had laid their eyes on the granddaughter. They were people who were linked to the dominant city by relationships of patronage and dependence. Count John Martinengo had already come forward to ask Polissena's hand. He was a powerful man: his mother was a da Porto and belonged to one of the most prestigious aristocratic families of the city. Vincenzo Scroffa had rejected the new alliance²⁵. He would not repeat his old mistakes with his niece Polissena. He could ensure her future only by recovering the ancient values of his lineage. But he sensed that his denial had earned him some implacable enemies. By resorting to an open Nuncupative will, Vincenzo Scroffa had wanted to make clear to everyone that he had already made arrangements for his granddaughter's marriage. The designation of the groom in a secret entailment had a two-fold motivation: to make sure, by excluding the possibility of legal quibbles, that this decision did not interfere with the *istituto heredis* envisaged in his will; and secondly, to curb the ambitions of the powerful rival group. The request for protection that he addressed to the heads of the Council of Ten was the political final polishing of an elaborate legal plan. The long years he had spent in the Dominant and the judiciary proceedings he had been involved in with his father-in-law had probably crossed his mind as he was making this decision.

In August 1613 Scroffa Vincent was killed by Count Giovanni Martinengo's hatchet-men²⁶. At his death the first entailment, in which the Vicentine

of our city of Vicenza": ASVi, *Notai di Vicenza*, b. 9356. A statement that very likely originated in the difficulties that aristocratic families had in those years to conduct more widely-based alliances that escaped local political control and reciprocal interdependence.

²⁵ Giovanni Martinengo was the son of the condottiere Giovan Battista and of Elena da Porto di Paolo, wed in 1570. Cf. M. da Porto, *La famiglia da Porto dal 1000 ai giorni nostri*, typescript dated 1979 (of which there is a copy in BCBVi and in ASVi), p. 116. On this work cf. M. Scremin, *La storia della famiglia da Porto*, in "Annali veneti", I (1984), pp. 183-84. There is not doubt that Vincenzo Scroffa's fears from this time were focused on the powerful group that united, among others, the houses of Martinengo and da Porto, as is shown by what he states in the second entailment about the possibility that his granddaughter Polissena might not marry the person he had designated. The testamentary commissioners were to "delegate the best subject there is at that time in our city. Prohibiting completely and absolutely, that I do not want her to be wed into the house of the da Porto family, because I do not want that my property or the child go into the house for just causes that inspire my spirit and also for the good of my granddaughter": ASVi, *Notai di Vicenza*, b. 9356.

²⁶ His murder — "Remembering how signor Vicenzo dala Scrova, returning home on horseback, was attacked outside the gate of Santa Lucia and two arquebuses were shot and he

aristocrat had predisposed a large number of rich bequests to charitable city institutions was opened²⁷. On the first days of January 1619, the Council of Ten finally ordered the opening of the second entailment. Vincenzo Scroffa had given his niece Polissena two possibilities: she could choose to marry either Octavio or Antonio Scroffa, both belonging to two collateral branches of his House. If she refused to marry either one of them, she would inherit only the legitim, while the greater part of his estate would be distributed among charitable institutions.

After her grandfather's death, Polissena had been placed in the monastery of Saint Lucia of Vicenza. After she had learned the contents of her grandfather's provisions, she immediately asked the rectors of Vicenza for permission to submit her own request to the Heads of the Council of Ten²⁸. From this moment, Polissena showed her strong dislike for the future her grandfather had decided for her. She went about the matter with such skill and forethought as to allow us to imagine that behind her there must have been someone who had insinuated himself into her heart with the aim of nullifying the testamentary provisions limiting her to a specific choice.

Faced with the young woman's request, the Heads of the Council of Ten turned to Fra' Paolo Sarpi and Servilius Treo for advice. The two *consultori* were of the opinion that Polissena had to state her intentions, making a choice between the two men her grandfather had chosen for her. Put on the spot, on January 25, 1619 Polissena Scroffa decided to choose Antonio Scroffa. However, because he had just turned twelve years old, their marriage could not be celebrated immediately. In a splendid, long *consulto fra Paolo Sarpi* expressed his reflections on the case to the Heads. The *Servita* observed that Scroffa's had been drawn up with great legal skill. However, the aristocrat from Vicenza had not foreseen that at the time of the unseal-

was wounded, and almost immediately passed from this present life" — was reported in a chronicle of the time: BCBVi, ms. 165. *Memoria de batesimi et altre cose ch'ocore alla giornata di Girolamo di Masi*, c. 30. Proclaimed by the Council of Ten, Martinengo was banished on 23 September 1613: cf. F. Capretti, *Mezzo secolo di vita vissuta a Brescia nel Seicento*, Brescia 1934, p. 188.

²⁷ As testamentary commissioners Scroffa chose certain Vicentine aristocrats and the Venetian patrician Zaccaria Sagredo, to whom in the second entailment he gave the sum of 10,000 ducats, if Polissena did not follow his indications. He suggested that they should not be surprised at the extraordinary amount of money destined to bequeathments, "because I know very well that my property and income can do it". He also ordered to be buried next to his father and son, at the foot of the central altar of the sanctuary of mounte Berico, which in 1590 he had had restored and embellished": cf. ASVi, *Notai di Vicenza*, b. 9356

²⁸ On the affair of Polissena Scroffa a case file was made, containing the will of Vincenzo Scroffa, the acts promulgated by the various magistracies and the petitions and *consulti* that accompanied its progress until 26 September 1620. ASV, *Consiglio dei Dieci, Processi criminali, Dogado*, b. 1: *Scritture diverse nel negotio di D. Pulissena Scroffa*. For the sake of brevity, I shall not cite this file except for precise references.

ing of the second entailment, Antonio Scroffa might still not have reached the legitimate age for marriage, set for a man at fourteen. Vincenzo had indeed added in the document that if “some accident” arose the wedding might be postponed²⁹. But, Sarpi observed, this was not the case. Given Polissena’s choice, the marriage contract between the two young people could not be delayed, and at the age of fifteen she would be bound to it. But in the young woman’s choice Sarpi immediately perceived a risk³⁰. Indeed, Vincenzo Scroffa’s testamentary dispositions had created widespread contrariety, and it was likely that the choice of Antonio Scroffa had been made so as to bypass the strict provisions of the will. Though she could not do it *de jure*, if Polissena *de facto* broke the *de futuro* betrothals contracted with Antonio de Scroffa, the celebration of a marriage *per verba de prasenti* (before witnesses) with another person would certainly be considered valid. Most likely, the *Servita* added, “the first contract would be annulled and then a lawsuit could be brought as to whether the first contract had satisfied the obligation her ancestor had set for her.” This was actually a matter of betrothals and marriage, whose competence traditionally fell under ecclesiastical jurisdiction³¹. To avoid this risk, friar Paolo Sarpi then proposed a very singular marriage contract: the two young people were to exchange an oath of marriage, distinctly and separately, before a representative of the heads of the Council of Ten. Thus, the *Servita* added, if Polissena were to contract a wedding with another person, “this would be un-retractable *de jure* and if she wanted to violate it *de facto* she would lose the benefits of the will.”

²⁹ Polissena was to marry at the age of fifteen and a half “and if by some chance it should happen that she could not fully carry out marriage in the same year of 1619, in any case let this benefit that at the time in which it is accomplished at least with the same with the usual unrevokable words and obligations”. Scroffa had envisioned that if the two possible suitors had passed away, the testamentary commissioners were to choose Polissena’s husband among the members of the Vicentine aristocracy: ASVi, *Notai di Vicenza*, b. 9336.

³⁰ *Consulta* of fra Paolo Sarpi undated, but certainly written at the end of January 1619: ASV, *Scritture diverse*, cc. 21-23.

³¹ On these issues, cf. G. Cozzi, *Il dibattito sui matrimoni clandestini. Vicende giuridiche, sociali, religiose dell’istituzione matrimoniale tra medioevo e età moderna*, lecture notes of the course of the history of political and social institutions, Department of historical studies, University of Venice, academic year. 1985-86: “Betrothals *per verba de futuro* consisted in the commitment of two persons, of at least seven years of age, to contract marriage between them in the future; instead, betrothal *per verba de praesenti* meant the two persons, who had reached at least the age of puberty, declared reciprocally and freely their wish to be husband and wife from that very moment”. After the Council of Trent, this exchange of consent was to be in the presence of the parish priest and two witnesses. It was, however, a highly complex matter, in which the interpretation of the legal rules that governed it was very influenced by the forces at play.

Fra Paolo Sarpi's proposal represented a subtle stratagem, which, in a very delicate and controversial matter such as this one, offered among other things the opportunity of highlighting the intrinsic sacredness of political power. According to his thinking, this power could and should impose itself on the vaguer and more and instrumental power of the Church³². The heads of the Council of Ten followed the *Servita's* advice, and so Polissena was forced to give her reluctant consent.

However, the match was just beginning. The person behind Polissena was left with only one choice: in 1613 the Council of Ten had delegated to another magister any dispute that might arise concerning the estate of Vincent Scroffa. In May of 1619 Polissena's lawyer submitted to the magistrate *Sopragastaldo* a document in which he explained that his client had acquired various rights to her grandfather's wealth. In fact, she claimed her share of Ribeira's estate, which had belonged to her dead father and brother. They were legitimate claims, as the commissioner of the will soon certified, but if this were done the young woman would receive a large part of grandfather's entire estate, thus substantially disregarding his wishes. At this point, it was legitimate to suspect that Polissena's aim was to obtain the right to her share of the legitim without having to make an explicit statement about her marriage, whose jurisdiction by now fell under the heads of the Council of Ten. Above all, she would not have to formally renounce the rest of the inheritance, which is what would happen if she explicitly refused to marry Antonio Scroffa. In their subsequent *consulti* frair Paolo Sarpi and Servilio Treo observed that in any case the suit brought by Polissena's lawyers to the magistrate del Sopragastaldo should in no way interfere with Vincenzo Scroffa's will³³ and that only through the formal renunciation of its provisions could she claim her share of the legitim. Meanwhile, she could try to prove through the courts that not all of Ribeira's property rightfully belonged to Vincenzo Scroffa.

However, the two legal *consultori* had underestimated the significance that the matter had now assumed. Tensions increased when Polissena's lawyers sent legal injunctions to the commissioners of the will to release not only the part of the assets of the Ribeiras, which she inherited according to the succession line, but also her share of the legitim³⁴. The whole affair took on greater dimensions. It was now clear to everyone that Polissena had no

³² Id., *Paolo Sarpi tra Venezia e l'Europa*, Turin 1979.

³³ Cf. the *consulti* of 1 June and 9 August 1619: ASV, *Scritture diverse*, cc. 34-35, 38.

³⁴ On the part of the testamentary commissioners the suit was evidently upheld by Zaccharia Sagredo, who appealed also on the opinion of some jurists regarding the legitimacy of Polissena's requests: cf. *ibid.*, cc. 42-43.

intention to marry Antonio Scroffa, despite the promise she had formally given to the heads of the Council of Ten. Her choices showed clearly that she wanted to seize the assets of her ancestor. On the contrary, her moves gave the idea that she wanted to get hold of her grandfather's patrimony³⁵. The entire city of Venice was most likely following the development of the affair, which in many ways seemed more and more ridiculous, with the inevitable consequence of deriding the political power. Many probably saw in Polissena a clever girl able to make fun of the revered and feared Council of Ten. On the 11th September 1619 Paolo Sarpi wrote that the whole matter needed to be resolved quickly by forcing Polissena to declare herself about her grandfather's decisions, "the rumor going around this city that she had a different plan." Though it seemed highly unlikely, if she wanted to keep her promise to marry Antonio Scroffa, she would have had to drop any claim over the legitim of her grandfather's estate³⁶. Faced with this threat, on the following 23rd of September Polissena Scroffa sent a dispatch to the heads of the Council in which she finally affirmed that she did not intend to marry Antonio Scroffa, a choice, she added, that her grandfather had imposed on her "to satisfy his own passion³⁷."

Asked to review the writing of the young woman, friar Paul Sarpi stated in a new *consulto* that the matter could now be considered closed. With Polissena's acceptance of the legitim as a result of her explicit refusal to marry Antonio Scroffa, the disposition of her grandfather's will could be judged to have been respected. The lawsuit still in the courts would decide whether or not the young woman was entitled to an additional portion of the Ribeira estate. There remained the issue of the oath she had taken before the heads of the Council of Ten. True, disregarding it showed a certain irreverence on her behalf, but, as the *Servita* remarked, "the fragility of her sex and her age," called for indulgence.

Sarpi adroitly referred to the document he had drawn up together with Treo Servilius on the previous 1st of June, in which he recalled that "nevertheless, in spite of this, all laws divine and human command that her freedom not be taken away from her³⁸." It would be legitimate to expect that the episode would finally return to the normality from which Vincenzo Scroffa's unforeseeable will had removed it. However, on the 26th of Sep-

³⁵ See for example the document presented by David Cavazza, Polissena's lawyer, in which the claims on the family estate were described in great detail, along with the formal request made by the young woman on 12 August 1619 to obtain a third of her grandfather's patrimony, corresponding to her legitimate quote: *ibid.*, c. 36, 1 June 1619.

³⁶ *Ibid.*, cc. 46-47.

³⁷ *Ibid.*, c. 48.

³⁸ *Consulto* of 28 September 1619: *ibid.*, c. 49

tember 1619 the majority of the Council of Ten rejected fra Paolo Sarpi's proposal to leave it up to the magistracy of Sopragastaldo to follow up the lawsuit, and they ordered Polissena to appear before the heads, who would have to acknowledge her formal admission of renunciation³⁹. The following 17 October, the Council of Ten deliberated that as long as the lawsuit was going on, the protection it had accorded to the young woman would be in force⁴⁰. This meant, in substance, that the supreme Venetian organ did not accept the refusal of her grandfather's proposals that Polissena had made *in extremis*. In short, she had to marry Antonio Scroffa, because she had committed herself with a promise of marriage made before the heads of the Council of Ten.

Polissena Scroffa was transferred to a Venetian convent. She was allowed to be visited only by her lawyers, but in the presence of the Mother Abbess and other nuns. Her letters were intercepted⁴¹. She was now prevented from making a choice that only a few months before she could have safely made. At the end of May 1620 she sent a desperate petition⁴² to the heads of the Council of Ten stating once more that she had no intention of marrying Antonio Scroffa and was willing to drop the the lawsuit she had filed. The young woman suggested that, through the rectors of Vicenza, she could be given the possibility to choose her future husband among four or five eligible men of the city⁴³.

Asked for a new *consulto*, fra Paul Sarpi again stated that it was appropriate to go along with the young woman's request at that point. After all, this would respect the will of Vincent Scroffa. By renouncing two-thirds of the estate of her grandfather, Polissena could marry, following the advice of her relatives, "a subject of suitable quality"⁴⁴. Once again, Sarpi's advice

³⁹ *Ibid.*, c. 8. The «*parte*» was rejected with eight votes against and seven pro.

⁴⁰ *Ibid.*, cc. 54-57. On 9 October the testamentary commissioner Zaccaria Sagredo referred to the Heads that Polissena had asked for him to be called to the convent where she was and had declared that "even if I have to be broke Sir Antonio Scroffa will never be my husband and I shall declare this always and everywhere". To the advice that Sagredo had given her to choose the other Scroffa, she replied: "Worse still, one is poor and the other a beggar", *ibid.*, cc. 52-53.

⁴¹ *Ibid.*, cc. 38-64.

⁴² In a letter to the Heads of the Council of Ten, Polissena wrote "that in four days it seems to me four years and every day I have the wish to receive the Lord, I do nothing but cry and I do not want to make anyone laugh": *ibid.*, c. 59, letter of 27 October 1619.

⁴³ *Ibid.*, c. 71.

⁴⁴ *Ibid.*, cc. 75-76, *consulto* drawn up with Servilio Treo on 20 July 1620. It is significant that this *consulto* begins by recalling that the Heads had "commanded that we should give them our opinion in what manner it is just and appropriate to put an end to the business of the marriage of D. Polissena Scroffa, recommended to their Generosity and protection".

was not followed. The plea put forward by Polissena Scroffa fell on deaf ears. The woman was released on the 20th of September 1620, after making a formal engagement to marry Antonio Scroffa⁴⁵. The distance from home, the pressures of her family and the uncertainty of the future had finally won over her aversion towards a choice that had been imposed on her. In the end, the Council of Ten won out over the atmosphere of curiosity and gossip that the affair had created around it. The Venetian supreme body had also wanted to demonstrate that a commitment made before the Council was endowed with the sacredness innate in every one of the highest forms of power. Yet, behind the decision of the Council of Ten there might have been a subtle tweaking of the ear of its most illustrious *consul-tore*: as he well knew, once a principled commitment had been made, it had to be followed through to the end, at the risk of losing dignity.

In the end, Vincenzo Scroffa's wishes were satisfied. A man with deep understanding of the Venetian world of magistracies and its complex interweaving of power, the aristocrat from Vicenza had probably planned everything in advance: giving custody of his last will to the supreme Venetian magistracy would eventually end up by creating a situation that the protagonists could almost certainly not find a way out of. What is certain is that his desire to recreate a past that the traumatic course of events had torn him away from had now been assured: his lineage rose to new splendor, and in 1698 the grandson of Polissena and Antonio Scroffa, named Vincenzo, became a Venetian patrician⁴⁶.

Vincenzo Scroffa's choice to entrust the execution of his will to the Heads of the Ten is set in a social and political context that starting precisely from the second half of the 16th century had begun to take on new fea-

⁴⁵ Ibid., note placed on the frontispiece of the file: "She was freed to wed in Vicenza, as in the part".

⁴⁶ In the second entailment the Vicentine aristocrat had ordered that his home "situated in the *contrà* de Lisiera below the *sindicaria* of Santa Lucia, with all that there is in the aforesaid *contrà* and surrounding place, such as houses, lands and rents, belong to the firstborn of my granddaughter, who must have the name Vincenzo and so that the aforesaid house and property pass from firstborn to firstborn of the descendants of my granddaughter to eternity": ASVI, *Notai di Vicenza*, b. 9356. The institution of primogeniture started to spread among the Vicentine aristocracy starting from the second half of the 16th century, inspired by an inner drive aiming to enhance symbolically the ideology underlying and perpetuating the lineage: cf. C. Povolo, *La primogenitura di Mario Capra*, Vicenza 1990. On the enrolment of the Scroffas to the Venetian patriciate, cf. BCBVI, ms. 2527. In the speech read in the Senate by Vettor Zane on 26 luglio 1698 it was recalled that Vincenzo Scroffa had recorded "among his domestic memories that the greater part of his ample patrimony was founded on the fortunate marriage to a young woman who was sole heir of the Scroffa family recommended by the father to the respectable Tutelage of the Excellent Council".

tures. The loss of political identity of the mainland aristocracy and the substantial delegitimation of the subject centers had greatly complicated the course of judiciary conflicts. The courts of the dominant center had greatly enlarged their sphere of influence, creating repercussions on the civil and criminal courts of the subject centers. At the heart of the decision of the Vicentine aristocrat, there was clearly an awareness that even the most sophisticated legal instruments could not withstand a judiciary conflict that would instrumentally resort to the Venetian courts⁴⁷. The alliances and the influence at the disposal of his powerful opponents were probably what made him decide to take the initiative, politically qualifying, on the basis of his understanding of the subtle logic underlying the Venetian power structure, choices that drew their legal inspiration from the most sophisticated possible jurisprudence.

The local legislative order would, after all, be redefined under the pressure of a conflictuality that could no longer be controlled by magistracies without political authority. For centuries certain customs had marked the legal and administrative life of the subject centers⁴⁸. Its function consisted, among other things, in allowing leading aristocrats to resolve their contradictions smoothly. These practices were forced to surface⁴⁹ and to comply with the statutory editions which appeared in almost all the cities of the mainland during the 17th and 18th centuries⁵⁰. Coming up beside the judiciary precedents of the great courts of the Dominant, the new legislation took on a different legal shape, to regulate the highly complex weave

⁴⁷ It is significant that in his will Scroffa had said concerning his decisions that “[he] neither desires nor intends that there be allowed excuses of any sort; and [he] prays and begs every il. et etc, judge that may have to judge, to execute punctually and without any interpretation this disposition of his and he puts it upon his conscience, though the aforesaid signor testator is certain and secure that the Venetian judges and highest the exc. councils subject themselves like to in their judgments to the will of testators and all the subjects of this *Serenissima Repubblica* live with this certainty that their wishes will be formally executed”: ASVi, *Notai di Vicenza*, b. 9356.

⁴⁸ In matters of succession, to deal with the judiciary conflicts that were directed to the magistracies of the Dominant, Vicenza was forced to insert into the city statutes ancient customs that until then had never been formally questioned: cf. BCBVi, *Archivio Torre*, bb. 306 and 714 about the request of the city in 1634 to obtain confirmation of the customs regulating the “solemnity” of wills.

⁴⁹ About this problem cf. the reflections of di J. A. Maravall, *Stato moderno e mentalità sociale*, 2 voll., Bologna 1991, II, pp. 483-526.

⁵⁰ For Vicenza cf. B. Munari, *Notizie sulle leggi che regolarono la città e provincia di Vicenza*, Vicenza 1861. More in general G. Cozzi, *Repubblica di Venezia e stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Turin 1982

of anthropological and political relationships between center and periphery⁵¹.

⁵¹ At the end of the 18th century, Antonio Lorenzoni observed in his *Instituzioni* that legitimate succession “here, our town governments are directed by the Laws, which refer to Roman Law, to which they make but few changes ... here, it is not good to decide cases of this kind with other Laws, in existence in of our Municipal or , Roman Laws”. At another point of his work, he reveals that in a matter as “intricate” as succession “it is best to keep in mind two reflections, that is first of all that the common Law together with the Municipal do not provide at times definitively for all these possible cases and that in consequence it cannot deal with if not to what seems uniform to the Venetian Judgments in this matter”: Lorenzoni, *Instituzioni...*, I, pp. 111, 190. In the judgment of the Vicentine jurist, the judiciary precedents of the great state courts thus served to integrate the local legislation, still deeply anchored to tradition but, evidently, endowed with a diverse institutional legitimacy.

TRADITION AND JURISDICTION IN THE WRITINGS OF A 'CONSULTORE IN IURE' (GIOVAN MARIA BERTOLLI, 1631-1707)

From 'small country' to dominant city

Bertoli, Bertolo, Bertuolo, Bertolli...: no doubt, even in the disinterested complicity of Latin declinations, the continual variations in his surname that accompanied Giovan Maria Bertolli over the course of his whole life served almost as a constant reminder of his humble origins, despite his lightening rise in social position¹. This rise was truly surprising and quite unpredictable even for those decades of the 17th century, when wealth and learning conversed easily with the apparently rigid confines imposed by status and family background². In the end, supported by his social position, he himself decided on his name as *consultore in iure*, affixing the signature of Giovan Maria Bertolli to the numerous legal opinions he wrote at the request of the highest Venetian political authorities.

The priest who registered his baptism in the Cathedral of Vicenza on 2 De-

¹ His first biographer had no problem in choosing the surname Bertolli; as we shall see, a considerable part of his work was dedicated to this Vicentine jurist's activity as *consultore in iure*: L. Ferrari, *Di Giammaria Bertolli Vicentino, consultore della veneta repubblica*, Treviso 1885. Indeed, in the entry dedicated to him by G. F. Torcellan in *Dizionario biografico degli italiani*, 9, Rome 1967, p. 607, for the sake of caution Torcellan also reported the version *Bertolo* in brackets. It should not be surprising that this alternation of the surname has come down to us, so much so that the variant *Bertolo* seems to have acquired force, and has now become the predominant one today. Cf., e.g., V. Piermatteo, *Giovanni Maria Bertolo. Consultore in iure della Repubblica veneziana. Profilo di un avvocato tra professione, devozione e patrocinio delle arti*, tesi di laurea, Università di Udine, rel. V. Romani, anno acc. 2004-2005. But the variant *Bertolo* has been chosen in an even more significant context in the initiatives of the Biblioteca Bertoliana in memory of the death of this illustrious legal consultant, cf., but only as an example, section *Il Biblionauta* dedicated to Giovan Maria Bertolli and published in "Il giornale di Vicenza" of 2 Nov. 2005. More recently, on the choice of 'Bertolli', see by contrast M. Infelise, *A proposito di Imprimatur. Una controversia giurisdizionale di fine Seicento tra Venezia e Roma*, in *Studi offerti a Gaetano Cozzi*, Venice 1992, pp. 287-299.

² On the relationship between honor and wealth, see the synthesis offered by J. Casey, *La famiglia nella storia*, Bari 1991 (Oxford 1989), in particular pp. 85-108.

ember 1631 also recorded the name of his parents: *messer Iseppo Bertolo e donna Paulina*³. Though these names were accompanied by the two appellatives, which seem to attest to some degree of social prominence, we know that Iseppo Bertolo was actually of very humble origins and had for years worked as a turner and carpenter. The surname Bertolo doubtlessly came from the grandfather, Bortolo, also a carpenter, who left Cittadella to settle in Vicenza around the middle of the 16th century. His marriage to Paulina Barbieri, of a bourgeois family from Vicenza, suggests that Iseppo Bertolo had accumulated an impressive fortune, so much so that he was able to support his two sons, Giovan Maria and Nicola, in their study of the law and to acquire a considerable amount of real estate⁴.

The life of Giovan Maria Bertolli certainly represents a significant and paradigmatic example of the rise of a *parvenu* in a society still deeply marked by status and privilege. If the family's wealth, which is indubitable even if we do not know its actual origins, represented the starting point of his social climb, his knowledge, and especially his legal knowledge, was the primary instrument that allowed Giovan Maria Bertolli to achieve a prominent role in the political equilibrium of the Venetian state.

Towards the end of the 1650s, Giovan Maria Bertolli moved to Venice with his whole family. This was a significant step for him as an individual, but in a certain sense it also reflected the profound political changes that had come about in the preceding decades in the relationship between the dominant city and its subject cities⁵. Vicenza, like other large cities in the dominion of the Terraferma, had gradually lost its political identity to the advantage of the city on the lagoon. Weakened by the invasive action of the magistracies of the *Dominante*, as well as by the growth of social classes inclined to constantly challenge its authority and prestige, its institutions were no longer the emblem of its ancient municipal autonomy. It had, in fact, become common practice, at least for resolving the most pressing social conflicts, to turn to the judiciary organs of Venice. The legal instruments that had from ancient times been dedicated to defending Vicenza's political identity, and

³ The baptismal certificate is provided by Ferrari, *Di Giammaria Bertolli...*, p. 8: "On the day 2 settembre 1631. Giovan Maria figliolo of messer Iseppo Bertolo and his wife madonna Paulina, was born on the day of 31 August. In the presence of signor Cruido Aviano, the signora contessa Domiscillia Valmarana, was baptized ...". Luigi Ferrari carried out an accurate investigation of Bertolli's ancestors, also citing the marriage certificate of his paternal grandfather (cf. *ibid.*, pp. 6-7).

⁴ For documents regarding the family of Bertolli cf. Piermatteo, *Giovanni Maria Bertolo...*, pp. 96-98.

⁵ Invaluable information on this phase of Bertolli's life can be found in Piermatteo, *Giovanni Maria Bertolo...*, pp. 98-99.

even more the legal dimension underpinning this identity, which was of a Roman and jurisprudential stamp, had thus been forced to confront itself with the law of the dominant city, with its pragmatic and customary character⁶.

Similarly, the great aristocratic families that during the 16th century, Vicenza's *secolo d'oro*, had shown the ambition to achieve luster on the European scale in various spheres, from the cultural to the political and military, had lost the features that had distinguished them, even relative to the other noble and aristocratic classes of the Terraferma. Overwhelmed by internal conflicts and above all by its incapacity, or better, by the impossibility of governing the destructive outcomes of these conflicts, the Vicentine ruling class was forced to reduce its political profile and accept subordination to the relations of political nepotism and patronage typical of the Venetian patricians⁷.

These deep changes were sharply highlighted by a more general crisis of traditional values: a social hierarchy based on status and nobility of blood had to make its peace with a hierarchy which on the contrary stressed, with the values of wealth, a pressing need to redefine power equilibriums⁸.

The social and political transformations that shook the life of Vicenza were underscored by the general crisis that struck the Venetian state around the middle of the 17th century. Despite its undeniable capacity to put up both political and commercial resistance, the city on the lagoon had to face a long and wearying conflict with the Turkish power, which in the end led to a significant weakening of its hegemonic role in the Mediterranean.

Honor and honors

In the years when Giovan Maria Bertolli first made his entry in the dominant city, under the pressure of the military and financial urgency created by the conflict with the Turks, the Venetian ruling class decided to open up

⁶ See on this underlying theme my *L'intrigo dell'onore. Poteri e istituzioni nella Repubblica di Venezia tra Cinque e Seicento*, Verona 1997, in particular pp. 147-227.

⁷ Cf. again *ibid*, pp. 186-190. For an exemplary episode cf. *Il processo a Paolo Orgiano (1605-1607)*, ed. by C. Povoletto, with the collaboration of C. Andreato, V. Cesco, M. Marcarelli, Rome 2003. See also G. Cozzi, *Repubblica di Venezia e stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Turin 1982; and by the same author, for a general picture of political transformations in the life of the Republic, *Venezia nello scenario europeo*, in *La Repubblica di Venezia. Dal 1517 alla fine della Repubblica*, Turin 1992, pp. 5-200.

⁸ Cf. in particular C. Povoletto, *L'uomo che pretendeva l'onore. Storia di Bortolamio Pasqualin da Malo (1502-1591)*, Venice 2010.

the narrow passage, until then all but impenetrable, that gave access to its patrician class. Numerous wealthy families, ambitious to reach the threshold of power, paid huge sums of money to acquire the dignity of becoming Venetian patricians⁹. The climate was thus favorable for this son of an obscure carpenter, determined to make his way in the complicated, and in some ways inextricable, maze that was Venetian power.

The knowledge that Giovan Maria Bertolli possessed and the profession of lawyer that he had chosen to follow at a young age, did not seem to offer much room in a city that had not only declaredly rejected any and all reference to Roman law, but also had on more than one occasion openly shown diffidence, and even hostility, towards the cast of jurists who had made itself the jealous interpreter of that law¹⁰.

As we have said, Giovan Maria Bertolli came from a city which, like all the other great cities of the Terraferma, was deeply inspired by imperial common law. This was a legal system legitimated by tradition and by its cultural and ideological references. Moreover, it was a system that sanctioned, with the preeminence of its knowledge, the autonomy of the subject centers and the indispensable function of their ruling classes¹¹.

The great transformations that began in the final decades of the 16th century and the interference of the Venetian magistracies had paradoxically, while not in actually merging, at least put into contact the legal reality of the Terraferma with that of the dominant city, which was anchored by long tradition to customs that shunned the schemes and theories typical of imperial law¹². Thus, the legal system of the Venetian state, traditionally centered on the institutional and political separateness between subject centers and the dominant center, took on a new physiognomy. In the magistracies of the dominant city, which conflicts arising in the subject cities increasingly flowed towards, Roman law might perhaps be considered with a degree of superiority, but it certainly could not be ignored. And nor could the jurists

⁹ R. Sabbadini has treated this important phase in the life of the Venetian patriciate in detail in *L'acquisto della tradizione. Tradizione aristocratica e nuova nobiltà a Venezia*, Udine 1996. In particular, on the cooptation of an aristocratic Vicentine family into the Venetian ruling class, cf. C. Povolo, *Percorsi genealogici. Storia di donne in una famiglia dell'aristocrazia vicentina*, s.d e s.l., Vicenza 1990.

¹⁰ On this theme cf. G. Cozzi, *La società veneta e il suo diritto. Saggi su questioni matrimoniali, giustizia penale, politica del diritto, sopravvivenza del diritto veneto nell'Ottocento*, Venice 2000; C. Povolo, *Un sistema giuridico repubblicano: Venezia e il suo stato territoriale (secoli XV-XVIII)*, in *Il diritto patrio. Tra diritto comune e codificazione (secoli XVI-XIX)*, ed. by I. Birocchi and A. Mattone, Roma 2006, pp. 297-353.

¹¹ The bibliography on this theme is vast. Here I limit myself to mentioning A. Padoa-Schioppa, *Italia ed Europa nella storia del diritto*, Bologna 2003.

¹² This topic is fully treated in Cozzi, *Repubblica di Venezia...*, pp. 319 and ff.

and lawyers who were expert in this law, and who better than anyone else could express its deep, subtle logic¹³.

In the dominant city, then, Giovan Maria Bertolli could find his great opportunity. His forensic activity was by necessity limited by the consolidated existence of the *ordinari* and *straordinari* lawyers, the former of patrician lineage and in any Venetian citizens¹⁴. However, the flow of litigation arriving from the Terraferma had shown that the role of lawyers from outside could not be eliminated, both for the specific legal knowledge required and for the scope and complexity of the conflicts which the Venetian magistracies were being called upon to decide¹⁵.

We may add that Giovan Maria Bertolli's introduction in Venice was also paradoxically favored by another important factor of a political nature. In contrast to the great monarchical and princely states, the political transformations of the Venetian state, which was organized as an aristocratic republic, had had to follow other paths and assume other forms. Indeed, in the former the expansion of 17th century administrative and judiciary activity had led them, if not actually to leave behind the traditional *jurisdictional state*¹⁶, at least to

¹³ Cf. for some cases of social advancement that occurred thanks to the profession of law G. Benzoni, *Un Ulpiano mancato: Giovanni Finetti*, in "Studi veneziani", XXV (1993), pp. 35-71

¹⁴ In 1537 it was openly decided that the *ordinari* lawyers, belonging exclusively to the patrician class, should be supported by *straordinari*, who had to have resided in Venice for a certain period of time. The civil suits arriving as appeals from the Terraferma and the *stato da mar* to the courts of Venice were however supported by local lawyers chosen by the parties, cf. Cozzi, *Repubblica di Venezia...*, pp. 314-317; M. Bellabarba, *Le pratiche del diritto civile: gli avvocati, le "Correzioni", i conservatori delle leggi*, in *Storia di Venezia. Dal Rinascimento al Barocco*, VI, ed. by G. Cozzi and P. Prodi, Rome 1994, pp. 804 and ff.

¹⁵ On the profession of lawyers, see G. Alpa e R. Danovi, *Un progetto di ricerca sulla storia dell'avvocatura*, ed. by G. Alpa e R. Danovi, Bologna 2003; and on the criminal section of the Venetian Republic, *Processo e difesa penale in età moderna. Venezia e il suo stato territoriale*, ed. by C. Povo, Bologna 2007.

¹⁶ I.e., the form of state which, according to the definition of M. Fioravanti, has three fundamental features: "a territory increasingly understood in a unitary sense, but whose unity is preceded, logically and historically, by the parts that compose it, in the sense that the central government is always obliged to presuppose the existence of a multitude of subjects, ranging from towns to rural communities ...; a legal system which also increasingly works to care for the whole, but which nonetheless is not automatically translated into law hierarchically super-ordinate to the rights of the parts and the single components ...; a government that increasingly operates by referring to the territory as a whole, and also in its unitary state, but nonetheless without the intention of generating uniformity, ... a government, therefore, that does not work through an administration appointed to express in every place, in the center as in every point of the periphery, the presence and the force of the *imperium*, except for the means of its jurisdiction, which allows it to govern with far more flexibility a territorially complex unity, essentially with the intention of keeping the peace, and of bringing together and holding in equilibrium the concretely existing forces", M. Fioravanti, *Stato e costituzione*,

consolidate an elite¹⁷ drawn from both the aristocracy and the bourgeoisie, organized on a basis that tended to be hierarchical and bureaucratic¹⁸. By contrast, in the Venetian Republic, dominated by a patrician class bestowed with exclusive power, this process could not be taken into consideration. Going beyond the political and juridical separateness that distinguished the Venetian state could only be realized on the one hand by emphasizing the traditional ideology that underpinned the autonomy of the subject centers, and on the other by exalting the judiciary activity of the Venetian magistracies which catalyzed all politically significant conflicts. In this light, the formation of an elite that would identify itself with the new state project could only be fully realized by calling into question the traditional prerogatives of the city's patrician class¹⁹.

Having left behind his *piccola patria* still clinging to its traditional though by- then weakened power structures, where he could not expect anything much, Giovan Maria Bertolli arrived in the great dominant city. There he caught sight of the narrow pathways that could lead to new opportunities for a man like him, equipped with both knowledge and ambition²⁰.

The profession of the law, already undertaken in Vicenza and almost certainly followed, at least at the beginning, at the margins of the great Venetian *straordinaria* legal profession, was in all likelihood favored by his marriage to Serafina Barbieri, who belonged to a prosperous family of citizens²¹. Personal and family relations, developed both in the dominant city and in

in *Lo stato moderno in Europa. Istituzioni e diritto*, ed. by M. Fioravanti, Bari 2002, pp. 8-9.

¹⁷ Both through the presence of courts and through the absorption of the provincial nobility or of members of bourgeois origins into the ranks of those in charge, cf. on this subject J. A. Maravall, *Stato moderno e mentalità sociale*, Bologna 1991 (Madrid 1972).

¹⁸ Problems which, also from the historical standpoint, have been dealt with by M. R. Damaška, *I volti della giustizia e del potere. Analisi comparatistica del processo*, Bologna 1991, in particular the chapters dedicated to the *Modello gerarchico e modello paritario nel contesto storico*, pp. 68 and ff.

¹⁹ On this topic I once again refer to my *Un sistema giuridico repubblicano...*, in particular pp. 340-347.

²⁰ These were paths already opened in the course of the 15th century, but which in the following century widened considerably, thanks also to the changes that took place in relations between subject centers and dominant center. To remain in the context of Vicenza, we can mention Marcantonio Pellegrini, Sebastiano Montecchio and, above all, Angelo Matteazzi, renowned exponent of the humanistic legal school, cf. Povolo, *L'intrigo dell'onore...*, pp. 147 e sgg.

²¹ For the abundant and well-documented information about Bertolli's family I once again refer to Ferrari, *Giammaria Bertolli...*, pp. 10-12 and Piermatteo, *Giovanni Maria Bertolo...*, pp. 97-100. The Barbieri family belonged to the *original citizens*, that important intermediate social segment below the patricians. From this segment were chosen the *segretari* who did their work in the ambit of the Venetian magistracies, cf. A. Da Mosto, *L'archivio di stato di Venezia*, I, Rome 1937, p. 74.

his native city, helped him to practice an activity carried on in close contact with the complex network of Venetian magistracies. Few traces are left of this activity, since it was probably done mainly in support of harangues pronounced by lawyers already certified in the Venetian forum.

Of this first phase of his activity there remain only a few letters and documents concerning a lawsuit he followed in the years 1662-63, very likely in the role of public prosecutor. This was a dispute between the ancient hospice of the Proti of Vicenza and the Pestalozzi family. The point of contention (*turbato possesso*) was banal: both parties lay claim to a boundary wall, for opposite reasons. In his defense of the position of the *governatori* of the hospice, in the documents he wrote for the occasion Bertolli already shows a pronounced inclination to interpret legal language in the light of historical research. We might call this a *historiographical* dimension, and we shall find it again far more developed in the following decades when Bertolli worked as *consultore in iure* for the Republic²².

We know very little of his activity as public prosecutor and lawyer in the 1660s and 1670s. It must have produced results profitable both economically and professionally, since in the following decade Bertolli obtained various social honors, especially remarkable for a man whose obscure origins seemed to emerge continually in the uncertainty of that surname, which so clearly harked back to his forebear, Bortolo²³.

Honor and honors were intimately tied in the period when Giovan Maria Bertolli was making a place for himself among the thick throng of protectors and protected that animated Venetian political life²⁴. In 1680, almost certainly drawing on the well-furnished family purse, he won the title of imperial count, which was ratified by the Venetian Senate in 1683²⁵. Though

²² The matter is summed up by Ferrari, *Giammaria Bertolli...*, pp. 16-21. In certain of his letters addressed to the *governatore* of the hospice, Bertolli communicated that he had stressed the social function of that charitable institution. He also did research in the hospice's archives, examining the 15th century will of its founder in order to find arguments that could lead to a successful outcome of the lawsuit being debated in *Quarantia*.

²³ It is likely that Bertolli acquired the status of *straordinario* lawyer, seeing that a professional standing of such high renown can be explained only by his direct conduct of lawsuits debated in the highest magistracies of the *Dominante* and in contact with the patrician *ordinari* lawyers.

²⁴ The system of *protections* in a republic followed very complicated rules, but it worked as a real system parallel to the institutional one, profoundly influencing political and social relations between the dominant and the subject centers, cf. C. Povolo, *The creation of Venetian historiography*, in *Venice reconsidered. The history and civilization of an Italian city state. 1297-1797*, ed. by J. Martin and D. Romano, Baltimore 2000, pp. 495-497.

²⁵ Once again, for information about the concession and ratification of this title, see Ferrari, *Giammaria Bertolli...*, pp. 34-40; Piermatteo, *Giovanni Maria Bertolo...*, pp. 99-100.

this title was in a certain sense inflated by the frequent concessions granted to all those who aspired to it, in the case of Giovan Maria Bertolli it was a sign of great praise. Money and knowledge had, in fact, contributed in equal measure to sanction a privilege that turned its eyes away from a socially questionable family background.

A reciprocal exchange of affection

But Giovan Maria Bertolli made his real leap to fame in 1684, when, on the proposal of the *Riformatori allo Studio* of Padua, the Venetian Senate named him *consultore in iure* “in all matters that will be necessary from day to day”. The appointment meant leaving his activity as lawyer and taking up stable residence in Venice²⁶.

This was a prestigious appointment that lay within a by-then consolidated tradition that had begun in the first years of the 17th century when the same office was granted to fra Paolo Sarpi. The office of *consultore in iure* reflected to the highest degree both the specific dimension of the Venetian state and the features of Venice’s legal system, in itself an expression of the most typical and obscure aspects of a system of power at once republican and aristocratic. Above all in these last decades of the 17th century, as we shall see, the activity of *consultore* was not in contrast with the juridical learning of the Roman tradition that characterized the legal world outside of Venice. In the *integrazione* to *consultore feudista*, bestowed on him the following year, the Venetian Senate specified why the choice of Giovan Maria Bertolli was especially appropriate:

We recognize as right and worthy the choice of Count Doctor Giovan Maria Bertolli who possesses all the most desirable parts of experience, ability and *dottrina*, bolstered by long and praiseworthy practice in the forum and still more in the role of *consultore in iure*, which he performs with full public satisfaction ...²⁷

Along with his *dottrina*, his activity in the Venetian forum was thus considered an integral and distinctive part of the cultural traits and experience that would best benefit the activity of *consultore in iure*. As has already been said, this was an activity that in those years expressed a sort of synthesis between common law and Veneto law, a synthesis clearly interpreted in ex-

²⁶ The documentation concerning Bertolli’s appointment was examined by Ferrari, *Giammaria Bertolli...*, pp. 42-44.

²⁷ *Ibid.*, p. 44.

PLICITLY political terms in the republican legal system that distinguished the Venetian state²⁸.

Thus, Giovan Maria Bertolli had reached a highly desirable political-cultural target, in a certain sense the highest that could be aspired to in the Venetian state for someone who came from a subject center.

There was no delay in the recognition given by the *piccola patria* of his origins, both in the form of attestations of praise and the bestowing of other honors. In 1689 the *Collegio dei giudici* of Vicenza, recalling his “rare virtues” and “singular merit”, proposed to Giovan Maria Bertolli to become an effective member. This proposal was accepted by Bertolli, who expressed his deep satisfaction in the following honeyed words:

I wish that my abilities were more distinguished so as to be worthy of it and great is the merit of this great consent. In it they will always be employed in its adored service and in particular I shall never leave off the continual exercise of my most reverend esteem²⁹.

In previous centuries the *Collegio dei giudici* of Vicenza was a prestigious magistracy. Organized by a fixed number and composed of jurists trained in Romanist law, it had constituted the cultural backbone of Vicentine political life. Its members had always played an important role in the ancient court of the *Consolato*, which held broad jurisdiction in criminal cases. They occupied by right the great majority of the civil magistracies of the city. The members of the College also had the exclusive right to handle, in their capacity as lawyers, every lawsuit debated in the ambit of the Vicentine forum. Thus, as an integral part of the ruling class of the local aristocracy, the jurists of the College performed the function of mediation and interrelation between the legal sphere and the more strictly political one. Moreover, with the exclusivity and prestige of their language they also expressed the legitimacy of the city’s autonomy and its ideological references, which were underpinned by imperial Roman law. In the course of the 17th century, with the gradual weakening of the city’s political autonomy along with that of its ruling class, the *Collegio dei giudici* also lost the prestige and, above all, the essential role

²⁸ Cf. Povoletto, *Un sistema giuridico repubblicano...*, p. 319.

²⁹ Piermatteo, *Giovanni Maria Bertolli...*, p. 102. On the institution of the *Collegio dei giudici* of Vicenza see the very complete and well-documented work of L. Faggion, *Les seigneurs du droit dans la République de Venise. Collège des juges et société à l’époque moderne (1530-1730 env.)*, Geneva 1998. Faggion also cites Bertolli’s enrolment in the College, “l’une des personnalités les plus spectaculaires de la seconde moitié du XVIII^e siècle”, recalling that “malgré ses origines roturières et conformément aux statuts du Collège des Juges, il est accepté comme membre en 1689”, (pp. 254-255).

it had played in the two previous centuries in recomposing and containing local conflicts.

The bestowal of such a high honor on Giovan Maria Bertolli, whose humble origins were certainly not unknown, was certainly an expression of recognition of his brilliant career. But above all it represented the need felt by the Vicentine *Collegio* to dispose of an essential point of cultural and political reference, which with the passing of time could prove itself useful.

Thus, the tables had been turned on the past, and now it was the *parvenu* on whom the dominant city's most splendid laurels had been set who was to be honored and revered. In this context can be read the subsequent granting of Vicentine citizenship to Bertolli (which entailed entrance into the *Consiglio dei 500*) and also his cooptation into the far more prestigious *Consiglio dei 150*, responsible for governing the city's political life³⁰.

The illustrious offspring, yet still the *parvenu*, great grandson of that obscure 16th-century carpenter lacking even a surname, had therefore been received by his native country with all the honors required by his new social condition. In reality, by so doing, the Vicentine ruling class was in fact reaffirming the indispensable bond of tradition and the cohesive force of ancient privileges. Only with great difficulty could Giovan Maria Bertolli have refused such an interested proposal. All things considered, it was a proposal essentially useful and fruitful for the very city from which some decades before he had set out ambitiously, armed with his learning and the wealth accumulated mainly thanks to a farsighted marriage strategy. After all, though reduced in its political dimension, thanks to the bestowal of honors inconceivable a century before, the city of Vicenza was nonetheless reaffirming its essential role in a state inexorably destined to maintain its composite and fragmentary nature. The ambiguity of this relationship continued into the following years with the election of Bertolli as *deputato ad utilia* on the part of the *Consiglio dei 150*³¹. This was obviously a wholly nominal election, which aimed to give symbolical sanction to the ties of this illustrious native son with his country of origin.

But the high point of this reciprocal show of affections was reached some years later, when, with a decision that would seem to reaffirm his insepara-

³⁰ Ferrari, *Giammaria Bertolli...*, p. 55, who also cites the passage in which the Vicentine *Consiglio* motivated the honor bestowed: "So it is highly fitting that this city, which is his homeland, should award this native son the highest ornament possible, so much the more so in that on every occasion of public need he has made his virtue and assiduous assistance stand out, with his prudent and authoritative directions for upholding the dignity of the homeland".

³¹ Piermatteo, *Giovan Maria Bertolo...*, p. 103. The restricted group of *deputati ad utilia* constituted the organ that presided over the city council.

ble ties to his native country, Giovan Maria Bertolli left his precious personal library to the city of Vicenza. This offer was readily accepted by Vicenza's ruling class. After the jurist's death in 1707 this bequest led to the formation of the city library, which in honor of its generous donator was given the name Bertoliana³². The absence of a consonant testifies once again to the alternating coming and going of a surname that the illustrious jurist had in vain attempted to establish as fixed. In any case, this absence once again recalls the obscure origins of his birth, even after his death. And, if we look closely, the consequence (a paper one) of the legal learning that had made such a great contribution to Giovan Maria Bertolli's social climb seemed, significantly enough, to return to his native country in the form of the donation of his precious *libreria* to the city.

The consultore in iure

Giovan Maria Bertolli acted as *consultore in iure* from 1684 to 1707, the year of his death. Many decades had passed since fra Paolo Sarpi, in 1618, had drawn up his famous *consulto* (expert opinion) entitled *Carico di consultor in iure della Repubblica* ³³. In that *consulto* the great *Servita* had openly maintained that it was the essential task of the *consultore in iure* to argue "what there is of reason in the fact or case or business that is proposed to him". An essentially pragmatic way of arguing, little inclined to the elaborate reflections of jurists and aiming instead to reconstruct historically, through documentation, matters of interest to the Republic. These were, for fra Paolo Sarpi, the features that should mark the *scritture* that the *consultore in iure* drew up to respond to the queries of the Venetian magistracies. In this as in his other writings, the *Servita* indirectly suggested that it was best that the *consultore* not let himself get tied up in sophisticated legal questions, and that he should also avoid dangerous statements of principle unless they were absolutely necessary. It was fundamental, this great *consultore in iure* went on to say, that the affirmation of the sovereignty of the Republic be pursued with the main object of keeping the trust of its subjects³⁴.

³² On this matter see Ferrari, *Giammaria Bertolli...*, pp. 61-77.

³³ The *consulto* was published in Paolo Sarpi, *Opere*, ed. by G. and L. Cozzi, Milan-Naples 1969, pp. 464-467, with an introductory note on pp. 461-463.

³⁴ I believe it essential to recall an important passage of the *consulto* of 1618, which illustrates the *historiographical* stamp that the writing of the *consultore in iure* should have: "A minimal document ignored and even a minimal passage of a document and a minimal occurrence not know, makes the counsel useless and not applicable ... in affairs connected with matters of hundreds of years those who don't have the time to check all things properly and can't be

With the thorny question of the *Interdetto* and the appointment of friar Paolo Sarpi to the position of *consultore in iure*, consultative activity in the Republic of Venice had immediately taken on completely innovative aspects, decidedly distancing itself from what had, above all in the preceding century, been done by Romanist-trained jurists through their *consilia*³⁵. The new consultative activity in reality explicitly mirrored the deepest spirit of the Veneto legal system. This was an eminently customary legal system, scarcely inclined to abstraction and on the whole contrary to forms of jurisprudential mediation on the part of jurists grounded in Romanist law. Recourse to the latter had in fact been practiced until then to settle lawsuits or to reaffirm the sovereignty of the Republic, but in a context in which the form of the *jurisdictional state*³⁶ still prevailed, and in which it was also necessary to reflect the complexity and polycentrism of the *stato da terra* and the *stato da mar*.

The profound transformations that took place in the 16th century and the controversy of the *Interdetto* showed that the *diritto veneto* or, better, the Venetian legal system consolidated over the centuries in the city on the lagoon, had been obliged, in a certain sense unwillingly³⁷, to reaffirm itself with regard to the imperial Roman law in use above all in the wide and varied territory of the Terraferma³⁸. From the political standpoint, starting from the late 16th century the Republic had increased its interference, thereby damaging the prerogatives and the subtle balance that had from the early 15th century underpinned the life of the subject centers. What is more, with the *Interdetto* Venice had begun a genuine controversy with the Church.

sure that there isn't anything else to find out, shall never give a definite answer", cf. C. Povolo, *Un rapporto difficile e controverso: Paolo Sarpi e il diritto veneto*, in *Ripensando Paolo Sarpi*, ed. by C. Pin, Venice 2006, p. 395-397.

³⁵ As Antonella Barzazi has observed, the very old usage of recurring to famous jurists to settle the controversies that arose had, in the course of the 16th century, grown greatly, above all following the institutional changes that took place at the end of the century and the increasingly frequent instances of intrusion on the part of the Holy See, cf. A. Barzazi, *I consultori "in iure"*, in *Storia della cultura veneta. Il Settecento*, 5/II, ed. by G. Arnaldi and M. Pastore Stocchi, Vicenza 1986, pp. 179-180.

³⁶ Cf. *supra* for the definition of the jurisdictional state.

³⁷ Unwillingly seeing that Venice had been obliged to give up the legal and political separateness that had for centuries distinguished the ancient city state, cf. Povolo, *Un sistema giuridico repubblicano...*, pp. 335 and ff.

³⁸ In criminal law the insertion of the Veneto legal system (above all through the mandate of the ritual of the *Consiglio dei dieci* to the rectors of the large cities of the Terraferma) had taken place by superimposing itself or flanking the local jurisdictions; while in civil law certain magistracies such as the *Auditori novi* and the *Avogaria di comun* had facilitated recourse to the appeal magistracies in Venice (the *Quarantie*), cf. for an example that is still original, the chapter dedicated to Polissena Scroffa.

These changes had been profound and complex, also because they were carried out with extreme caution and without ever formally questioning the age-old institutional structures that formally legitimated the traditional *jurisdictional* state. It should be noted that they occurred within the context of a complicated European framework, which saw the affirmation of the prerogatives of sovereigns and princes over centers of power that had enjoyed full political legitimacy until then ³⁹.

In the Republic of Venice, the affirmation of Venetian law had in reality taken place without substantial changes in the overall institutional (and formal) structure, despite the undeniable reversal of the relations of force between the dominant and the subject centers. The question of the *Interdetto* brought to light certain contradictions that would continue to remain unsolved until the fall of the Republic. The imposition of the Veneto legal system and the preeminent role taken on by the magistracies of the dominant center highlighted the impossibility for a republic and its ruling aristocratic class to reorganize the form of the state, despite the changes that had occurred in relationships of power⁴⁰. This problem was even more important after the serious clash with the Church, whose system of law was based on the same ideology underlying the imperial Roman law that regulated the life of the large urban centers of the Veneto Terraferma.

Thus, the new consultative activity inaugurated with fra Paolo Sarpi was called upon to give replies to and interpret a series of legal and political issues that were constantly coming to the fore. In his writings the *consultore in iure* had to grasp the essential political dimension of the controversies and questions submitted to him, dealing with the complex relationship that connected the Veneto legal system (expression of the legitimacy of the power of the Venetian ruling class) with the system of imperial Roman law that still shaped the main features of the subject centers.

Though the activity of *consultore in iure* did reflect the personality and learning of the person holding the appointment, it generally adapted itself to the political line of the Venetian patriciate, and obviously also to the more or less forceful position taken by the Republic towards other states and the Holy See itself. After the disappearance of the protagonists of the *Interdetto* between the 1620s and 1640s, and in the face of the political and military

³⁹ On these aspects, see A. De Benedictis, *Politica, governo e istituzioni nell'Europa moderna*, Bologna 2001; I. Birocchi, *Alla ricerca dell'ordine. Fonti e cultura giuridica nell'età moderna*, Turin 2002, pp. 317-391.

⁴⁰ The impossibility of creating a hierarchical administrative and judiciary structure (cf. on the problem Damaška, *I volti della giustizia...*, *passim*) which, behind the changed relationships of power, could absorb the aristocracy of the Terraferma, led to a sort of *under-representation* of power and a sharpening of conflicts, cf. Povolo, *L'intrigo dell'onore...*, pp. 186 and ff.

problems that invested the Republic around the middle of the century, consultative activity lost much of its propulsive force or, more precisely, the propensity of the Veneto legal system to constitute itself as a distinctive element in the practice of government was weakened⁴¹. At the time when Giovan Maria Bertolli was named *consultore in iure* the activity of *consultore* could in fact boast a certain tradition, but it had lost luster both in consequence of the weakening of the Republic's jurisdictional activity and of the evident political and military difficulties it faced.

Starting from the 1680s, the Republic took on new-found vigor, both in foreign affairs and domestically. The conquest of the Peloponnese had made it seem possible to take on a new, active role on the European scene⁴². The conflicts with the Church seemed to be following an incisive political line intended to reaffirm centuries-old prerogatives⁴³. As regards criminal law, in the last two decades of the century the *Consiglio dei dieci* began a determined activity of control over the courts of the subject cities⁴⁴.

Giovan Maria Bertolli, therefore, performed his activity of consultation at a time when the *consultore in iure* was called on to answer serious questions that required not only learning and knowledge of the problems, but also the vocation to make himself a scrupulous interpreter of the new political phase the Republic was experiencing.

Though his juridical backing was Romanistic, as we have already noted, in the course of decades of legal practice spent in the Dominante in close contact with the Venetian magistracies, Bertolli had acquired a thorough knowledge of the Veneto legal system as well as of the political dynamics that animated the Venetian ruling class. In his numerous *consulti*⁴⁵ we can see the com-

⁴¹ As has been observed by Antonella Barzazi, "in the second half of the 17th century, the *consulto* tended to lose the close relationship with contemporary reality and the perceptive appreciation of practical experience that were typical of its traditional structure, and to take on instead a long-winded, erudite historical character, rarely the fruit of new research and often lacking ties to specific facts", cf. Barzazi, *I consultori in "iure"...*, p. 191. Cf. also Infelise, *A proposito di Imprimatur...*, pp. 287-288.

⁴² Cf. G. Cozzi, *La Repubblica di Venezia in Morea. Un diritto per il nuovo Regno*, in Cozzi, *La società veneta...*, pp. 267-310.

⁴³ For a significant instance cf. Infelise, *A proposito di Imprimatur...*, passim

⁴⁴ Cf. C. Povolo, *Retoriche giudiziarie, dimensioni del penale e prassi processuale nella Repubblica di Venezia: da Lorenzo Priori ai pratici settecenteschi*, in *L'amministrazione della giustizia penale nella Repubblica di Venezia (secoli XVI-XVIII)*, II, ed. by G. Chiodi and C. Povolo, Verona 2004, pp. 25-32.

⁴⁵ The *consulti* are housed in the Archivio di stato of Venice (= A.S.V.), filze 139-158. Luigi Ferrari, who consulted them and published some in their entirety, wrote that there were roughly 1,500. Many *consulti* were signed by Bertolli together with other *consultori*. As Ferrari himself observed in his time, the nineteen *tomi* are missing some *consulti*, including the very large, important one concerning the administration of the Peloponnese.

plexity and wide scope of the questions dealt with in the twenty years of his activity as *consultore in iure*. These ranged from matters of ecclesiastical and international politics to the very frequent questions concerning boundary disputes, feudal rights and religious practices⁴⁶. These *consulti* delineate the complex activity of governance exercised by the highest Venetian magistracies, as well as the personal attitude and cultural profile of a man who, in the course of his life, had been able to take on legal traditions that in many way seemed contrasting, but that were constantly wedded in the political action carried on by the Republic in those final decades of the 17th century.

Actually, Giovan Maria Bertolli's legal training was, more than a conceptual tool of analysis, a cultural substrate that enabled him to penetrate the vague, multiform vague world of the jurisdictional state. This, in fact, consisted of legal systems that crossed and overlapped each other; of jurisdictions that came to light *ex-novo*, putting more ancient ones into shadow; of customs that seemed to loom up out of the past to contest intrusions that used a different legal language; of controversies involving minute communities that threatened border arrangements between states.

But Giovan Maria Bertolli had also penetrated the complicated windings of the Venetian power system. In his role as lawyer he had doubtlessly been able to grasp the subtle dynamics that animated the Venetian magistracies, which represented the emanation of a state structure republican in form, whose aristocratic ruling class took shelter in the fortress of its own political prerogatives. An elite plutocratic ruling class, which exercised power essentially through control of certain political organs, but which could not give up the ideological and cultural lure of the *equità* and *giustizia* that for centuries had inspired the existence of the patrician class and of the Venetian Republic itself.

The complex and certainly not univocal connections that related the Veneto legal system with common law were expressed particularly in the Republic's attitude towards the Holy See and its inevitable interference in

⁴⁶ Ferrari described Bertolli's many contributions as follows: "I find him treating questions of canon law, public law, international, administrative, trade, feudal law, etc.; disputes between the high and the low clergy, quarrels with Rome, with States and Princes; and conserving what I should say were the almost unlimited rights of the Government, embroiling himself in border conflicts and contestations, in violations of ceremony, in the appointment of Bishops; and then, following Court intrigues and the feigned intentions of crowned heads, including that of Caesar, and after descending to discuss criminal cases, private interests, including even the permission to put up a factory or an oratory, or granting a pension, or detaching a passport beyond the *Dominante*", *cf. Ibid.*, pp. 82-83. In reality, Bertolli's biographer did not fully grasp how this complex consultative activity mirrored the specific dimension of the jurisdictional state of the *antico regime*, which lay beyond the vision of public law that would be affirmed in the course of the 19th century.

Venetian political life. This interference obviously called into question the sovereignty of the state, but it was also perceived by a broad segment of the city's patrician class as an invasive and destabilizing threat to the fragile (and hypersensitive) system of republican power. The very notion of jurisdictionalism, which was expressed in its broadest and most intransigent form with the *Interdetto*, drew its deepest logic from the need to defend the innate egalitarian vocation of the aristocracy and its republicanism. The profuse donation of benefices and honors, which the Holy See so frequently reserved to certain powerful patrician families of the Republic, risked damaging the foundations of the Republic's very legitimacy. This was a constant problem in the continuing dialectic that animated the life of the city's magistracies: on the one hand were the prerogatives, constantly claimed, by a representative organ like the *Maggior Consiglio*, on the other effective power, held by certain restricted organs like the *Collegio* and the *Consiglio dei dieci*⁴⁷.

It is not by chance that most of the activity of the *consultori in iure* regarded ecclesiastical matters, in all their nuances: from questions of great political relevance to the smallest ones involving single persons, communities and parishes. And, we might add, it is not by chance that the figure of the *consultore in iure* mirrored the essence and the peculiarities of the Veneto legal system: in its traditional features, reflection of an institutional and legal structure that felt the prerogatives of the ancient city state to be inalienable; but also in its new political repercussions, expression of a state reality by then decidedly inclined to accept, though without renouncing its own pre-eminence, the multiform realities of the subject centers and the Romanistic legal tradition that significantly still represented them.

⁴⁷ This tension is well summed-up by G. Cozzi: "The law was to be ... expression of a collective will, always active, always able to modify what had been disposed through adequate instruments, such as the vote and active participation in the government of the Republic. For citizens of a republic, the law cannot therefore be an imposition from outside, the projection of an external authority. And an authority could also be external if entrusted to members of the aristocracy itself, but ones who had removed themselves from the control of the others and had cancelled the equality that ought to put everyone on the same plane, under the rule of the same law. The same was true for justice: without equality, it was not possible to do or to have justice, without the free participation of all in the government of the Republic, it was not possible to do or to have justice..." , cf. Cozzi, *Repubblica di Venezia...*, pp. 174-216; and also Povolo, *Un sistema giuridico repubblicano...*, p. 325.

The dimensions of the sacred

Thus, Giovan Maria Bertolli, the *parvenu* hailing from a subject city still jealously holding on to its privileges, who had arrived in the great dominant city equipped with his formidable legal knowledge and the wealth soon amassed by penetrating the complicated network of its magistracies, was called on to become guardian and interpreter of the great tradition referring back ideologically and mythically to the charismatic figure of fra Paolo Sarpi. In Bertolli's *consulti*, ecclesiastical questions, in all their complexity, decidedly prevail. In the *consulto* written up on 16 March 1690, Bertolli treats what may perhaps be considered the most important issue of a jurisdictionalist nature that the Republic had to face in its dealings with the Holy See: the prerogatives of the Church of San Marco and of the *cappella regia* of the Doge⁴⁸. Although it reads like a sort of concise informative note to be communicated to the ambassador to the Holy See, the *consulto* unhesitatingly expresses the most classic ideas of Venetian jurisdictionalism on this issue. After pointing out that San Marco's was a parish church, with its own baptismal font and territory over which it had jurisdiction, Bertolli observed that the Venetian Doges had always exercised, personally or through the *Primicerio*, a far wider and symbolically significant jurisdiction. Indeed, the *Primiceri* had always performed functions that were usual of the bishops :

They have always, after an examination, in every century granted the *interventi* to San Marco the dimissory letters so that they can be ordained and receive holy orders. They have given license to confess and administrate the sacraments, in this as in the other churches and hospitals united to it. They have dispensed marriage bans, performed the proofs of freedom for these marriages and when necessary also for those celebrated by sacristans.

All this had been done, according to Bertolli, without any interference in the Doges' prerogatives on the part of the Patriarch of Venice or the apostolic nuncio. This seems to lead to the conclusion that at the origins of the jurisdiction of the Church of San Marco there existed an ancient pontifical concession, which probably was lost in the course of time, "but, kept alive by centuries of use, retains its force and can be adduced for any privilege". The Doges' prerogatives were, therefore, sanctioned essentially by custom and by the Republic's inclination to keep them alive and whole over

⁴⁸ Archivio di stato di Venezia (=A.S.V.), *Consultori in iure*, busta 141, 16 March 1690, drawn up with another *consultore*. The matter has been treated by G. Cozzi, *Il giuspatronato del doge su San Marco. Diritto originario o concessione pontificia?*, in Cozzi, *La società veneta e il suo diritto...*, pp. 231-247.

the course of time. What is certain is that the *consultore* was aware that this was a question of prerogatives even more important in a republic in which the authority of the *principe*, by contrast to what happened in monarchies, was clearly weaker, both from the charismatic and the political standpoints.

And indeed, to conclude his note Bertolli recommended extreme caution: the information he had accurately reported was to be communicated to the ambassador so that he could proceed in the most opportune manner, but it must not be formally communicated in detail to the Holy See. It sufficed for the Republic to claim its regal prerogatives, validated by custom and, if it were the case, to aim at obtaining a pontifical breve that would broaden and strengthen them in the most appropriate way.

Certainly, the *consulto* written to define the Doges' prerogatives over the Church of San Marco was only a faint reminder of the heated claims of the same sort in the days time when the Republic was fired by an inflexible defense of its sovereign prerogatives.

As we have said, the last decades of the 17th century saw the Republic playing a more incisive and effective role both in international and domestic politics. From many standpoints, the activity of the *consultori* reflected this new-found dynamism, and as Giovan Maria Bertolli gained confidence in the role entrusted to him, we can note a more personal style which, though somewhat hesitantly, harks back to the former tradition of the *consultori* inaugurated by fra Paolo Sarpi.

The ability of the *consultore* lay essentially in his capacity to understand on the one hand the essence of Veneto law and its republican spirit, and on the other the dynamics that animated the ruling aristocracy. The propensity always to give pride of place to a flexible and efficacious praxis and to shy away from questions of principle had to be accompanied by his specific sensibility in understanding how to underscore, with sagacity and prudence, the risks that could derive from allowing attention to the sovereignty of the state to slacken.

In this regard, particularly significant is the lengthy *consulto* that Bertolli drew up on 20 July 1699 concerning one of the most delicate aspects of the thorny and competitive relationship between the secular and the ecclesiastical powers, i.e. the publication of the so-called *Bolla in Coena Domini*⁴⁹. In a lengthy and detailed historical examination, Bertolli recalled that the *Bolla*, customarily published on Holy Thursday, was very ancient, even if it was not until 1569 that it was formalized by Pope Pius V in terms that would afterwards come to interfere in the relations between State and Church.

⁴⁹ The *consulto* is in A.S.V., *Consultori in iure*, busta 150, 20 luglio 1699.

Published yearly in every city of Christianity, the papal bull peremptorily reaffirmed the authority of the Holy See and inflicted sanctions and excommunication on all those who in one way or another wronged the prerogatives of the Church and its clergy.

As Bertolli observed, there were many points raised by the publication of the bull regarding the *Potestà dei Principi* that led to friction, ranging from fiscal to beneficiary questions and from legal appeals to ecclesiastical immunities⁵⁰. In his historical reconstruction, Bertolli noted that the papal *Bolla* had been contested in the great European monarchies and had in the end caused the great controversy of the *Interdetto* in the Republic of Venice⁵¹. Those bitter conflicts, however, had in large part disappeared, and

⁵⁰ I believe it is useful to cite the point at which Bertolli dealt with the question of immunities, also because it is a frequent argument in numerous opinions written by him during his activity as *consultore*. “The fourth [point] is the intromission of lay magistrates in criminal cases against ecclesiastics, by trying them, catching them, banishing them or in other ways condemning them in punishment of their crimes, as though this were to offend ecclesiastical immunity, but this immunity or extension of the lay *potestà* that the ecclesiastics claim, consists of two almost parts; one concerns, as we have said above, only spiritual things and feast days, which Christ Our Lord has instituted and ordained ministers for the health of the people; the other regards temporal and worldly things, in which, in order to make their ecclesiastical ministry more decorous and free for holy functions, their persons are seen equally exempt. The former immunity is *de iure divino* and he who offends or alters it without doubt meets with the censures of this bull; but the latter is nothing but *de iure positivo humano*, so that regard to that bull, it cannot oblige, except in those places and for those civil or criminal cases in which it is custom. From this it follows that when it [the bull, *tr.*] prohibits secular judges from proceeding criminally against the same ecclesiastics, an exception must be made for those places in which there is the usage and original custom that certain particular crimes are punished for them as well by the secular jurisdiction, crimes which as the most atrocious and consequently offensive to the public peace deserve a blood penalty, which as the more atrocious and consequently more offensive to the public quiet merit blood penalties, not contemplated in the holy canons. This custom, in fact, is current especially in this *Serenissimo Dominio*, and being legitimately laid down from time immemorial, born with the very *potestà* that constitutes the *Repubblica Serenissima* in the guise of the sovereign Prince, cannot be either by the present bull or by other ecclesiastic law, with which *non obstantibus derogata*, otherwise the *ius humano* would be over the divine, since it cannot be denied that the Principato is instituted by natural divine law and approved by divine evangelic law with the precise aim of the temporal public tranquility. And if God has instituted to this end the Princedom, He must certainly have given the Prince every means necessary and opportune relative to the same, among which there is no doubt that among the main ones is that of chastising and punishing all wrongdoers ...”, *Ibid*, busta 150, cc. 345-346, alla data. Arguments, as we can see, were completely consistent with the established Venetian jurisdictionalist tradition.

⁵¹ It is worthwhile to cite the passage in which Bertolli recalled the *Interdetto* and the figure of Paolo Sarpi. “The Holiness of Paul V, who at the beginning of the current century, having just taken on the papacy, showed himself to be so dissatisfied with it that he took the step of fulminating with the *Interdetto* the *Serenissima Repubblica*; but with what happy outcome we shall allow the truth of history to narrate. What is certain is that from that time to now the

things had changed. Surprisingly enough, almost between the lines Bertolli reminded his interlocutors of a paradoxical aspect of the situation that had come about in Venice:

Considering that the publication of this bull has little by little been put into disuse, mostly in many cities of Italy and perhaps in all of the *Serenissimo Dominio* except for Venice, it would seem by hypothesis to be a desirable thing to see it go into absolute perpetual oblivion here, too, especially out of doubt that allowing it to be published every year before the very eyes of *Vostra Serenità* can be taken by public interpretation as consent to this bull, as it is and remains⁵².

Giovan Maria Bertolli proposed a pragmatic solution, in harmony with time-honored consultative practice, without however hesitating to make explicit his criticism of the state of affairs as it was:

Much to the contrary, we are of the respectful opinion that every step taken now to keep it from being published, here or in other places where it is usually published, besides being interpreted by Rome as a manifest novelty, would in a certain way make your *Serenità* give signs of doubting the justice of your own laws, out of some imagined efficacy of its anathemas⁵³.

This is a criticism that clearly shows the difficult situation in which the Republic might find itself if a controversy with the Holy See about the publication of the *Bolla in Coena Domini* broke out.

In what followed Giovan Maria Bertolli adjusted his aim, making clearly explicit the causes that had produced a situation that promised to be, to say the least, paradoxical. Indeed, it was not a thing of little consequence that in Venice itself numerous publications were being printed in which certain interested commentators and annotators of the *Bolla* were giving new life to its presumed legitimacy and force, to the detriment of the secular power.

Serenissimo Dominio has not changed its usual, customary style of governing at all; nor for this has it met, with any of the following popes, and not even with Paul V himself, the least opposition, the public reasons having been made very clear on that occasion, most of all by the virtue, *dottrina* and knowledge of the most famous father master Paolo. After this, therefore, this bull cannot put any sort of shadow over the supreme, legitimate secular *potestà*, as it is known by now to what scope it reaches and to what degree its force is active", *Ibid*, busta 150, c. 347, alla data. Bertolli made use of the great event of the *Interdetto* and the authority of Paolo Sarpi to give continuity to the Republic's choices in matters of jurisdictionalist importance. As we have already noted, in the course of the 17th century the absence of evident conflicts had depended more on a certain acquiescence to Rome's choices. The reference in any case served to bear out what was then upheld in the following part of in the *consulto*.

⁵² *Ibid*, busta 150, c. 347, alla data

⁵³ *Ibid*, busta 150, c. 347, alla data

Bertolli's criticism was undoubtedly justified by the necessary function of stimulus provided by the figure of the *consultore*, at least insofar as it referred to time-honored republican jurisdictional tradition. This critique was carried out without biting his tongue, pointing to precise responsibilities and basing himself on his great predecessor, the *Servita*.

Giovan Maria Bertolli was aiming at the publications which, without any sort of control, did not scruple to put forward arguments that wholly favored the ecclesiastical power. But the vehemence of his accusation seemed in fact to point to other, essentially political, responsibilities, which had not paid due attention to the dangers of the interference of the Holy See at the expense of the sovereignty of the Republic:

We shall set aside and pass under silence the many books of a similar sort which, though poisonous and harmful, both to precedent political and to civil laws in general, and in particular to those of the *Serenissima Repubblica*, nonetheless are printed or reprinted in this very city of Venice, its capital, with public permission and some even with special privilege.

Nor should we even enter into the argument if the declaration printed in these books (that is to say, that they are allowed to be printed only to favor their traffic and commerce, and not to approve in this jurisdictional point the false opinion of their authors) were really sufficient to keep those who read them thanks to their publication from imbibing, as the saying goes, with their eyes all the poison of their condemnable propositions, according to which in temporal affairs princes are despoiled of absolute free dominion and disobedience and rebellion are fomented among the people.

We shall only conclude reverentially with our remembered father master Paolo that the more diligence, vigilance and attention the public revisers use in purging the books to be printed or reprinted from the likes of the scum and poison of these doctrines, in the *Serenissimo Veneto Dominio* it will never be so much as to be enough and will always without comparison be more advantageous for the public matters and interests than the harm that the private interest of some printers or booksellers might by chance receive⁵⁴.

This *consulto* dealing with the *Bolla in Coena Domini* well illustrates Giovan Maria Bertolli's maturity and his capacity to penetrate and become part of the great tradition of the *consultori in iure*. Obviously, ecclesiastical matters loaned themselves more than any other to being interpreted so as to safeguard the Republic's prerogatives, above all in questions that touched its sovereignty most nearly. But this was a very complicated set of issues, which involved law, jurisdiction and customs of both private persons and single ecclesiastics. Questions, therefore, requiring not only prudence, but

⁵⁴ *Ibid*, busta 150, c. 348, alla data

also the capacity to grasp all the multifaceted aspects that could in the end substantially influence government activities and regulate the relationship between governors and governed.

We need only think, for instance, of the numerous cases regarding the oratories and small churches that dotted the dominion of the Terraferma. They represented one of the manifestation of the 'decorum' and prestige sought after by many landowners on their properties, a visible witness of a baroque religiosity, but at the same time an explicit manifestation of a privileged social status. Their construction could clearly interfere with consolidated parish rights, and in any case over time could certainly modify age-old jurisdictional arrangements.

The Republic had intervened with an important law in 1603, in which it required that besides apostolic permission it was also necessary to obtain the authorization of the secular magistracies. This law had contributed to sharpen the tensions that would later result in the great *Interdetto* controversy. In reality, already in the course of the 1600s a very flexible practice, wary of intervening actively in this sphere, had left the initiative in the hands of subjects. The requests were immediately sent on to the *consultori* for an opinion and often proved that oratories and sacred buildings had been built only with only episcopal permission, without the required secular authorization. In these cases the *consultore* by and large could do no more than recommend granting the permission, request for which might have originated in an ongoing conflict or in the need to regularize a situation that had become complicated.

Giovan Maria Bertolli wrote numerous opinions on these matters. For example, in 1687 *dominus* Bortolo Patella had forwarded a request to obtain permission to build 'un piccolo oratorio' near his vacation home, located at Villa Del Doge in Polesine⁵⁵. As usual, the request was motivated by the distance of the property from the parish church, and by the fact that "he cannot at times, because of the rains and overflowing of water, fulfill the obligation to hear the holy mass with his family and servants on holy days". The 1603 law envisioned that, besides Episcopal permission and the consent of the parish priest, there also had to be a secular authorization, to decide whether the request merited acceptance and if it had the prerequisites envisioned by the law.

In reality, the petition forwarded by Patella fit into an already consolidated jurisdictional tradition, as was clearly shown by the '*opposizione*' promptly advanced by the patrician Angelo Dolfin, whose title of *feudo* allowed him to enjoy broad jurisdiction over Villa del Doge. As the Venetian patrician made

⁵⁵ A.S.V., *Consultori in iure*, filza 140, 10 giugno 1688.

clear, there existed a public church in the village, built in 1577, and in the neighborhood there were two other small churches, one of which he owned and in which “Patella has had the benefit and has always been welcomed courteously”.

As Giovan Maria Bertolli attested in his *consulto*, Bortolo Patella’s request, though meriting acceptance, certainly did not have all the prerequisites required by the law of 1603.

Order seems to us to be out of order, while we are getting the same information from the regiment that that the building has been started with the construction of the foundations, a thing contrary to the laws, since before beginning they should have asked for permission and now they have had to ask for and obtain pardon for having done it and contravened and then ask to be allowed to continue. Yet, if it so pleases, it is possible at the same time to excuse it as caused by omission and not out of cunning, since at most it is a matter of simple foundations that reach the top of a bank, where the pavement of the oratorio is to begin.

The positive opinion of the *consultore*, intended to accept the petition of Patella, in consideration of a jurisdictional situation, reflected the political awareness that in any case requests of this kind attested to and reinforced the legitimacy of the secular power in a matter that had traditionally always been the under the jurisdiction of the ecclesiastical authorities.

A complicated subject, the ecclesiastical one, and one that gave rise to a myriad of conflicts and legal cases in which jurisdictional rights were not at all easily defined. As we shall have the occasion to see in the matter of clandestine marriages, one has the impression that at the turn of the century the Republic was more careful to delimit the interference of ecclesiastical authorities, at least on the level of judiciary practice.

On 12 May 1703, Giovan Maria Bertolli was asked for an opinion about a shady affair that had been promptly reported by the *podestà* of Chioggia⁵⁶. A woman had thought it a good idea to solve the problem of her unmarried daughter’s pregnancy by using a broth with a consecrated particle in it. Though there had been no consequences, the woman was nonetheless accused of attempted abortion by another, married daughter who had by mistake swallowed the same potion. This was a social practice belonging to the vague world of popular culture, traditionally under the jurisdiction of the Holy Office. However, Giovan Maria Bertolli had no doubt that “such enormous and abominable wickedness” should be punished by the secular forum:

⁵⁶ A.S.V., *Consultori in iure*, filza 155, 12 May 1703; the passage quoted is at c. 72.

Similar cases of herbal charms, witchcraft, charms and evil spells cannot be known by the Holy Office unless there is evidence or suspicion of heresy for the abuse of sacraments or in other respects ... in consideration that this evil operation caused the death of a new creature before its birth⁵⁷.

The definition of *mixti fori* jurisdictions evidently loaned itself to interpretations that were not unambiguous or precise. In his *consulti* Bertolli dedicates careful attention to the prerogatives of the secular power, probably owing to his awareness of a more incisive jurisdictionalist politics on the part of the Republic.

Devotions and devotion

In many of Bertolli's *consulti* the theme of popular devotion is dealt with in light of conflicts that arose locally, or upon requests from various parts directly soliciting some sort of recognition of legitimacy by organs of the Republic. This was almost certainly a reflection of the growth in religious sentiment registered almost all over Europe starting from the second half of the 17th century, and which was very often the cause of tensions and conflicts that involved both the jurisdictional and the customary realms.

These were *consulti* concerning communities, brotherhoods and lay associations, as well as religious practices not always based on the traditional parish structure. Giovan Maria Bertolli was careful to reject all interference on the part of any ecclesiastical authority whatsoever. He was also inclined to favor certain forms of popular devotion, above all when they drew their legitimacy from tradition and custom.

A very bitter controversy about this subject is found in one of the last of Bertolli's *consulti*⁵⁸. The bishop of Trent had directly addressed the *Signoria* to complain that the community of Tignale claimed a series of rights over the local parish priest, and in particular arrogated to itself the right to exclude him from directing the country church of Montecastello. The bone of contention, as Bertolli observed, lay in the keeping of the keys to the church and in the division of alms. The church, in fact

belongs to the community that built it after the demolition of the fortress that stood on the aforesaid mountain. Before it, till the year 1446 on the 6th of September, it was commanded with *ducali* from Your Serenity that it would be de-

⁵⁷ *Ibid*, filza 155, c. 72.

⁵⁸ A.S.V., *Consultori in iure*, filza 155, 3 August 1705

livered a certain amount of *coppi* that had been donated in the past to cover up the same church ⁵⁹.

Giovan Maria Bertolli had no doubts in holding the rights of the community to be well-founded. In 1639 the *provveditore* of Salò had drawn up a regulation in which it was mandated that a key should also be given to the parish priest. However, the agreement had not been approved, and was never put into practice, being contrary to the laws of the Republic, that “do not wish ecclesiastics to interfere in lay matters”. Regarding the alms and the hermit who guarded the church of Montecastello, the *consultore* reiterated that both involved a right enjoyed by the community by age-old custom, convalidated as well by laws of the Republic clearly aimed at preventing ecclesiastics from “laying hand to lay oblations”.

The community of Tignale was situated on the borders of the state, even if from the religious standpoint it belonged to the diocese of Trent. What is more, it enjoyed ample privileges, also as regards the jurisdiction exercised by the *provveditore* of Salò. Thus, it is likely that Bertolli’s defense of its prerogatives was motivated by explicitly political considerations⁶⁰.

Another interesting case, which Bertolli dealt with in his *consulto* of 22 March 1702, would seem to bear out this hypothesis. The dispute concerned the lay brotherhood of the Beata Vergine del Mesco of Ceneda and the local bishop⁶¹. From the days of Paolo Sarpi the prerogatives enjoyed by the bishop of Ceneda had caused perplexity, if not hostility, in a certain sector of the Venetian patriciate⁶². The bishop had decided to suspend the age-old procession that, starting from several brotherhoods of the small town and nearby villages, made its way up to the Camaldolese monastery of Follina, where a miraculous image of the Virgin was worshipped. The holy image, observed Bertolli, was venerated to such a degree:

That not only Ceneda and many other localities of the same diocese go every year in procession to visit it, but also those of many distant lands of the *Patria* of Friuli,

⁵⁹ *Ibid*, filza 155, cc. 323-324

⁶⁰ The *consulto* of 3 August 1705 once again concerns a dispute between the community of Tignale and its parish priest. The latter had requested to be allowed to proceed judicially against certain debtors in the court of Salò. Bertolli observed that in civil matters the community had original jurisdiction, assigned to its deputy, and that the *provveditore* of Salò had authority only on appeal, cf. A.S.V., *Consultori in iure*, filza 155, alla data.

⁶¹ A.S.V., *Consultori in iure*, filza 154, 8 May 1702

⁶² On the long standing issues regarding Ceneda cf. P. Sarpi, *Opere...*, pp. 479-480.

of Belluno and of Treviso and this by very ancient and immemorial institution, never interrupted, but always observed⁶³.

There was no doubt that processions came under the authority of the bishops, but this was a *mixed* matter, the *consultore* went on to say: this procession had never caused any 'scandal'. And, in the spirit of a jurist, he did not hesitate to affirm (and to advise):

We add that popular usages that have the appearance of religious devotion (like those of processions) only with difficulty are taken away without serious complaints and lamentations and especially if they are rooted in the length of time ... The course of centuries: this we can legally and according to our doctors put forward for any privilege whatsoever, not only against bishops, but also in the face of the Roman Holy See⁶⁴.

Thus, for Bertolli the strong and still living call of custom constituted the essence and legal legitimacy of a popular religious practice.

However, apart from the marked political profile of certain cases, Bertolli shows greater caution and a certain balance of judgment in the numerous other opinions dedicated to lay confraternities. This was, indeed, a delicate sphere: the exercise of religious practices, with all they involved, could cause not only irritation and conflict, but could also shake delicate jurisdictional equilibriums deeply rooted in the structure of society itself and in its transformations⁶⁵. This was all the more so in that the requests sent on to Bertolli for a *consulto* without any doubt frequently attested to situations of actual *illegality* in the face of measures taken by the Republic regarding lay associations⁶⁶.

In 1702 Bertolli was asked to give an opinion on a dispute whose opposing parties were the priest of the Church of Santa Maria di Castelfranco and the brotherhood of the *suffragio dei morti* that existed in the same church⁶⁷. The lay association was instituted in 1689, but with only apostolic permission: "a thing condemned by the laws", Bertolli annotated. Now the brotherhood was requesting that its altar should benefit from bequests and that only the chaplain of the brotherhood should officiate at ceremonies. This was only

⁶³ *Ibid*, filza 154, c. 65.

⁶⁴ *Ibid*, filza 154, c. 66.

⁶⁵ A matter treated in depth by A. Torre, *Il consumo di devozioni. Religione e comunità nelle campagne dell'Ancien Régime*, Venice 1995.

⁶⁶ An analogous situation, as we have observed, for the request to build oratories and small private churches.

⁶⁷ A.S.V., *Consultori in iure*, filza 154, 8 February 1702.

apparently a banal dispute, since the brotherhood's claims involved prerogatives of the high priest. Giovan Maria Bertolli had no doubts in advising that the brotherhood not be allowed to enjoy the benefits of bequests if they referred to the altar, and that its chaplain would have to stand back if the high priest sent his representative to officiate at ceremonies.

Thus, Bertolli's *consulto* pronounced itself in favor of the parish rights, so that the devotional practices of the brotherhood would not impinge on the high priest's jurisdiction. This line of interpretation was constant, as we can see in many other opinions he pronounced on these matters: while lay brotherhoods should not have to suffer intromission on the part of the ecclesiastical authorities, neither should they lay claims that could interfere with consolidated parish jurisdiction.

In a *consulto* written on 22 December 1703, statutes presented by the two brotherhoods of the Santissimo Sacramento and the Rosario di Sandrigo (Vicenza) were carefully examined by Bertolli⁶⁸. The former was a very ancient brotherhood, while the founding of the latter dated to 1636, in this case as well only with Episcopal permission. More than confirmation, then, this was a question of legitimization, but one which gave the *consultore* the opportunity to point out other inconsistencies. In fact, the two brotherhoods intended to build their own oratory, which Bertolli felt was completely superfluous:

Since the brothers can dress in the church, as they have done up to now ... if they want to exhibit the Forty Hours they can do so above their altars in the parish church, without building an anti-church⁶⁹.

What is more, the statutes envisioned that new co-optations would be accepted upon authorization of the high priest, who would also have to take part in all the reunions of the two lay associations. This had to be rejected, as it was contrary to the laws of the Republic. And the same held for another power that the brotherhoods to themselves:

That the brothers can expel brothers they feel do not lead a good life and that the *massari* and *conservatori* have the power to discuss it among themselves and then turn them out, while this is to come to a trial of life and death and to condemn without defense, which is unusual and not practiced in other schools.

Bertolli's observations, as we can see, aimed at avoiding that practices of worship could lend themselves to predictable manipulation and abuse. At

⁶⁸ A.S.V., *Consultori in iure*, filza 155, 22 December 1703.

⁶⁹ For this and for the following citation cf. *Ibid.*, cc. 224-225.

times his censorial intervention was even more analytic. As, for example, in the case of the brotherhood of the Agonizzanti of Crema⁷⁰. His comments involve not only organizational aspects, but also more precisely spiritual questions. For instance, the point where it said that a mass would be celebrated for every bygone brother “at the privileged altar and his soul would be free of the torments of purgatory” should be changed to read: “the mass will be celebrated at the altar in intercession of his soul”.

The attitude to take towards lay associations required the highest degree of caution, above all, as we have already observed, for the fact that their religious practices generally had jurisdictional implications inevitably involving rights, prerogatives and bequests. In any case, it is interesting to note that Bertolli’s reflections on the whole show great attention to *custom* and the force it played in disputes of a jurisdictional character. Significant, in this light, is the conflict that in 1689 opposed the *rules* of the community of San Vito del Cadore to the local parish priest⁷¹. The community claimed the right of *jus patronatus* over the Church of Santa Maria della Difesa. Both an inscription on the church portal and an old document from 1521 unequivocally attested the community’s prerogative over the church. However, what is especially interesting is the analysis made by Bertolli to settle the various points of the controversy. The representatives of the community complained that the parish priest claimed the right to attend their meetings, under the pretext of having the right to intervene in the administration of the church. For the *consultore* it was a simple matter to point out that the *laws* prohibited whatsoever intromission of this kind on the part of ecclesiastics⁷². On the question of the election of the *mansionario* he had no hesitation in supporting the community’s position, also in virtue of the custom attesting that the community had more than once exercised this right.

The church is under patronage and therefore the appointment of the chaplain is up to the patrons, so we also see a very old appointment made back in 1546 4 September, resumed in the year 1676 and continued to the present. The reason why in a century we do not see frequent similar appointments comes from nothing other than the poverty of the rents, which not sufficing to have a daily mass celebrated, permitted that ministry that the parish priest exercised elected. But having grown with charity and pious donations and transformed in a sum suf-

⁷⁰ A.S.V., *Consultori in iure*, filza 156, 22 agosto 1704.

⁷¹ A.S.V., *Consultori in iure*, filza 141, 26 December 1689.

⁷² It is interesting to note that the *laws* Bertolli was referring to actually consisted in judiciary precedents, the first regarding the Patria del Friuli and the second Cadore itself, cf. *Ibid*, filza 141, c.175.

ficient for this holy rite, they now proceed to elections, which cannot be denied them⁷³.

Custom was therefore understood as a practice that reiterated determined rights and possessed full juridical validity⁷⁴. The third point dealt with by Bertolli was more delicate. The community requested that its own priest have the right to celebrate the evening mass on holy days that were not solemn days of obligation. This request was strongly opposed by the parish priest. But once again it was an easy matter for the *consultore* to express himself in favor of the community:

As it is a question of a lay church in *jus patronatus* which is not dependant on the matrices we do not think such prohibitions can take place. Even less so since these celebrations necessarily serve to accommodate those peoples, part of whom listening to this first one in going back to their home they host to the others so that they can also go to the parish church and hearing the sacrifice. And there is much evidence that shows that without being able to fulfill the precept, because not everyone in the families can go to church at the same time, so as not to leave their things totally abandoned, since it is however a matter of the greatest cult of our Lord and a thing serious and important that does not prevent the parish priest (because apart for the solemn festivities where the practice of offering is in use, which is the topic of scandal) it is our feeling that the rules deserve to be absolved⁷⁵.

Arguments all too explicit, delivered with an expository rhetoric that clearly betrayed Bertolli's inclination to accept the community's requests. However, where he takes a step back was in the *fourth point*, in which the *fraglie* (corporation) of the church advanced the claim to monthly processions, though on days that were not solemn and without prejudice to the prerogatives of the parish priest. Bertolli held that on this point the consent of the priest was a

⁷³ *Ibid*, filza 141, c. 176.

⁷⁴ In a *consulto* drawn up on 25 December 1690 concerning a similar request of the community of Vighizzolo d'Este, which demanded *jus patronatus* over the parish church in contrast with the monks of the Carceri d'Este, Bertolli gave a decidedly negative opinion, in that the customary rights appeared weak and uncertain. In fact, if the right of *jus patronatus* could not be proven by precise documents (as established by the Council of Trent), it had to be testified to by social practices (like for example the appointment of the priest) that would give validity to it as an established old custom. And so, "if there were the title to real canonic patronage, it would be possible, despite the course of so many years, to accept this reason, but since the aforementioned title is lacking, and without any presentation for two centuries, we do not know how we could concur in this opinion without contravening the Council of Trent", cf. A.S.V., *Consultori in iure*, filza 142, 25 December 1690, c. 3.

⁷⁵ *Ibid*, filza 141, c. 176.

mandatory condition and that consequently the request of the community could not be taken into consideration:

Here it is not a question of mass, or a necessary or prescribed thing, but one of pure worship, which it's of little importance but it is used to need the license, not being allowed in these functions, that are different from the parish ius, as the canonist would agree upon, to put a prejudice against the priest, nor taking away what it was his and that belongs to him⁷⁶.

Therefore, Bertolli made a distinction between rights of *jus patronatus* that concerned most closely the community and practices of worship that might interfere with the life of the parish. We can trace this line of interpretation in many of his opinions. It reflected, on the one hand special attention to rights acquired through custom, above all if claimed by a community⁷⁷, and on the other a fundamental reluctance to accept suits, especially if they came from lay brotherhoods, that might modify consolidated jurisdictional arrangements.

Tradition

In reality, Giovan Maria Bertolli's perception of customary right is intimately tied to judiciary precedents. In his opinions we can trace a sort of historical-documentary research⁷⁸ that cannot simply be explained as the development of a line of interpretation looking for support in tradition. Rather,

⁷⁶ *Ibid*, filza 141, c. 176.

⁷⁷ An interesting *consulto* is the one drawn up on 6 September 1702 on the merits of a petition of certain communities under the tenure of the *podesta'* of Camposanpiero, which for over five centuries had owned some goods they had received in virtue of the will made in 1161 by a citizen of Padua, Galvano Mascarotto. An anonymous denunciation presented to the *Provveditori ai beni comunali* affirmed that these were state lands. To attest that in reality they were *beni comuni* there existed a thick file of judiciary cases and a sentence of the *Consiglio dei dieci* itself, which had ordered that the communities should not be disturbed in their rights again "when there is proof that the community has enjoyed the properties without disturbance for over thirty years". Observing that the properties described by the assessors of the *Beni comunali* were the same ones possessed by the communities for hundreds of years, as the taxes paid by them to the city of Padua attested, Bertolli went on to say: "It should be noted that from that time to the present roughly six centuries have passed in which there have been infinite alterations and changes and it is enough to find such an ancient title to establish good grounds for these cities", cf. A.S.V., *Consultori in iure*, filza 154, 6 September 1702, cc. 185-186.

⁷⁸ Some of Bertolli's *consulti* appear to be virtual short historical treatises on certain subjects. We mention here, as example, the one regarding Dalmatia in A.S.V., *Consultori in iure*, filza 151, 30 September 1691.

it can be seen it as a *historiographic tension*, aimed at shaping the *consulto* as political analysis, where historical data and the legal dimension merge to legitimate a very flexible practice of government, the expression of a republican ideology sensitive to both equalitarian and oligarchic pressures.

Obviously, these aspects can be found not only in Bertolli's many opinions regarding ecclesiastic and beneficiary questions, illustrated by the few cases examined above, but also in his frequent contributions on boundary and feudal matters, where once again the complexity of the Republic's political situation comes to the fore.

In this context, the *consulto* drawn up by Bertolli on 18 April 1700 may be significant⁷⁹. The affair touched on both ecclesiastical and feudal jurisdictions. The bishop of Belluno had bitterly complained to the heads of the Council of Ten about the harm caused to his jurisdiction by the city of Belluno. This was an affair of considerable importance, which went beyond the usual tensions existing at the local level between ecclesiastical and secular authorities. The Captain of the Rocca di Pietore, who had jurisdiction over the city of Belluno, had annulled the trial opened by the Episcopal chancellor after a 'sacrilegious' theft in a local church. Moreover, he had taken measures to prepare a 'rigorous' trial of all those who had lent a hand to 'disturbing' the city's jurisdiction. In fact, the city enjoyed *mero e misto imperio* over the Rocca and held that the bishop had committed an abusive act by ordering the trial. With the consequence that it immediately proceeded to send some *orators* to Venice to defend the measures taken by the Captain of the Rocca.

Giovan Maria Bertolli had no hesitation about condemning the city's initiative, recollecting the fundamental logic that still underlay the jurisdictional state:

What followed in the time of the dukes of Milan, the privileges of the *Serenissima Repubblica*, the *ducale* of the most excellent Senate and the most high Council, the boundaries assigned by the *Magistrato de' feudi* and the acts of the *Avogaria*, all, one after the other, referred to exactly in the information of the most illustrious signor *Podestà*, confirm nothing other than the union of the fortress and its territory to the city and council by *mero et misto imperio*, that is to say, by ordinary civil and criminal jurisdiction, which is indeed what all the other castallans and *judicenti* of the Patria of Friuli, the noble men Counts Collanti, Savorgnan, Gabrieli, Brandolini and others enjoy; the cities they have been deputies and consuls of, the communities of Cadore and the like. And yet they have never kept the bishops from taking legal measures in matters under their jurisdiction and far less have they had the courage to place hands on and proceed criminally against the ministers of those curias, as the Council of Bellun has improperly done.

⁷⁹ A.S.V., *consultori in iure*, filza 151, 18 April 1700.

These were harsh words indeed, which in reality covered Bertolli's irritation against holders of a local jurisdiction who had assumed powers that belonged uniquely to the *potestà* of the Prince. This was especially true as they concerned the sphere of criminal law, in which for many decades the Council of Ten had widened its authority. And indeed, the *consultore* went on to say:

What is more, it is very well-known, and the laws confirm it, that when two *judicenti* have a dispute there is no other judge than the majesty of the highest Prince. If Padua is in contrast with Treviso, Verona with Vicenza, Brescia with Bergamo, the Magistrato di Procuratore with that of Petition in questions of jurisdiction, one of them does not eliminate the acts of the other, but instead submits it all to public knowledge to obtain the final sentence. And yet these are regiments and highly authoritative lay magistrates; thus how much less could the Council of Belluno do this against a bishop and against the acts and ministers of his curia.

And last of all, the finale thrust:

It is known that if a trial is formed in Brescia or in Padua, or in another place with ordinary authority, evidence falls on some ecclesiastical persons, that trial is not continued, but it is brought to this most high Council, from which alone powers and faculties depend. And so we are not able to see how the Bellunese have gone so far beyond, unless insofar as they nourish sentiments that their Council has the same authority as the most high Council of Ten⁸⁰.

A *consulto* drawn up extremely harshly and in tones that leave no shadow of doubt about the *consultore's* thoughts. The reprimand made to the city of Belluno seemed to express, contradictorily, both the intangibility of the jurisdictional state in all its components, including the ecclesiastical one, and the sovereign and absolute prerogatives of the magistracies of the Dominant, in particular the Council of Ten. Actually, in this as in other *consulti*, Giovan Maria Bertolli reflected the peculiarity of a republican state which, while unquestionably needing to affirm its sovereignty, was still reluctant or perhaps even impotent to relax the logic of power that drove the subject centers.

This aspect is also brilliantly illustrated in the *consulto* written on 10 November 1690⁸¹. The *comunità* of Cadore had presented a *memoriale* on the occasion of the law emanated a few days before by the Council of Ten obliging the Venetian rectors of the principal cities to send on all necessary in-

⁸⁰ For the passages cited cf. *Ibid.*, filza 151, alla data, cc. 336-337.

⁸¹ A.S.V., *Consultori in iure*, filza 142, 10 December 1690.

formation about every case of murder committed in their territories. Feudal jurisdictions and *terre separate* would have to send these notifications to the representatives of their respective *podesta*⁸².

When asked to express an opinion regarding the request by the community of Cadore to be allowed to send directly to the Council of Ten information concerning murders committed in their jurisdiction, Giovan Maria Bertolli drew up a very full *consulto*, in which he first retraced the history of this *terra separata* (separated territory), which had always had special ties with Venice:

And we observe, as a thing to censure strongly, that the jurisdiction of the *Cadorini* has been declared different from the other *iusdicenze* by the Council, because since it was decreed in the year 1687 22 December that when whatsoever *iusdicente* is notified of any case of homicide that occurred in his jurisdiction, it cannot be consigned to his office without a deliberation made with the usual forms and conditions. The eminent Council, upon the supplications of Cadore, with a new part 1688 29 July commanded that on the positive matter for the said community to carry on the ample and distinct privileges granted on the first dedication that distinguished it on its *iusdicenza*, it was declared that it's not considered compromised le same community of Cadore in the said decree of the 22nd of December 1687⁸³.

In reality, as is shown by many other deliberations granted to other seigniorial jurisdictions, Giovan Maria Bertolli's proposal fit well into the structure of the ancient jurisdictional state. After all, the exemption granted to Cadore did not interfere with the measures taken by Venice in the preceding two centuries in matters of public peace and order⁸⁴. Moreover, the request sent directly to the Council of Ten reinforced the apparently indissoluble bond between dominant center and subject centers.

⁸² Actually, a first important measure had been taken on 11 September 1680, by which the rectors of the Terraferma were ordered to report every homicide committed in their jurisdictions to the Council of Ten. In 1682 a subsequent law specified that the feudal *giusdicenti* were also under the obligation to communicate to the rectors of the nearest city the cases of homicide in their territories. Probably, as the case of Cadore attests, this praxis really became mandatory only from 1690, as is subsequently attested in many *consulti* of Bertolli regarding numerous requests of *giusdicenti* to be allowed to send their information directly to the Heads of the Council of Ten, cf. C. Povoło, *Retoriche giudiziarie, dimensioni del penale e prassi processuale nella Repubblica di Venezia: da Lorenzo Priori ai pratici settecenteschi*, in *L'amministrazione della giustizia penale nella Repubblica di Venezia (secoli XVI-XVIII)*, II, ed. by G. Chioldi and C. Povoło, Verona 2004, pp. 26-30.

⁸³ A.S.V., *Consultori in iure*, filza 142, 10 December 1690, c.56.

⁸⁴ On this subject cf. C. Povoło, *Dall'ordine della pace all'ordine pubblico. Uno sguardo da Venezia e il suo stato territoriale (secoli XVI-XVIII)*, in *Processo e difesa penale in età moderna. Venezia e il suo stato territoriale*, ed. by C. Povoło, Bologna 2007, pp. 47-50.

The activity of Giovan Maria Bertolli also comprehended the complex matter of boundary disputes, from treaties between states to controversies between single communities. In his many opinions on these questions, Bertolli frequently recurred to his rich store of legal knowledge, as well as to the experience he had acquired in the course of the activity conducted in close contact with the Venetian political world⁸⁵.

Significant, though certainly not as politically important as similar opinions on boundary questions, is the *consulto* drawn up on 24 September 1699 regarding the dispute that broke out between two bordering communities belonging, respectively, to Veneto Istria and Austrian Istria. The small community of Baratto, in the jurisdiction of Due Castelli, had arrested a bandit captured in its territory. To take him to the jail in Pinguente, the men of the community had passed through the country around Pisino (Austrian jurisdiction) and in particular the Valle di Chersiola, without the permission of the local *zuppano*⁸⁶. The captain of the county of Pisino had immediately asked that this 'violation' of the boundary be remedied by handing over the bandit to the *zuppano*, who would then free him.

Bertolli immediately stressed the delicate political nature of an incident only apparently banal:

However the point of having an arrested person pass with an armed body through the state of another prince brings with it, according to the weakness of us *consultori*, certain problems, since it is usual to ask for his consent and also permission.

It was not hard for our *consultore* to find legal cavils that might in part justify the error committed by the community of Baratto:

So that it is possible to apply what our doctors write about a person who with arms and horses passes through a reign from which extraction is forbidden without royal license, who nonetheless can continue his journey and arrive at his domicile outside this reign without asking for this license. Nor do we neglect to mention the other case of that prisoner who, led by policemen, passing through the cemetery or the church claims immunity, in which the doctors conclude that he cannot enjoy it, but that he can be taken away from there, even if the ecclesiastical jurisdiction is very strong. And this for no other reason than

⁸⁵ I mention some of the many cases dealt with by Bertolli in his twenty-year activity as *consultore*: Strassoldo (A.S.V., *Consultori in iure*, filza 139, 20 March 1685); Lastebasse (*Ibid*, filza 142, 12 May 1691); Po (*Ibidem*, filza 150, 26 August 1698); Dalmatia (*Ibid*, filza 151, 30 settembre 1699).

⁸⁶ In Istria the representatives of the community (analogous to the *merighi e degani* in Veneto) were called *zuppani*.

for the difference that exists between passing *per modum justitiae*, which offends, and passing for *per modum facultatis*, which is not prejudicial. And for this reason the present question was decided in the parliament of France, it having been decreed that it is licit to conduct an arrested person to their prisons and pass through the jurisdiction of another.

A line of argument that probably felt specious and inconclusive to Bertolli himself; in fact, he immediately suggests a political solution:

I believe we must proceed with dexterity and promise that good orders will be given so that in the future will proceed with all most caution, and having nothing else as aim but the public attention to command to our subjects to good neighboring and to preserve to good communication between neighbors . And in this way we can respond to grievances brought by the minister of the cesarean embassy⁸⁷.

This pragmatic solution was proposed by Bertolli for a question in which legal disquisitions could indeed be employed, but in which they did not suffice to justify incisive political decisions on the part of the Republic.

The disorders of marriage

In Bertolli's activity as *consultore* there is also a very interesting set of cases regarding the complex question of matrimony. These cases bring to light incidents whose developments might easily lead to jurisdictional conflicts with the Church, and which also had very significant social and political implications.

In the second half of the 17th century Venice had shown greater attention towards a subject that was traditionally under ecclesiastical authority. As Bertolli recalled in one of his last *consulti*, drawn up on 16 May 1705, the Senate had intervened in 1663 (1662 *more veneto*) to remedy the 'disorders', unfailingly reported by the Patriarch, in the celebration of marriages. It was thus deliberated that the *Avogaria di comun* should enroll in the *libro d'oro* only the marriages of patricians celebrated according to the formalities envisioned by the Council of Trent. Moreover, for all other social classes the same task was entrusted to the *Esecutori contro la bestemmia*. Moreover, a large number of cases show that the same provision was also extended to include the *Terraferma*⁸⁸.

⁸⁷ All the citations are in A.S.V., *Consultori in iure*, filza 151, 24 September 1699, cc. 90-91.

⁸⁸ A.S.V., *Consultori in iure*, filza 156, 24 November 1689. Two young people, Marco Tezzoni of Conegliano and Angela Maria Tezzi from Conegliano had had the idea of getting around the

In the *consulti* written by Giovan Maria Bertolli concerning matrimonial questions, there emerged the widespread phenomenon of clandestine marriages. After the Tridentine decrees, these essentially amounted to an exchange of consent without respecting the formalities requested. It was therefore a matter belonging strictly to ecclesiastical authority, but one that Venice had decided to submit to the secular power as well, prosecuting lack of respect for the established rules.

The new matrimonial policy is well summed-up in Bertolli's *consulto* of 24 November 1689, which concerns a marriage made by two young people from Brescia, who had exchanged their consent while the parish priest was celebrating mass:

Distinguishing the matter in two parts however, we *consultori* believe we can faithfully represent [it]. That it is either a question of the essence of the aforesaid marriages or of the form followed in their making. If of the essence, this being a thing purely spiritual and ecclesiastical, examination of it rests with the Episcopal curia. If of the form, since it was done against the decree of the most excellent Senate 1662 28 February, it resides with the secular court, which in this part wanted to grant the execution of the Council. And the more so that [there] concur [acts of] violence, deception, defloration and other bad features. Whence it is our opinion that the execution of the aforesaid law should be ordered not only with the object of punishing the guilt of the offenders, but to put those subjects in obedience and with fear of punishment keep them away from such condemnable proceedings⁸⁹.

These were by and large cases that mirrored social tensions and unrest that the ecclesiastical rules, though flexible, were not able to curb or subdue. Indeed, clandestine marriage was considered a way to get around the usual

prohibitions imposed on them by the ecclesiastical authorities by exchanging their mutual consent without too many formalities: "when the high priest of Conegliano arrived in the Chiesa della Madonna to teach Christian doctrine, to show up before him and say to him that the signora Maria was his wife and soon after she herself added that he was her husband", *Ibid*, cc. 254-255.

⁸⁹ A. S.V., *Consultori in iure*, filza 141, 24 November 1689. Another interesting case is described in the *consulto* of 12 August 1700. Two young people of Saletto (Montagnana) had made a clandestine marriage with the aid of their parish priest, who in all likelihood wanted in this way to get around a previous promise of marriage (*sponsali*) contracted by one of them. It is interesting to note that Bertolli advised giving the rectors faculty to proceed against the two young people, but not against the priest. In fact, he observed, the Senate's measure aimed to correct a crime that "is not capital, nor one of those atrocities and enormities for which if even ecclesiastics are protagonists they must be subject to secular justice, but it is one of those called ordinary and which remain subject to their bishops, being at the most cases of counsel and incitement, which rarely and only in serious and important cases fall under criminal censure", cf. *Ibid*, filza 152, 12 August 1700, cc. 237-238.

tensions between generations, or else to find a practical solution to the value of the old *sponsali* (betrothal), still full of ideological meaning⁹⁰.

The question of the *sponsali* was especially complicated, in that it was not only envisioned and regulated by canon law, but was also deeply rooted in age-old customs regarding marriage. Even after the Tridentine provisions, a formally exchanged promise was held to be binding for the contracting parties, and to make marriage with another person impossible. This was the reason for the so-called *stride* [marriage bans], which were hung on the door of the parish church for three successive Sundays, in order to assure that no prior *sponsali* had been contracted by the betrothed parties. But what happened if meanwhile one of them had resorted to a clandestine wedding (i.e., one contracted without the bans published in church)? In the course of the 18th century, the *consultori* would deal with this matter fairly regularly⁹¹, but in the years when Bertolli was acting as *consultore* the phenomenon does not seem to have come out yet. It is therefore likely that during the course of the 18th century increasing secular interference in matrimonial questions served to reduce the wide margins of the indubitable discretionary power of ecclesiastical jurisdiction⁹².

The matter of the *sponsali* is examined in a *consulto* written by Bertolli on 28 August 1692⁹³. A young woman of Pirano, Lucia Contenti, had sued Andrea Viezzoli, her betrothed, both in the ecclesiastical and the secular courts. The apostolic curia of Capodistria had started proceedings to ascertain whether *sponsali* had been contracted between the two, in which case Viezzoli could not make another marriage. Instead, the *podestà* of Pirano had taken action

⁹⁰ In pre-Tridentine matrimonial doctrine, the *sponsali* had an extremely high value. With the Tridentine decree *Tametsi*, which established the obligation of the presence of the priest and two witnesses, they lost much of their relevance, even if the Church still held them to be theoretically binding. As J. Bossy has observed, “The Council of Trent, in particular, passed a marriage code that went against the collectivist and contractualist traditions of kinship morality, invalidating dating marriages not celebrated publicly before the priest...All this, consequently, amounts to a vigorous attack on extra-sacramental betrothal and *fiançailles* which well into the 16th century continued to be inspired by the contractualist theory of marriage”, cf. J. Bossy, *Dalla comunità all’individuo. Per una storia sociale dei sacramenti nell’Europa moderna*, Turin 1998, p. 13.

⁹¹ On the subject see the chapter *The Emergence of Tradition...*, pp. 171-198.

⁹² As will be seen, in the course of the 18th century, the *consultori in iure* will be called on to decide on questions directly entering into the *essence* of the marriage sacrament that Bertolli, in the years when he was writing, indicated instead as absolutely an ecclesiastical prerogative. The progressive interference of the Venetian Senate, albeit limited to a set of cases reflecting the relevance of ongoing conflicts, is attested by the requests made to the *consultori* on the merits of the presumed validity of a clandestine marriage even in the presence of the existence of previous *sponsali* celebrated by the would-be groom with another woman.

⁹³ A.S.V., *Consultori in iure*, filza 143, 28 August 1692

against the youth for the crime of rape⁹⁴. There was no problem in having the two proceedings co-exist, based on the traditional *mixti fori* division between the ecclesiastical and the secular jurisdiction.

When it was learned that the apostolic curia of Capodistria had delivered a sentence which established that the *sponsali* were not valid and that Vezzoli could contract marriage with another young woman, against payment of a sum of money to Lucia Contenti, the *podestà* of Pirano reacted by informing the Council of Ten, which requested Bertolli's opinion. The *consultore* observed that the two jurisdictions, the ecclesiastical and the secular, had correctly begun the two judiciary proceedings according to their respective jurisdictions. However, the sentence of the ecclesiastical forum had to be annulled, in that it had exceeded its authority:

Up to the point where it said that there were no *sponsali* and that the man is free to contract with whomever he pleases its judgment goes well, but when it obliged him to deposit fifty ducats to the woman, which constitutes a conviction and a punishment for a crime, it went beyond its jurisdiction and intruded on what is reserved to the secular forum.

A judgment which, if applied, would inevitably reduce the wide margins of mediation performed by ecclesiastical justice.

With his *consulti* regarding matrimonial questions, Giovan Maria Bertolli bears witness to a new interest on the part of the Republic in social practices that for centuries had been regulated by the Church with flexibility, and even some degree of tolerance. Though radically changing the traditional concept of marriage, even over a century later the Tridentine rules had not completely eliminated matrimonial rituals and practices deeply rooted in relations of kinship and community, above all in the rural world.

⁹⁴ A.S.V., *Consultori in iure*, filza 143, 28 August 1692

THE SMALL COMMUNITY AND ITS CUSTOMS

Some problems of definition

Custom and the small community: two concepts that for many centuries went along side by side, reflecting on the whole a cultural and ideological *unicum*. In reality, as we shall see, references to custom were widely used by learned jurists also in reference to territorial realities like the state and the city, though with many different and contradictory meanings¹. Similarly, the concept of small community supposes an interpretative approach whose territorial and cultural features are connoted by numerous variables, more or less linked by resting on the common foundation of custom.

The essence of these two terms cannot be defined by using the usual institutional and legal features: the small community cannot be identified by the sole fact of constituting some sort of *administrative unit*, while custom does not lend itself to being defined uniquely as a legal system alternative to written law². It should also be added that the identification of a cultural system

¹ Jurists and anthropologists have dwelt on the concept of custom, trying to identify both its theoretical and material features. An outline of legal custom is found in M. G. Losano, *I grandi sistemi giuridici. Introduzione ai diritti europei ed extraeuropei*, Bari 2000, pp. 257-323. There is a very noteworthy entry written some years ago by N. Bobbio, *Consuetudine (teoria generale)*, in *Enciclopedia del diritto*, IX (1961), pp. 426-433. Important for a history of the definition of the concept of custom is Assier-Andrieu, *Il tempo e il diritto dell'identità collettiva. Il destino antropologico del concetto di consuetudine*, in "Sociologia del diritto", XXVI (1999/3), pp. 15-50., with a full bibliographical treatment of the subject. Though referring mainly to traditional African legal systems, the concept of custom is examined in close correlation with that of community by N. Rouland, *Antropologia giuridica*, Milan 1992 (Paris 1988), in particular pp. 177-200. Full and original discussion of customs (and on their significance in the vendetta in Barbagia) in A. Pigliaru, *Il banditismo in Sardegna. La vendetta barbaricina come ordinamento giuridico*, Milan 1975.

² And as such it is often associated with one of the most significant manifestations of learned law, and that is the judiciary practice consisting in *precedents*, which, for example, as in the case of common law becomes a real regulative system of a whole society, cf. for example Losano, *I grandi sistemi giuridici...*, pp. 262-278. It is clear the adoption of a cultural concept of custom like this tends to put onto a second plane some of the most important features of customary law. Instead, in this essay we have tried not only to stress these features, but also

that links the concepts of small community and custom does not necessarily mean favoring historical analysis conducted on a scale of *micro* values, compared to wider territorial realities or problems (such as, for example, the state)³.

There is clearly something more, or better *other*, at stake. And this *other* can be seen above all in the delineation of a historical subject characterized by its complexity, uniqueness and, we might add, reluctance to be described according to abstract interpretative parameters easily compared with other realities.

How to define the *small community* and its customs? It seems obvious that the territorial base, more or less well-defined from the institutional standpoint (community, but we also think of the *contrada*), is a given which on its own is not enough to comprehend the complexity of the concept implicit in the term *small community*. Nonetheless, it is a given that allows us to clear the ground from a wider definition of community that, among other things, includes all groups of people who shared interests, values and religious practices (confraternities, corporations, etc.). Though at the same time we should remember that the institutional and administrative framework of the community very likely represented a *post factum* definition of settlements that were originally the result of geographical, economic and demographic factors.

The territorial factor is also important because, as we shall see, it supposed a constant, non-eliminable relationship between the small community and the environmental and ecological context in which it is situated. In turn, the territorial basis poses significant problems of internal distinction. A territorial-based community is a region, a city, an almost-city (an expression used by historians): institutional or non-institutional entities undoubtedly in possession of common elements.

What is certain, however, is that when we turn to the history of communi-

to identify them as the essence of a world that for its cultural and anthropological dynamics was often antithetical to learned, written law. If certain characteristic features of custom (like, for instance, the system of feud in the Middle Ages) could combine with the procedure developed by learned law, it must however be pointed out that this was mainly a cultural and legal blend aimed either to exploit or to enclose conflicts in a system whose underlying logic was antithetical to that of custom.

³ An approach called *micro-history*, which has enjoyed great popularity, above all in Italy, cf. for a discussion the contributions of C. Ginzburg, E. Grendi and J. Revel in "Quaderni storici", 86 (1994), pp. 511-575. The distinction suggested here is not a small matter. The concept of custom just described supposes, as does micro-history, a perspective that is, we might say, tendentially and inevitably an alternative to the usual way of looking at history. But differently from microhistory, it is not characterized essentially by methods of interpretative approach (which do, however, exist), but instead by its contents, cf. for the particular characteristics of customs the observations of Pigliaru, *Il banditismo...*, p. 187 and ff.

ties (and to their customs), we implicitly mean to refer to a history of rural communities, excluding without many methodological scruples, communities set in a large territory or an urban one. As we shall see, this is not a thing of little importance, since it is clear that underlying this choice there are certain criteria that could apparently be called ideological, but that in fact have precise historical and anthropological references.

Rather than being defined by its geographical setting (in the *contado*, in the countryside), it seems evident that the community that interests us is characterized by its small size (*la piccola comunità*). And so, an anthropological dimension more than a geographical one, not so much because there also existed rural and mountain communities spread over a wide territory, but because the anthropological dimension takes us to the heart of the history of communities and their customs, and suggests how the *cultural* link that we have chosen is fruitful from the standpoint of history and interpretation. Indeed, a crucial element in the life of a community was, and still is, the common network made up of social and family relationships. These are what allow the individual and collective dimension to blend in a *unicum* that constitutes the unitary foundation of the community itself. This *unicum* was founded on the network of acquaintances that constantly linked that past to the present, putting each individual into close relations with the other members of the community ('everyone knows everyone else') and that, finally, identified a series of values (often enough more supposed than real) that opposed the community itself to surrounding ones⁴.

However, the anthropological (and, as we shall see, also the legal) dimension of the community, though highly relevant, is not sufficient to solve all the problems of definition which we spoke about. Some communities, even if territorially and demographically *small*, were divided internally by an invisible line which, based on notions of status and precedence, broke the *unicum* we spoke of. These were usually communities with a *particular*

⁴ A definition of the community model based on certain characteristics shared by its members (the same life, the sum of specifics, and a common decisional field) in Rouland, *Antropologia...*, pp. 197-199. Rouland's approach, like that of Pitt-Rivers (for which, see the following pages) stresses both the aspects that can properly be called unitary and on the contrary those centering on conflict. This distinction finds important confirmation in the values of customs, which are on the one hand marked by ideals and on the other by the experienced legal order. As Rouland observes, "the social control exercised by law in the order of lived experience has conflict management as its goal ..., either by restoring the initial order or creating a new one, while respecting insofar as possible, the ideal order", cf. Rouland, *Antropologia...*, p. 186. In contrast, Robert Redfield, in what can be considered a classic, *La piccola comunità, la società e la cultura contadina*, Turin 1976 (Chicago 1956), undertakes his investigation by stressing the ideal aspects of community life, at the expense of changes that interacted with internal conflicts (on this aspect see questo aspetto *l'Introduzione all'edizione italiana* by Lucetta Scaraffia).

institutional identity, which ended up (as for example in Istria or in the territory of Treviso, during the Veneto dominion), by creating an internal within them.

In Istria the *cities* lying along the coast and some inland centers (such as Montona and Pingente) not only had political *dignity* conferred by Venetian representatives sent *in loco*, but they were also marked by the existence of a social stratification that filtered both relations with the territory and with internal political hierarchies⁵.

It should also be said that even in small communities with *equalitarian* values there were privileged relationships tied to the *contradas*. These relational networks often creating tensions with bordering *contrade*, or else could even turn into opposition to the community's institutional structure. But the propensity of these smaller unities to take on a well-defined institutional configuration (community or parish) indicates that the questions involved were numerous and, above all, it makes the institutional dimension of the small community more multifaceted.

Finally, many of the elements we have identified in the anthropological dimension of the community may well be referred to the institutional context of the parish (and of the parish community). And this observation is even more pertinent if we consider the strong *cultural* valence of religious values and the importance assumed by the parish in the modern period⁶.

⁵ The case of Istria is especially interesting for the complexity of the existing cultures and for certain specific economic and demographic aspects at work deep within it, conditioning relations between the cities and their territories. The notably low population density often influenced the usual dominion that urban centers have over small communities. This is the paradoxical but significant situation presented in 1559 to the Venetian Signoria by the *morlacchi* (a population from Dalmatia) who lived in the surroundings of the center called Due Castelli. As their representative said, they had built more than 2000 *casoni* "with our houses, vegetable gardens, places, meadows and have cultivated much sterile land and wild and thorny places". The few inhabitants of Due Castelli had decided to force them to move their entrances into the castle walls. "in which place", as the eight representatives of the *morlacchi* went on to note, "we have neither house, nor a place to put them, besides the fact that this things goes against the age-old observance and custom of the town and is an unusual thing in Istria... having given the order, on the pain of lire 20, the we come to live in the castle, against the of Vostra Serenità", Archivio di stato di Venezia (=A.S.V.), *Collegio, Risposte di fuori*, filza 313, 24 July 1559. On Istria cf. E. Ivetic, *Oltremare. L'Istria nell'ultimo dominio veneto*, Venice 2000.

⁶ Authoritative and still fundamental is the old book by G. Le Bras, *La chiesa e il villaggio*, Turin 1979 (Paris 1976). Le Bras observed: "The village is first of all an agglomerate in which we distinguish profane and sacred elements. If the village has an economic character, that is, if it is a place of commerce, a market, in contrast with to the center of production of private property; if it has a military character like the castle, or a social one, as a grouping of families, an evolved form of clan; these problems can be studied only within the history of each people. Instead, that there are in the village sacred elements, a protecting god, a temple, is certainly attested, in French villages, by the present of the church. But even in the church

However, it should be noted that the superimposition community/parish is in reality only apparent. Not only because in many cases the boundaries between the two did not coincide, but above all because in many cases the kinship values that for a long time dominated European society were imbued with their own religious dimension, which more than once was expressed in forms that opposed the parish and the values it was based on. As has been observed by John Bossy, at the beginning of the 16th century, Europe was still made up of autonomous communities where the ecclesiastical imprint had not necessarily been defined yet. Only starting with the Counter-Reformation was a system of parochial conformity begun, a system that was to transform the Church into an institution founded on the parishes⁷.

Thus, the *small community* was a territorial and institutional unity made up of individuals and families and characterized by an anthropological dimension in which relational networks had an equalitarian foundation dominated by kinship ties and by what we can call the juridical regime of custom.

The equalitarian character of the rural community has been repeatedly underscored by anthropologists. Disparities in riches, roles and crafts were not so great as to create distinction of status or precedence. And this characteristic meant that marriages and kinship alliances were made within the ambit of the community or in any case in a geographical context intended to favor above all neighborhood relationships⁸.

The rural community founded on equality therefore favored strategies that have been defined as *cooperative*. That is to say, strategies that aimed at favoring the exchange of women in the narrowest possible spheres. If the equalitarian foundation was lacking, strategies of *conquest* were immediately created, with a view to making the most advantageous matrimonial exchanges with the outside world, while inside the community new criteria of distinction and, possibly, of status were created⁹.

The equalitarian and cooperative foundation was closely tied to the preva-

it is possible to distinguish sacred and profane elements. It has a supernatural aim, to make the village Christian and to lead each of its inhabitants to salvation. But it tries to reach this aim by temporal means: personnel, buildings, property, intellectual instruments", cf. p. 20.

⁷ J. Bossy, *Dalla comunità all'individuo. Per una storia sociale dei sacramenti nell'Europa moderna*, Turin 1998. As this English historian has said "the medieval Church was on the side of life, while the Church of the Counter-Reformation was hostile to it. What I mean to say, essentially, is that what made the medieval Church a real community at the popular level was its acceptance of the family group, both natural and artificial, as a constituting element of its life...", p. 30.

⁸ J. Pitt-Rivers, *Introduction*, in *Mediterranean countrymen. Essays in the social anthropology of the Mediterranean*, Paris 1963, pp. 9-25.

⁹ On this problem cf. A. Burguière, *Le cento e una famiglie d'Europa*, in *Storia universale della famiglia*, ed. by J. Goody, 2 vol., Milan 1988 (Paris 1986), vol. II, pp. 87-94.

lence of oral customs. The reliance on orality and tradition, typical of customs, felt no need at all of writing. There were kinship relationships to guarantee the observation of determined rules. Even when, especially starting from the 16th-17th centuries, in many rural communities recourse to a notary became frequent, it was still custom that gave community exchanges their decisive features.

The strategies of *conquest* disrupted the world of custom and tradition, and introduced the propensity to resort to writing into the community. It was inevitable that, in this context, conflicts of some importance constantly broke out: and the archives bear ample witness to this, offering the historian a great quantity of documents on this subject.

Here is a significant example that we take from the Venetian archives. We are in Mirano (a small village between Padue and Venice), towards the end of the 16th century. A small community, in fact. And inevitably there are those who have the ambition of a profitable marriage for their daughters and, above all, for their relatives. Thus, Agostino Violato, a local merchant, thinks it a good idea to destine his only daughter to Girolamo Mutona, a citizen of Treviso. Violato's estate is very large, so it is not strange that Antonio Bertolin, the local baker, hopes to wed the girl. And it may be thought that between the two there had even been some amorous exchanges. On the day of the wedding, when the bride and groom are leaving the church, they are met with a hubbub of shouting and allusive insults. And their first night is followed by a noisy *awakening*, which the rejected local suitor is not extraneous to¹⁰.

The strategies of *conquest* tore apart age-old matrimonial equilibriums and caused reactions that made use of the unpolished but significant language of custom.

The customary foundation of the community would be prevalent for many centuries, even when, starting in the 19th century, state codifications tended to reduce customs to *usages*, or else to deny them completely. In this sense, we need only think of the persistence of *awakenings* and of the rites of youths until the late 20th century (in some hill and mountain communities)¹¹, as

¹⁰ Archivio di stato di Venezia (=A.S.V.), *Collegio, Risposte di fuori*, filza 344, 2 marzo 1591: "And unite all in a house on the piazza, in front of which married couples usually passed with their company on their way to the wedding, having waited for the return from church and all these insulting men were shouting at the windows: 'cuckolds, whores, etc.', with the most obscene and shameful insults of the vilest and most infamous brothels, with a racket of voices and insults they accompanied that honest company of men and women, and did not fail to repeat more than once the same shouts, with wielding arquebuses and other insolent and shameful noises, continuing until six o'clock in the night"

¹¹ Cf. M. Fincardi, *La cioccona. Dati etnografici dalla provincia reggiana*, in "L'Almanacco", 12 (1988), pp. 19-43.

well as of the practice of not reporting some property exchanges, and of recourse to inheritance systems that deviated from those established by the codes¹².

In this context, it is worth remembering that, with the birth of the Italian territorial state, the creation of the *judge of conciliation* (but we should also remember the *justice of peace* of the Napoleonic period), who held significant jurisdictional power, probably aimed at including within the institutional and legal sphere the community's strong inclination to solve a wide range of conflicts (such as, for example, certain inheritance conflicts) from within¹³. The more an equalitarian foundation kept the community cohesive, the more customs held sway over the population. Economic stratification did not necessarily shake the role of customs, unless it was accompanied by internal differences based on status and precedence¹⁴. In this case, recourse to external rules became inevitable, and caused strong conflicts within the community itself¹⁵.

But how can we define custom? And, above all, how was it understood by those who lived with it? The concept of custom we have adopted here seems to suppose a set of aspects that ethnology has long been inclined to call rituals or folklore¹⁶. A broad concept, in short. We shall see that one of the key problems

¹² Cf. on some of the problems connected to the relationship between formal law and living law P. Ungari, *Storia del diritto di famiglia in Italia (1796-1942)*, Bologna 1974, pp. 25-32.

¹³ On the figure of the justice of peace L. Neri, *L'istituzione dei giudici conciliatori*, Turin 1866.

¹⁴ On this order of problems see especially J. Pitt-Rivers, *The fate of Shechem or the politics of sex. Essays in the anthropology of the Mediterranean*, Cambridge 1977, pp. 13-17; M. P. Di Bella, *Name, blood and miracles: the claims to renown in traditional Sicily*, in *Honor and grace in anthropology*, ed. by J. P. Peristiany and J. Pitt-Rivers, Cambridge 1992, pp. 152-153.

¹⁵ Rouland, *Antropologia...*, p. 197 who observes that "writing effectively allows a stronger and easier control of time than does orality. It is a relatively easy to use tool of power, thanks to its anonymity, and it adapts well to strongly hierarchical and complex societies based on the individual or group: orality seems more rudimental a priori: the oral message has limited range and is more difficult to conserve. Yet, its apparent fragility tends to lead to the conservations of a more equilibrated social model – communitarism – in which groups and individuals, out of the necessary need they have for one another, collaborate rather than oppose one another".

¹⁶ The controversial history of the relationship between folklore disciplines (that is, regarding the history of popular traditions) and cultural anthropology is dealt with by P. Clemente, *Il punto sul folklore*, in *Oltre il folklore*, ed. by P. Clemente and F. Mugnaini, Rome 2001. As this scholar has to say, the word folklore was introduced in scholarship in the early 19th century: "thus, folklore was born when Romanticism began to feel the need to use the cultural resource of the 'roots' of people, and it still has this potentiality of being a reference point for civilizations to appeal to", p. 192. Clemente mentions the French project of the *Académie Celtique* aimed at investigating the life of popular traditions. On the application of this project to Veneto cf. F. Riva, *Tradizioni popolari venete secondo i documenti dell'inchiesta del Regno italico (1811)*, in "Istituto veneto di scienze, lettere ed arti", XXXIV (1966), pp. 3-93; and U. Ber-

regarding custom is the insertion of a series of social practices within a sort of finished normative *code*, which is possibly able to include all of them¹⁷.

Power of the word, power of writing

The code of custom would thus seem to repeat the indomitable force of tradition and the irrevocable values associated with religion, space and time. But as the Carnic episode examined in this volume illustrates, the social practices marked by mediation and by relations of force were extremely sensitive to the innovations and social changes that involved in the community in its entirety.

The problem in describing and interpreting the essence of customs and their extreme potential for modification and renovation is essentially the consequence of the ideological tensions inherent in the fundamental ideological values of tradition. The judiciary mishaps of the Corradazzo family reveal another important aspect: if the challenge to the rules of custom came mainly from outside, this could happen only because the equalitarian spirit we have spoken about no longer existed. And this happened above all when some upcoming desiring to develop a strategy of conquest decided to use a different legal language and to use written law as an instrument¹⁸.

The relationship between custom and written law illustrates the diaphragm

nardi, *Gli studi sul costume e le tradizioni popolari nell'Ottocento*, in *Storia della cultura veneta. Dall'età napoleonica alla prima guerra mondiale*, 6, ed. by G. Arnaldi and M. Pastore Stocchi, Vicenza 1986, pp. 311-341. Folklore studies are considered the activity of the entomologist, inclined to classify and to care about in the *drama* of the almost inevitable disappearance of popular traditions. Clemente observes that "in reality, folklore studies have lacked an exact theory of social and cultural change, and has referred to very simple models that have led to contrast the new and the old in an a-historical fashion: the new and the old exist in every generation", Clemente *Il punto...*, p. 194.

¹⁷ Looking closely at the first studies that, from the 18th century treated the concept of custom, Louis Assier-Andrieu recalls P.-J. Grosley, who saw in it "an element of the capacity of adaptation to the changing reality of human relations, immediately inferable from the empirical observation of social facts, and an element of founding essentiality of these same relations, inscribed in an unavailable regularity and in a permanence that denies all historicity. Custom is thus both the living site of change and the imperious call of obedience to the origins or, we should say today, to the *structure*, a-temporal and a-historical by definition". With A.-Y. Gouget the concept of custom acquires historicity and dynamicity, linking itself to its specific material context: "if the search for its primary source leads, as we have already seen, to an a-temporal representation of custom, that of its material causes, instead, invites us to relativize the influence in the context of a determined society, in a given moment of its evolution, and to situate it in relation to a plurality of social determiners which at this point it no longer incorporates...", cf. L. Assier-Andrieu, *Il tempo e il diritto...*, pp. 20-21 and 27.

¹⁸ On this episode see pp. 15-45.

that is created between the need for order and law, implicit in the formulation of all written law (which tend to be abstract, general and not easy to adapt to single cases) and the sense of *justice* belonging to every society. This sense of *justice* was (and in part still is) reflected to the highest degree in customs, in that they possessed the adaptability necessary to solve each conflict without profoundly altering the social *harmony* and equilibrium (as we shall show regarding the peace system)¹⁹. All these elements are well developed linguistically and imagistically by the lawyer who in the 1570s drew up a petition in the name of the *poor peasants* under the jurisdiction of the *podesta* of Treviso. The town had banned in its territory hunting *alla paissà*, that is, with snares, nets and dogs. This was a resource sent directly by God and heaven, claimed the people of the district, a resource that could not be taken from those who, differently from the townspeople, did not have falcons, sparrowhawks, or other rapacious birds²⁰.

These rites and customs were in contrast with the culture of the towns. In some cases, they reflected real cultural opposition that the lawyers filtered through their writings. An example is the petition presented in 1539 by the *morlacchi* settled in the villages around the Istrian town of Dignano. The lawyer-like prose, able and subtle in its argumentation, becomes a long *cahier de doléances* listing the abuses of the townspeople, but even more it reveals usages and customs that were not easily accepted by a stratified culture²¹. The force and persistence of customs is clearly linked to the political and institutional relationships involving the small community. And these should probably also be associated with the phenomenon that legal historians have called *homologation process*, meaning setting down customs in writing. This process took place on a vast scale in France from the 15th century on, but

¹⁹ In these societies the feud represented the element that regulated conflicts, and was a structure founded on rules: "the feud depends, in the ideal type, upon a segmentary family structure: that is, brothers may quarrel between themselves and no one will intervene, but they will stand shoulder to shoulder if one of them is attacked by a cousin, and again they will postpone disputes with cousins and rally to their defense should these be attacked by any outsider". Where a higher political authority tended to form, the structure of the feud was challenged, touching of the reaction of kin groups. In North Africa, as a researcher of the Berber people observed "it is general felt in most regions that when the sultan is in control of the area, law and order is maintained but justice is not upheld.", cf. J. Casey, *The history of the family*, Oxford 1989, pp. 43, 48.

²⁰ A.S.V., *Collegio, Risposte di fuori*, filza 330, 17 of February 1575 *more veneto*.

²¹ Cf. The petition in A.S.V., *Collegio, Risposte di fuori*, filza 315, 24 May 1561. For example, in chapters five and six we read: "That the lands for us *murlachi*, if for two years were left to rest as those of Dignano also, they should not be taken away, but the third year we can work them as is just ... That we can keep in our homes untied pigs, as has been declared by more than one decision, without being condemned, punishing according to Your Highness' opinion".

it is also possible to find it in situations that characterized (though usually only for some specific aspects) many communities of the Italian territorial states starting from the late Middle Ages²².

This *homologation process* reflected in the first place the political influence of the towns and their dominion over the surrounding territory. More specific and exact studies show, however, that in general it started (with the request for the town's approval) from conflicts inside the community²³.

Town regulations themselves indirectly bore witness to the cohesive force of custom, when envisioning the community's collective responsibility for many crimes whose author was unknown.

Writing down customs, however, was a determining factor in the light of political relationships within the community. A very interesting case is represented by the Istrian community of Momiano, which in 1521, after it was conquered by Pirano, was forced to put its customs in writing on the basis of the altered power relations. Having passed under the seigniorial jurisdiction of the Rota family, in the following centuries its written customs were to become a cause of attrition between the community and feudal lords. In 1582, in a petition asking for exemption from a new duty on wine imposed by Venice, recalled the 1521 agreement in which "were constituted many orders and constitutions with which we poor people of Momiano have to live, supporting many very heavy burden, which every year we are held to contribute to the lord of the manor of that place"²⁴. However, in the 17th and 18th centuries these customs were repeatedly challenged by the community and contested in light of the new relations of power²⁵.

However, most customs conserved their open and innovative characteristic, and we might ask ourselves to what degree this aspect worked as an important check on the towns' cultural and juridical penetration. We can consider, for instance the virtually exclusive monopoly over criminal justice enjoyed by the town courts and the possibility they had (above all through inquisitorial proceedings) to frustrate or weaken rural feuds. It is likely that

²² Cf. R. C. Van Caenegem, *I signori del diritto*, Milan 1991 (Cambridge 1987), pp. 92-93.

²³ C. Povolo, *L'intrigo dell'onore. Poteri e istituzioni nella Repubblica di Venezia tra Cinque e Seicento*, Verona 1997, pp. 68 and ff. The written compilation of certain customs (in particular those which, to use Rouland's terms, concerned the man-thing relationship) could also derive from the need for defense from external political and economic arrangements. But generally they were part of a conflictual development involving the sphere of the *piccola comunità*.

²⁴ See the petition in A.S.V., *Collegio, Risposte di fuori*, filza 336, anno 1582

²⁵ See in this context the very full case file formed in the Austrian period, in which are reported the most significant moments of the bitter conflict between the community and the Rota family concerning the interpretation to be given to the customs written down in 1521, cf. Archivio di stato di Trieste, *Atti amministrativi dell'Istria (1797-1813)*, busta 14.

the language of kinship was continually reformulated to keep town justice from becoming the element that resolved internal conflicts²⁶. In this sense and direction – but only as exemplificative – the acts of peace and the compromises (along with their formal changes) characterizing kinship relations should be examined²⁷.

Peace represented a determining element in community life and, as such, it was an integral part of conflicts. It was closely tied to the world of custom, in that its very essence was made of and mediated by social equilibriums and relations. What is more, it possessed a deeply religious dimension, since it recreated harmony between the world of the living and that of the dead (it is not by chance that many times reconciliation took place in the village cemetery). And, paradoxically, only peace could legitimate a new conflict²⁸. It should also be observed that though (except for certain well-defined jurisdictional areas) the ancient forms of conflict resolution (summed up by the happy formula of *community law*) were gradually frustrated or weakened (as for instance the justice of the *astanti* in Friuli), the capacity of communities to keep their equalitarian cohesion to some degree constituted a barrier to the incursion of *learned* procedures²⁹.

The links between custom and written law inevitably took on political coloring. To realize this, we need only remember that the application of written law was in the hands of learned persons who possessed self-referential technical knowledge, and who tended to put on a secondary plane the *order of peace* that inspired conflicts among kin. Instead, they emphasized the importance of a different order of criteria, aimed at giving primary importance to social safety and order³⁰. This political coloring was reflected traumatically in the sphere of the small community. It can be felt especially by examining the changes in the trial rituals that *ab antiquo* had regulated conflicts

²⁶ In this context, it is interesting to see the work by G. Pinna, *Il pastore sardo e la giustizia*, Nuoro 2003 (1st edition Cagliari 1967). The author, a lawyer from Nuoro, described the society of Barbagia in the light of his activity and knowledge of the criminal trial as applied to a pastoral society still strongly anchored to the feud and to custom.

²⁷ For all these questions, see S. Roberts, *The study of dispute: anthropological perspectives*, in *Disputes and settlements. Law and human relations in the West*, ed. by J. Bossy, Cambridge 1983, pp. 12-14. Also interesting is the chapter *La composizione delle controversie nelle società senza stato* in P. Stein, *I fondamenti del diritto europeo*, Milan 1987 (London 1984), pp. 3-12.

²⁸ J. Bossy, *Postscript*, in *Disputes and settlements...*, pp. 287-293.

²⁹ B. Lenman-G. Parker, *The state, the community and the criminal law in early modern Europe*, in *Crime and the law. The social history of crime in Western Europe since 1500*, ed. by V.A.C. Gatrell, B. Lenman, G. Parker, London 1980, pp. 11-48.

³⁰ On this topic, see my *Dall'ordine della pace all'ordine pubblico. Uno sguardo da Venezia e il suo stato territoriale (secoli XVI-XVIII)* in *Processo e difesa penale in età moderna. Venezia e il suo stato territoriale*, ed. by C. Povolo, Bologna 2007, pp. 15-107.

among kinship groups. In 1577 the community of Salò convinced Venice that in the administration of criminal justice a judge of *Maleficio* be put alongside the *provveditore* and captain periodically sent by Venice to rule the vast territory on the western bank of Lake Garda. In vain did the other communities that made up the *Magnifica Patria* oppose a measure that clearly weakened their traditional judiciary prerogatives, which were based on a strong political autonomy and the tendency to self-regulate internal conflicts. In the decades that followed, they had to appeal to Venice to oppose the strong jurisdictional stamp that the judges of *Maleficio* had placed on trial rites³¹.

A field of research that merits further study, for example, is that of testimony³². The network of testimony represents the visible reflection of the ongoing feud within a community. The regulation of evidence on the part of learned law (*common law*) constituted a instrument of pressure and control on the part of the class of hegemonic town-dwellers. And from this derived the vast range of witnesses that could be accepted and sworn in.

In the so-called system of *legal proof* two testimonies *de visu* were taken (along with confession) as full proof. By contrast, testimony *de auditu* had less value³³. But within the community, the narration of a fact based on what *had been heard tell* took on high value, and was probably considered completely legitimate in interpersonal relations and in the social consideration enjoyed by the person who had given the account³⁴. The constant appeal to *what has been heard tell* was motivated not so much by an attitude of refusal to collaborate with outside justice as by a different cultural perspective³⁵.

³¹ For example, to oppose the so-called *citazioni ad informandum curiam* by which the judge of *maleficio* obliged persons to appear before the course without openly specifying whether as witnesses or accused. On this, see C. Povolo, Zanzanù. *Il bandito del lago*, Brescia 2011, pp. 174-176.

³² Cf. C. Povolo, *Witnesses and testimonies of the past*, in "Acta Histriae", 19/1-2 (2011), pp. 29-41, introduction to the Acts of the conference dedicated to *Testimoni e testimonianze del passato*.

³³ G. Cozzi, *Note su tribunali e procedure penali a Venezia nel '700*, in "Rivista storica italiana", LXXVII (1965), pp. 945 and ff. When the so-called *moral evidence* became established, the judge obviously could assign probatory value to certain testimonies that were questionable from a formal standpoint, cf. Povolo, *Witnesses and testimonies...*, p. 8.

³⁴ N. Rouland observed in this context: "If writing insists above all on the message it carries and tends towards the anonymity of social relations, orality gives value to the individualization of social relations. If the content of the oral message is important, the individual qualities and social position of the one who gives it are equally important", Rouland, *Antropologia...*, p. 196.

³⁵ Obviously the attitude of *outside* justice is different. As the lawyer Gonario Pinna noted, for example in Sardinia the proof of an alibi "has over time undergone a deterioration and depreciation that have led to a dispute that will be hard to overcome", cf. Pinna, *Il pastore sardo...*, p. 116.

Another cultural aspect of customs is their collective nature, which is played out in the dimension of the community as a whole and its capacity to express values felt to be substantially shared by the individuals and groups that composed it. This aspect found its essence and meaning in the very life of the rural world, and could paradoxically be underscored by the political subordination imposed by towns through the legal criterion of the collective responsibility of the community for a wide range of individual behaviors of its members and representatives. No wonder, then, if as relations of power changed, custom also changed by having recourse precisely to what had always been one of its most distinctive features. This can be evinced, for example, from the accusation of sedition and *conventicole* (cabal) brought by the city of Vicenza against some communities in its territory. In 1576 these communities had deliberated to take on a common defense in every criminal controversy that any member of the community might have to undergo against representatives of the local nobility. The concept of collective responsibility had thus been overturned and actively taken up by the community to defend their political acquisitions³⁶.

Inside the code

The idea of custom is also closely related to the anthropological and juridical dimension of *grace*. In a small community, interpersonal relations were such that the economic and material dimension was largely interpreted in the language of kinship and neighborhood³⁷. This was the relationship that bestowed a just and fitting value on every form of commerce or work³⁸. This

³⁶ A.S.V., *Collegio, Risposte di fuori*, filza 330, 14 June 1576. On this episode, see also Povolo, *L'intrigo dell'onore...*, pp. 72-74.

³⁷ Cf. M. P. Di Bella, *Dire o tacere in Sicilia. Viaggio alle radici dell'omertà*, Rome 2011 (Paris 2004).

³⁸ André Burguière observes that economic logic and kinship logic constitute a common denominator in the matrimonial strategies of the relatively stable societies of modern Europe. Some of their features are found in very different regional and social contexts, which this French scholar is tempted to consider as variants common to all forms of social organization. Some strategies of alliance, such as 'double marriages' (i.e., with reciprocal exchange) and above all the 'resumption of alliance' which after one or two generations joined (even at times overcoming the limits imposed by prohibited kinship) two families that had previously been related, are widespread in many European contexts. In such cases, the dowry was no more than a *symbolic testimony* that was reciprocally exchanged, without belonging to anyone in particular. The ploy of the exchange of marriage partners over several generations evidently aimed at keeping a small property from being eaten into. So that these strategies could work, marriages had to be made within a very narrow geographical context, and the choice of partners directed as far as possible to very close relations, like kinfolk or neighbors. Almost everywhere the dowry followed the principle of reciprocity that particularly marked stable

is even more visible in work of a collective nature, in which what was done *for free* was the result of complex kinship relations, which can only be deciphered in light of the equalitarianism that constituted the essential character of the small community³⁹.

Shared and communal goods evidenced a significant aspect of the features of the community. Their permanence and, above all, their specific management, are proof of the intensity with which the anthropological dimension of *grace* pervaded interpersonal relations and indirectly confirmed the transience of all forms of material predominance based on distinction and precedence⁴⁰.

The idea of *grace* is directly correlated to that of *friendship*. Groups and individuals were connected by a tight network of friends. Friendship relations brought together kin groups, indirectly bearing witness to the community's ideological cohesion or, on the contrary, where these relations were lacking, the tensions and intensity of conflicts⁴¹.

It was these friendship relationships that marked relations with the outside world: with other communities, but above all with representatives of the institutions (of cities or of the state) whose activity regarded questions internal to the community. Outside interference could thus be filtered and manipulated in the light of local relations of power. When the community was not able to to mediate its internal conflicts (feud), friendship relations were weakened, and with them the possibility of controlling outside interference. Relations of friendship were also formed, though subordinately, with the members of the aristocracy who dwelled, at times for prolonged periods, in the same community. This was a subordinate relationship, but nonetheless it involved ties of reciprocity that linked the aristocrat's capacity to bestow (which also involved his honor) to services rendered by members of the

rural societies, in which in neighborhood, community and age-group solidarity assured "a power of arbitration and regulation", cf. Burguière *Le cento e una famiglie...*, pp. 92-94. This system met found a valid defense in the practices of control exercised by groups of young people. As we have already noted, the underlying given of custom was made up of the ties and ideology of kinship, which, as in the case of Forni di Sopra, were able to shape and absorb novelties introduced into the sphere of the community.

³⁹ On the concept of grace, cf. J. Pitt-Rivers, *Postscript: the place of grace in anthropology, in Honor and grace in anthropology...*, pp. 215-246.

⁴⁰ On the cultural dimension of communal goods in the mountain region of Carnia, cf. F. Bianco, *Carnia XVII-XIX. Organizzazione comunitaria e strutture economiche nel sistema alpino*, Pordenone 2000, in particular pp. 85 and ff.

⁴¹ On friendship relations as a genuine ordering system of the community, cf. J. Pitt-Rivers, *Il popolo della Sierra*, Turin 1976 (Chicago 1971). On the concept of friendship, cf. M. Aymard, *Amicizia e convivialità*, in *La vita privata dal Rinascimento all'Illuminismo*, Bari 1987 (Paris 1986), pp. 357-392.

community. The role of mediation taken by many aristocrats in establishing the peace is part of this same logic. In this sense, many of the relationships that seen from outside (also by the eye of the historian) could seem like prevarication or even undisputed domination of the aristocracy were actually characterized by their reciprocity.

The refusal of a subordinate relationship by some emerging families or, as happened more often, the lack of reciprocity, were elements that wound up by creating the community's opposition to the members of the aristocracy who owned property in its territory. Judiciary sources are extremely generous in offering the historian who patiently consults them the rhetorical figure of the aristocratic tyrant, oppressive and violent, or in any case one who abuses his power over the community's rights. This rhetorical figure made use of consolidated legal and cultural stylistic devices, but it was ably exploited by lawyers who by so doing essentially wanted to show up someone whose violent attitudes threatened the constituted order⁴².

What should be said of Andrea Morosini, whose abuses and prevarications led the community of Villa del Conte, below Padua, to address a complaint to the *Signoria* twice in the 1560s? This Venetian patrician had astutely taken over some common property. Not only did he prevent his shareholders from paying the rates dues to the community, but he also extorted money from his inhabitants, denouncing them for non-existent damages and forcing them to work for him without pay. The lawyerly tone of the complaints presented by the people of the community might lead us to think that Contarini was an unscrupulous entrepreneur, one totally intent on increasing the rents of his properties at the expense of a communitarian world entrenched in anachronistic rights. But upon a closer look, the Venetian patrician's actions do suggest a very strange way of behaving: the offence, on his part, to what was perhaps the essence of aristocratic honor and prestige (which Venetian patricians themselves could not contravene), that is, the intrinsic capacity to bestow and, through bestowing, to legitimate the predominance of status. And if curiosity encouraged us to go into the affair more deeply, we might discover that it was really financial difficulties than greed for power that lay behind the prevarications of this Venetian patrician⁴³.

A complex subject, that of friendship, which constituted an important filter for the community and family relations with the outside world, leaving a deep imprint on internal equilibriums.

The search for a supposed *customary code*, able to uncover the hidden mech-

⁴² A. De Benedictis, *Politica, governo e istituzioni nell'Europa moderna*, Bologna 2001.

⁴³ A.S.V., *Collegio, Risposte di fuori*, filza 319, 23 January 1565 *more veneto*; filza 325, 17 October 1571.

anisms of an eminently oral and informal juridical system, was certainly nourished by the rules that underpinned and gave life to the structures supporting kinship and the ways in which they organized their exchanges.

The idiom of kinship was expressed first and foremost by marriage alliances. But the relations acquired through the choice of godparents for the rite of baptism were also important. As is well-known, the Church put significant limits on this practice, which directly linked baptism to a profound religious sentiment that pervaded the very nature of family relations⁴⁴. It would be interesting to know if this prohibition was sidestepped through other rites, such as the haircut (widespread in Balkan countries), or certain propitiatory and magic rituals (registered in South America after the conquest)⁴⁵. Thus, within the community the choice of godparents was fundamental, and it would of interest to study this phenomenon considering the same relationship when it occurred between representatives of the local landholding nobility and members of the upcoming farming families⁴⁶.

The cohesion or weakening of kinship is clearly one of the most interesting of the subjects that represent a privileged terrain for investigation in the realm of the small community. It is directly linked to the stability of the kin group on a determined territory and to the management of resources⁴⁷. For example, to what degree did the penetration of landowners from the cities or from outside influence this stability? And also, indirectly, the physiognomy of the community? This is a very complex subject, which must also comprehend the various forms of land management. What is certain is that the type of property (small, large, urban, external), of possession and concrete management are not insignificant. In the presence of a high density of manual workers, kinship cohesion was probably weak or nearly inexistent. But if we exclude these extreme cases, it should be observed that a whole set of factors (demographic, economic and cultural) acted on the property structure/community cohesion relationship in a manner that was not unambiguous. For a long time 'land management' was a factor that negatively influenced

⁴⁴ Bossy, *Dalla comunità...*, pp. 37 and ff.; E. Muir, *Ritual in early modern Europe*, Cambridge 1997, pp. 21 and ff. Edvard Muir notes that "For example in France, godparents were usually close blood relatives, selected from among the immediate kin of the mother and father. But in the South, especially in the Balkans and Italy, godparents were suspended in the webs of elaborate patronage networks.", p. 29.

⁴⁵ C. Bernard-S. Gruzinski, *I figli dell'apocalisse: la famiglia in Meso-America e nelle Ande*, in *Storia universale della famiglia...*, pp. 177 and ff.

⁴⁶ A subject dealt with very fully by G. Alfani, *Padri, padrini, patroni. La parentela spirituale nella storia*, Venice 2007.

⁴⁷ On the subject of kinship in its political-anthropological and economic valences, see Casey, *The history...*, in particular pp. 41 and ff.

the strength of the structure of property⁴⁸. As did the geographical situation of the community within a determined territory (roads, vicinity to urban centers, the nature of the terrain, hilly or mountainous zones, etc.)⁴⁹.

This consideration is also indirectly borne out by the permanence on a vast scale of the customs we have spoken about. Customs underpinning a strong power of mediation on the part of local forces. But also customs expressed through collective rituals that sanctioned the common identity, such as festivities⁵⁰. The cohesive force of feast day is in fact something that cannot be simply explained by the rituals (in the course of the 19th century called folkloristic) connected to fieldwork and the passing of the seasons. The feast day expressed the cultural cohesion of the kin group and the community. They not only linked the present to the values of the past, but they also marked the community's awareness of its own territorial context. And it is not by chance that in the late 18th century they would become the object of attacks and criticisms born of a different way of thinking about property and income⁵¹.

In the religious feast feelings about religion and family merged into a sole cultural dimension. Attesting to this was the profound feeling surrounding the cult of the dead. Many of the most recondite meanings of this cult are not easy to discern because of the ideological superimposition imposed by the Church. And here, too, the turning point is to be found, significantly enough, in the early 19th century, with the Napoleonic measures regarding cemeteries. It would be interesting to be able to assess the impact of these measures on the cultural foundations of the community. And the same is

⁴⁸ For example, in times of demographic decline, not only did the number of manual workers fall, but it was also difficult for landowners to rent their lands. In this situation, it was necessary to recur to emphyteusis (such as *livello*) that allowed farming families to settle permanently on small plots of land, cf., for an example, the miscellaneous volume dedicated to the Vicentine community of Dueville, AA.VV., *Storia e identificazione di una comunità del passato*, ed. by C. Povo, Vicenza 1985.

⁴⁹ As in the case of the small community of Lisiera in the territory of Vicenza, cf. AA.VV., *Lisiera. Immagini, documenti e problemi per la storia e cultura di una comunità veneta. Strutture, congiunture, episodi*, ed. by C. Povo, Vicenza 1981.

⁵⁰ On rituals cf. Muir, *Ritual...*, Muir observes: "The chaos of life meant that sterility, bankruptcy, or death could strike anyone at any time, but rituals provided a countervailing principle of order, what has been called a "cosmic order." Rituals brought the cosmic order into daily life by giving persons access to divine power; lay ritual blurred the distinction between the sacred and the profane, because people experience the sacred within the profane world ..", p. 16. These aspects also explain the apparent immutability of customs, which seem to coincide with the incessant, perennial changing of the seasons.

⁵¹ Cf. on these aspects pp. 199-248.

true for the institutional transformations imposed on the traditional institutional set-up (with the reduction of many communities into *frazioni*)⁵².

The idiom of honor was another important element defining community law. This was an idiom that prescribed behaviors regarding both friendship and sexual relations. It was the language of honor that determined the features of gender considered appropriate and the behavior that was ethically positive. Collective rites like the *mattinate* (awakenings) were used to punish those held guilty of serious infractions⁵³.

There was honor marked by masculinity and honor marked by modesty. In the sphere of the community, despite its aggressive tension the former did not suffice on its own to create a symbolic space of power and distinction (in this sense, the trial of Paolo Orgiano is significant⁵⁴); the latter was characterized by the intense values assigned to the woman's body. Indeed, it was the woman who represented the essential vehicle of alliances and exchanges. Though this honor could not be augmented, it was endowed with strong symbolic values. To surrender a woman was always a fact of great social importance for both kin groups: it redrew or re-established the community's internal equilibriums⁵⁵. From this derived the significance of celebrating the wedding in the woman's parish. And, above, all the conservation of the public image of her purity-virginity. The woman's body was imbued with such strong symbolic value that it only took a stolen kiss, taken by surprise and by force, in front of the whole community, to spoil the strategies of the kin group the young woman belonged to⁵⁶.

⁵² For these questions, too, it is useful to refer to Le Bras, *La chiesa e il villaggio...*, *passim*.

⁵³ The bibliography on honor is very wide. I refer here to the Acts of the conference held in Capodistria in 1999: *Honour: identity and ambiguity of an informal code*, in "Acta Histriae", IX e X, Koper 2000. A general framework is given in Di Bella, *Name, blood and miracles...*, On the political dimension of honor, see Pitt-Rivers, *The fate of Shechem...*, pp. 126-171. On the conflictual relation between aristocratic honor and honor among country people, cf. Povolo, *L'intrigo dell'onore...*, pp. 355-412. On the *mattinate* cf. D. Fabre, *Il privato contro le consuetudini*, in *La vita privata...*, pp. 426-457.

⁵⁴ Povolo, *L'intrigo dell'onore...*, pp. 355 e sgg.

⁵⁵ Cf. Pitt-Rivers, *The fate of Shechem...*, pp. 126-171.

⁵⁶ In 1603 Bortolamio Fondra of Serravalle sent a petition to the *Signoria* reporting that his daughter, Giustina, had suffered a serious affront to her honor. Pietro Fucati, of the same community, who had in vain asked her hand in marriage, "on the day of St. Biasio, in the Church of St. Augusta, where there is the head of the glorious saint, great devotion and the very great meeting of all this land of Serravalle, Ceneda and other surrounding places, imagining that Giustina, too, would have gone there to ask for pardon, on that day purposely and with forethought to wait for her in the street, where she had to pass. And seeing that with other maids and women she was going for this pardon, he went behind her and without fear of the Lord God and the justice of the world, in the midst of the public street he flung himself on the aforesaid maid to kiss her by force...". Rather than aiming at an improbable marriage

The institution of abduction, which was widespread in the early modern period, could be explosive when it occurred without the tacit consent of the families involved⁵⁷. This could in itself give a predatory character to the practice, which very often went beyond the intentions of the young people involved in a ritual that was by and large aimed to extort the consent of the future bride's parents. Emblematic here is the episode that took place in the western part of the upper bank of Lake Garda between May and August of 1704, whose protagonist was Doctor Francesco Parentini of Tremosine. As the sentence underscored, not only was he a man with an overbearing and tendentially violent character, but he was inclined to occupy a "post and figure superior to his fortune". Parentini had set eyes on Giulia Zuanna of Gargnano, "a young woman of a noteworthy and civilized household". After asking her hand in vain from her paternal uncle and receiving a decided refusal, he determined to abduct her with the aid of some of his servants. But the words of the sentence let it transpire that the young Giulia was not completely indifferent to Parentini's requests:

After which, going back by the lake and with Giulia repeating in vain the most lively protests and the strongest expressions to show the pain of the violence suffered, her led her to his house in Tremosine, where ... he managed to exact by the show of so much force a spurious and illegitimate assent out of her simplicity and fear ... in the presence of the priest of Tremosine, nor content with this he extorted in the aforesaid detestable manners attested or established in the acts of the notary Conaglio, and she was forced to sign it in duplicate copy in the presence of Parentini"⁵⁸.

with the girl (as the petitioner suggests) the violence probably was intended to prevent possible talks for an alliance with another lineage. A very widespread practice, violence committed in public with a forced kiss fell on the fragile terrain of honor and probably did not reflect the rash initiative of a frustrated lover so much as tensions at work within the community between conflicting kin groups. The case of Serravalle is found in A.S.V., *Collegio, Risposte di fuori*, filza 356, 19 marzo 1603.

⁵⁷ On abduction cf. V. Cesco, *Il rapimento a fine di matrimonio. Una pratica sociale in età moderna tra retorica e cultura*, in *L'amministrazione della giustizia penale nella Repubblica di Venezia (secoli XVI-XVIII). Retoriche, stereotipi, prassi*, ed. by G. Chiodi and C. Povolo, Verona 2004, pp. 349-412.

⁵⁸ A.S.V., *Capi del Consiglio dei dieci, Banditi*, busta 13, sentence of 14 August 1704. The sentence went on to add: "and to crown so many misdeeds he insisted on attempting the chastity of this Giulia to give in to him and that by the will of the Lord God and her constancy she remained intact and unharmed; after all these perils, violence and iniquitous dealing, seeing that the endeavor to persuade her to yield freely to his unjust pressures was hopeless, he was persuaded by the resistant constancy of Giulia and humiliated by the horror of so many wrongdoings to give her back her just freedom". The strong reactions of the family of the young woman became a decisive factor in the outcome of the affair. Parentini was banished and the Council of Ten declared that on the spot where the abduction had taken place was to be affixed an inscription in capital letters: "Francesco Parentini, banished capitally by the

Thus passion, interests, matrimonial strategies and social practices merged and crossed, using the complex language of honor to define the role and prestige of kin groups within the community.

The idiom of honor did not always coincide with Church or state law, and without doubt it followed ways specific to the rural world. We need only think, for example, about how the attitude of the community differed from the Church or the state in its attitude towards adultery, or about the rituals of courtship and sexual initiation⁵⁹. The Tridentine marriage was to have quite a hard time in imposing itself over the religious dimension of kinship. It is interesting to note that these rules and prescriptions were not applied to those who, those residing in the community, were of a social group possessing the status of city-dweller or of nobility. The primary aim of the *matinata* and other rituals of degradation was to mark and make public not so much an action as the 'contaminated' person who had broken the rules of custom (for instance, the husband victim of adultery). Indeed, the person was imbued with a *sacred* value linked to the honor of the community. It was the lack of these values that spurred the community to expel persons who had completely lost the sense of honor (like, for example, prostitutes). These forms of exclusion and expulsion clearly contrast the punishment of banishment pronounced by city and, above all, state courts. It would be interesting to verify whether, and how, this punishment, above all in the most acute phase of banditry, entered the community, threatening family solidarity or accentuating local feuds⁶⁰.

These degradation and derision rites seem, paradoxically, to register a sudden rise starting in the second half of the 18th century, when the action of the authorities is more clearly oriented towards the regulation of certain community customs and institutions (such as festivities, brotherhoods and parishes). It was probably a phenomenon that had always been alive and widespread, and that emerged now thanks to the greater sensitivity of the authorities for public order. What is certain is that in the rural world, too, towards the end of the 18th century the dimension of the private assumed a sharper profile, one less willing to suffer the intrusion of groups of disorderly, insulting derisive youths. This is illustrated by the measures taken in many European countries against young 'rascals', as well as in the initiatives that, long before, many communities took to chase away those (mainly youths) whose behavior threatened the stability of the family and of private property.

highest Council of Ten with his hitmen for the violent abduction carried out in this place".

⁵⁹ Pitt-Rivers, *Il popolo della Sierra...*, passim.

⁶⁰ For example, analyzing the legislation for awards concerning banditry, which had rural communities as their explicit reference, cf. on this topic Povolo, *L'intrigo dell'onore...*, 153 and ff.

Moreover, the parish priest himself, who increasingly performed administrative and fiscal tasks on behalf of the state, seemed to react, at times very harshly, to rites that disturbed weddings and the family peace. Perhaps it is from this that there emerged the increasing unwillingness to tolerate disorderly behavior on the part of youths and to appeal to public justice. It is also possible that the growth of this phenomenon shows, on the contrary, the vitality of these customs and rites. And therefore that, faced by an external threat and the penetration of internal intolerance, certain customary rites took on still greater vitality and meaningfulness. Undoubtedly, their emergence is the result of a conflict which in the last half of the 18th century set the values of the world of custom and community against those coming from a conception of social order that followed a different reasoning⁶¹.

The theme of honor (understood as a norm that prescribed behaviors and indicated values) also involved the community as a whole. The sobriquets used by each community for the surrounding communities (the so-called *popular blazon*) indirectly indicated its own collective values.

It was mainly groups of youths (or, more precisely, of unmarried youths) that cultivated these values and rose in defense of the community's honor. As, for example, by aggressively withstanding any invasion of the boundary-line on the part of youths from other towns aiming to court local young women⁶². This was a custom that went on for a long time in almost every community, despite evident economic and cultural changes. It aimed to defend the prudent local matrimonial strategies, openly using the language of honor. It was not difficult for these collisions to end up in acts of blood, calling for the intervention of city and state courts. As a study based on 18th-century judiciary documents has shown, when this happened (quite frequently, to tell the truth), the custom was never openly confessed by witnesses, defendants or injured parties. And this was probably not so much out of a sense of omertà, as of the rural world's feeling that this custom could not be accepted or understood by the outside world, which possessed a different (learned) culture⁶³.

⁶¹ For this very complex matter cf. the analytic observations of Fabre, *Il privato contro le consuetudini...* See also the in-depth study of M. Fincardi, *Il rito della derisione. La satira notturna delle battarelle in Veneto, Trentino, Friuli Venezia Giulia, Verona* 2009.

⁶² N. Schindler, *I tutori del disordine: rituali della cultura giovanile agli inizi dell'età moderna*, in *Storia dei giovani dall'antichità all'età moderna*, ed. by G. Levi and J.C. Schmitt, Bari 1994, pp. 316-317

⁶³ C. Povoletto, *Confini violati. Rappresentazioni processuali dei conflitti giovanili nel mondo rurale veneto dell'Ottocento*, in *La vite e il vino. Storia e diritto*, ed. by M. Da Passano, A. Mattone, F. Mele, P.F. Simbula, Roma 2000, vol. II, pp. 1090-1091.

Indeed, community custom followed ideological criteria and values that did not match the expectations of the external institutions. After all, the rather late birth of last names and the difficulty they had in becoming fixed, due to frequent variations as well as to their derivation from (and subordination to) nicknames, illustrates how the language of rural kinship could not easily be assimilated by learned, written culture. Nicknames were used to classify the role of each individual (and family) inside the community, and could also serve as a *screen* against an instrumental use of last names on the part of state authorities. It would, for instance, be interesting to verify the relationship between nickname and last names in multi-ethnic communities, like the 20th-century Istrian communities where state authorities used last names to assert their own ideological values.

However, it was not only or mainly a question of defense against outside fiscal and judiciary interference. The orality and innate predisposition to mediation that characterized customs was something not easily comprehended by a legal culture which, being written, constituted an abstract, closed system.

A separate phenomenon, though one evidently connected what has been described, were the conflicts that often broke out between one community and others in the immediate surroundings. These conflicts could be about wooded lands, boundaries or pastures. In any case, they were conflicts that often exploited the language of honor: the community's honor was called on as a means to defining its identity. This happened in many cases during processions or religious rites, above all when community boundaries did not correspond to those of the parish as regards the territories and family groupings included.

Descriptions

The subject of custom also involves the important question of how it was seen and interpreted. This question can, in a certain sense, be formulated by examining the relationship between learned and popular culture, their contamination and, above all, the possibility to perceive the latter (since it was oral and ritual) through the control exercised by the former⁶⁴.

⁶⁴ What Fabiotti has to say about anthropology could very well be said of history, too: "Going beyond orality and the unconscious nature of phenomena are both processes that are realized thanks to the anthropologist's intentionality. Thus, they inevitably bring with them the reflection of what could be called a form of 'pre-comprehension'. This is made up of the epistemological-interpretative categories by which ethno-anthropologists choose their experience, approaching their object and then detaching themselves from it through the move-

It is clear that custom and its rites can be grasped only in light of the relations of power and the hierarchies imposed by power. Rites, conflicts and practices emerge out of the procedural scans established by the predominant institutional structure and those who managed and manipulated it. It was these procedures that transmitted their contents, filtering and deforming them to meet the needs of the power structure itself. Thus, a double level of interpretation is necessary whenever we approach community customs in order to grasp their essence and features. And an indispensable instrument of understanding is institutional procedure and practice.

In this sense, I do not feel it very useful to refer to the forms of political ideology defined as *communalism*⁶⁵, understood as a set of rights that could not be violated without questioning the intrinsic nature of a pact-and-class-oriented society. In the course of the modern period, the content of this ideology, seemingly immutable and intangible, was transmitted by new and different ways of the control, or at any rate of the definition, of conflicts. We need only think, for example, to the very important legal instrument that connected individuals, classes and communities to the prince or the sovereign: entreaties, petitions and *gravamina* (grievances)⁶⁶. As we shall see, their contents varied over the course of time, and a careful examination would easily show that new subjects and new instances were at work outside of the pact system within which they were set and found their logic⁶⁷.

ment of writing”, U. Fabietti, *Antropologia culturale*, Bari 1999, pp. 116-117. The fact that the historian uses mainly written documentation (which in itself involves a first level of abstraction) makes the interpretation only apparently more complex, if one holds that “in every description what is ‘described’ is not so much a ‘reality’ standing in front of us, but things in some way already set into representations at the moment we perceive them, both on the plane of sense and of reflection”.

⁶⁵ On *communalism* cf. De Benedictis, *Politica, governo...*, pp. 386-391: “in class-oriented societies, in short, not only cities but also villages were the expression of a *societas civilis cum imperio*, since the political rights exercised in the name of the community could not comprise only rights delegated by a higher power”, p. 387.

⁶⁶ On which, see B. Kümin-A. Würgler, *Petitions, gravamina and the early modern state: local influence on central legislation in England and Germany (Hesse)*, in “Parliaments, estates and representation”, 17 (1997), pp. 39-60; C. Nubola, *Supplications between politics and justice: the Northern and Central Italian states in the early modern age*, in “International review of social history”, 46 (2001), suppl. 9, pp. 35-56; L. H. Van Voss, *Introduction*, in “International review of social history”, 46 (2001), pp. 1-34; and the more recent, *Suppliche e “gravamina”, Politica, amministrazione, giustizia in Europa (secoli XIV-XVIII)*, ed. by C. Nubola and A. Würgler, Bologna 2002.

⁶⁷ Angela De Benedictis offers some interesting observations about customs: “As late as the early 18th century, country people claimed liberties held from time immemorial; they recalled age-old privileges and rights conserved for 50 years or more. Through the creation of historical legends which spoke about privileges fallen into disuse, the subjects – farmers and town-dwellers – tried to found a new system of custom often called the ‘good old law’, but in reality one that was actually suited to their subjective desires, their yearnings for a bet-

All these aspects are well exemplified by the long affair that involved the combative Vicentine community of Malo. The long controversy between the community and the noble Muzzan family began because of certain ancient rights that the latter had managed to steal, ably and fraudulently. The action to gain back its customary rights, carried on in vain by the community on the institution and judiciary level, led in the end to a bloody revolt⁶⁸. The revolt had, then, been preceded by a complicated judiciary procedure, which directly involved both the town and the dominant city's institutions. In December of 1552, the irreversible damage done to its ancient rights had incited the community to a sort of reckoning. It was dramatically reported by town deputies, who decided to send *orators* to Venice to request determined punishment:

Having been so daring and audacious...the men of the village of Malo, that beating the bell and the tower bell uprose in more than two hundred and impetuously going to the home of Marco and Francesco di Cavazzuoli, where there was still Antonio Losco...to murder them; and since it seemed to them they could not do or completely carry out their evil spirit, having surrounded this house with straw, canes, sticks and other things suitable for fire, they threw fire into the house and dovecote that was on top of the house, which they burnt and totally ruined

ter life...that is, winning new liberties passed through the defense of the old", De Benedictis, *Politica, governo...*, pp. 389-391.

⁶⁸ The whole dispute is reported in the petition presented by the community itself on 20 June 1562, two years after the bloody revolt. On that occasion the community recalled that it had always enjoyed the ancient right to collect the tithes. The right had been won in 1407, following an acquisition stipulated with the *camera fiscale* of Vicenza. In 1546 the nobleman Zuan Girolamo Muzzan questioned this right over a plot of land he had bought from a certain Alvise Corà di Malo, claiming that the latter had previously made a pact with the community itself, on the basis of which he was exempted from paying the tithe. However, Muzzan produced no document to justify his claims, which were simply confirmed by some witnesses. The community opened a judiciary dispute in the city magistracies: first the court of Aquila and then the deputy of the *podestà* ruled against it. After an appeal to the *Auditori novi*, "never having been found the said instrument of convention", the Venetian magistracy confirmed the deputy's sentence, in that it was a "conformed sentence", that is, it confirmed the preceding sentence and was, on the basis of the statutory dispositions, considered not open to appeal. Not to call it quits, in April of 1551 the community appealed to the *Avogadori di comun* in merit to this presumed non-appealability and obtained a favorable judgment. But the decision of the *avogadori* was then impugned by the *Capi* of the Council of Ten, which put an end to the question, by confirming the non-appealability of the two Vicentine sentences. Thus, a long and tortuous judiciary path preceded the revolt. In the 1562 petition the community claimed to have discovered the act of the convention stipulated by a notary in 1472, in which it was stated that if the piece of land were to be bought by persons *fora del comun*, the right to exemption would immediately cease. And it therefore asked, *per viam gratiae*, despite the two *conformi* sentences, to be able to re-establish its rights, cf. on this affair A.S.V., *Collegio, Risposte di fuori*, filza 316, alla data.

to its foundations. And the worst is that during this fire while the bell rang for five hours, with the greatest cruelty they murdered the three ... citizens named above....⁶⁹

In the years that followed the conflict flared up again and, guided by some upcoming families, the community was able to considerably reshape the relations of force with the local aristocracy⁷⁰.

If we examine more closely the proceedings that accompanied these conflicts over a long course that seems, however, always to aim at restoring what has been impaired or encroached on, we can appreciate how the relations of force gradually moved towards external forms of power. We shall have the opportunity to see this even more closely by examining the veritable *cahiers de doléance* that comprised the petitions sent by the communities to the *Signoria*.

Thus, procedures, contents, relations of power and institutional structures blend in a double interpretative level which, as the case of the community of Malo shows, allows us to appreciate the deep value of community custom. It is the greater complexity and variety of the procedures (and institutional practices) which in the modern (and contemporary) period transmits customs or, more exactly, the dimension they possess that tends to joining what is *inside* with what is *outside* the community, and what belongs to the *before* with the *after*. The language at work in articulating this process obviously comes mainly from outside, from forms of control or regulation of what happens *inside* the community. This learned, written language is often ill at ease with the job of description it takes on (as, for example, in the attempt to classify wedding rites and dowry customs).

⁶⁹ Vicenza, Biblioteca civica Bertoliana, *Archivio Torre*, busta 863, c. 513. The Council of Ten immediately took up the trial, ordering the arrest of 44 persons. One of the accused was sentenced to the death penalty and many others, who had fled, were banished and their property confiscated, cf. A.S.V., *Consiglio dei dieci, Criminali*, reg. 8, cc. 21-22, 42-49.

⁷⁰ On the episode see Povolo, *L'uomo che pretendeva l'onore. Storia di Bortolamio Pasqualin da Malo (1502-1591)*, Venezia 2010. Exemplary, in a certain sense, of the many already presented by the community and its adversaries, is the petition presented on 8 December 1579, A.S.V., *Collegio, Risposte di fuori*, filza 333. On this occasion the community recalled the peasant revolt that had occurred a few decades earlier: "for these old tyrannies, the men of the community, already seized by an unjust and desperate fury, they were led to commit a very serious excess, burning some of its citizens in a dovecote, where they had sought safety, cruelly and tumultuously killing them. For which crime they were punished with death and exile. This crime, though detested by reason and judgment, was however caused by a continual and obstinate tyranny of these offensive citizens, who not wanting to learn from the gentleness of this paternal and gentle government, by treating these men of the aforesaid community like slaves, Turks, enemies and infidels, they brought them to this fierce desperation". A lawyer-like citation, certainly, but still one that shows how the conflict took place at many different levels.

The operation of *description*, when it not only originates outside but is also performed outside, obviously tells us much more than what the intentions of those who issued, performed and completed it were. But in its institutional configuration and the power it expresses, it clearly also reflects the *thing* described to some degree. This is a question of perception if what we are observing is who is making the description. And, as we have already said, it is a question of a double level of interpretation if we consider it from the point of view of the historian who analyzes it. In this sense, the *descriptions* made by lawyers (who worked almost exclusively in urban centers) of the cases of conflict that the community allowed to come out in order to seek the intervention of an external institution are extremely significant. Generally speaking, they were culturally selective descriptions, bearing linguistic features that gave the case a physiognomy in conformity with the political and cultural criteria of the institution it was addressed to. Typical examples of this description are the petitions which, all over Europe, were addressed to the authorities in charge of receiving them, and by and large aimed at reopening or following up a conflict in course.

A detailed analysis of these petitions would reveal far more about the political intentions and cultural characteristics of the institutions they were addressed to than about the effective *cultural* dimension of the community that had raised them. However, careful deciphering and re-interpretation can also turn up interesting elements about this latter dimension. Moreover, an analysis of their linguistic characteristics could also lead to a classification of these narrations, with an eye not only to the political aims of the higher organ, but also to the cultural formation of the lawyers who were decisive in drawing up these documents⁷¹.

In this light, the Istrian case lends itself once more to some interesting observations. The job of mediation performed by the lawyers of the Istrian urban centers was in reality situated within a context teeming with cultural contrasts. The long-standing antagonism between town and country was sharpened by the constant arrival of new populations. The petitions made to the *Signoria* by the *morlacche* communities represent an example of a series of quite specific conflicts (for instance, between newcomers and town-dwellers⁷²). But in these cases the job performed by the town lawyer was an

⁷¹ For an analysis of similar documents (the *lettres de rémission*) cf.. N. Zemon Davis, *Storie d'archivio. Racconti di omicidio e domande di grazia nella Francia del Cinquecento*, Torino 1992 (Stanford 1987).

⁷² An example, among the many that can be found, is the incident that in 1593 opposed the community of Villanova to Rovigno. The *zupano* of Villanova had been arrested by order of the *podestà* of Rovigno, "outraged with us *morlachi* living in his jurisdiction for the judgment entreated in their favor from the *Serenità Vostra*...". When they entered the town to ask for his

essential filter both for the contact between different cultures and for directing their antagonism towards the central institutions. From this standpoint, the petition addressed to the *Signoria* in 1563 by the attorney Zuanne da Veggia, inhabitant of Parenzo and defense attorney “of some poor *murlacchi*, unjustly persecuted by the magnificent *podestà* of the aforesaid place of Parenzo”. He appealed to magistracies such as the *Avogaria di comun* and the *auditori novi*, blocking the initiative of the Venetian representative against some *morlacchi*⁷³.

Clearly, the *descriptions* made by Istrian lawyers were influenced not only by existing conflicts and tensions, but also by a political logic that encouraged Venice to favor the acceptance of the new populations in the peninsula. These descriptions are perhaps even more interesting when made within the community itself, by local operators (as we could call them), who used the language coming from outside (written and imposed or proposed by the institutions), but constantly and intimately adapted to local customs. The notary undoubtedly belonged to this category: his formulas, ritualized language and descriptive styles belonged to an idiom that was learned and necessarily abstract. But he had to describe social practices associated with custom and tradition. The will, the deed of sale and the bequest used the linguistic features of learned law to delimit and formalize customs that could be in contrast with or not entirely consistent with that language. Clearly, even more than mediation, the notary’s job involved a process of working towards ideological comprehension. In this case, procedures of adaptation inside / outside, before / after are of the greatest importance for decoding contents (deed of sale, etc.) as well as for the techniques of manipulation used.

Within the sphere of the *small community* the operation of *description* entrusted to the parish priest by the ecclesiastical hierarchy was fundamental. An important instrument at his disposal were represented by the canonical registers, formally introduced by the Council of Trent. They represent a clear case of *description* of customs using learned language and elaborate legal linguistic features. The canonical registers chiefly describe the idiom of kinship, though without openly revealing its complex internal mechanisms.

liberation, the *morlacchi* were assaulted by the population. This happened because “this very excellent *podestà*, joining all those citizens, our old adversaries and persecutors, ordered in an uncommon form the doors of the Land to be closed. And, come out of the palazzo with a stick in his hand, accompanied by judges, officials and citizens with arquebuses and pistols, he shouted very clearly along with all the others in a loud voice kill, kill the *zupano* and all this rabble”, cf. A.S.V., *Collegio, Risposte di fuori*, filza 346, 11 September 1593.

⁷³ The fear that the *podesta*’ might take it out on him for his activity in defense of the Morlachians had convinced him to recur to Venice to assure that certain lawsuits would be handled by a different representative, cf. A.S.V., *Collegio, Risposte di fuori*, filza 317, 12 agosto 1563.

The idiom of kinship expresses the numerous rites that mark the life of the countryside. They have been called rites of passage, in that they determine the various phases of individuals and the group. But they have also been called *rites of institution*, in that, rather than highlighting the passage from one phase to the following one, they are emblematic of the *separation* they create: between male and female, married and unmarried, those who are *inside* and those who are *outside*. These are rites that speak the language of kinship. Such as the rituals of hostility against marriage between widowed persons, which inevitably create possible tensions between the old and the new relations. The custom of the small community feels these rites very deeply. It seems obvious that their description cannot avoid being bent and deformed by a different cultural language, coming from a hierarchical external order.

In the records of the parish priest, the rite of baptism is filtered through a learned ecclesiastical perception. Actually, in these registers we can glimpse a customary world studded with *mammane* (midwives), god-fathers, names, nicknames and social conventions (babies illegitimate, exposed, concubines). In registering a marriage, kin ties and alliances merge with questions of social and geographical mobility, also revealing in the so-called *stride* the elaborate language of honor. And in burial rites country beliefs and cultural values are filtered by the priest's culture, which is not always skeptical (also interesting are the definitions of certain illnesses, such as the 'curse sickness'). And, finally, we should not forget the *stati d'anime*, which, by and large, reveal the galaxy of rural kinship in the territory. Their fixity is only apparent, if they are examined with sufficiently flexible and minute historical attention⁷⁴.

Canonical records give evidence of how the community and the parish could be at the same time complementary and divergent (especially in the modern period). Brotherhoods and parish vestry boards are two of the elements that illustrate this bond of interdependence and duality. The religious sentiment of the brotherhoods could also come into conflict with the parish and its celibate representative. And in the cult of the dead and the rites that marked it (processions, assistance) these conflicts could grow intense indeed. The vestry boards sanctioned the community's right to take care of the church building and bell tower. Church, bell tower and pews were in these cases *symbolic places*, in which priest and community expressed, at times harshly, their complex physiognomy⁷⁵.

⁷⁴ Cf. for these aspects Lebrun, *Il prete, il principe e la famiglia*, in *Storia universale...*, pp. 95-157.

⁷⁵ For all these very important matters, I once again refer to Le Bras, *La chiesa e il villaggio...*, in particular pp.115-128.

Clearly, we are dealing with customs grounded on *social practices* not only described in learned, or in any case written language, but also perceived according to a conflictual/judiciary logic of control. As we have already seen in the inheritance dispute examined here above, the knowledge of this language and this logic allows us to grasp the dynamics of the adaptation of customs along with specific aspects of their cultural dimension.

Cultures

What is clear is that the community-parish relationship was played out on various levels. And in some cases the identity of one seems to go side by side with the other, as in the cases (very frequent in the 18th century) of *contrade* which at a certain point felt the need to have their own parish priest, thereby implying the achievement of an identity bearing the community's specific features. These are subjects of some importance, which lead directly to the question of the specific physiognomy of each community in the context of the overall theme of custom.

But to what extent was every (small) community different from those in its surroundings and from all others? Further, to what extent were certain features significant enough to define the specific profile that distinguished each community? And, we might also add, on what foundation did each community's awareness of its being *different* from the others rest?

Clearly, there are certain aspects that suggest, if not the specificity and individuality of a community, the presence of institutional, economic, geographical and cultural traits than can affect its physiognomy. Rights of *ius patronatus*, 'strong' property and land-working structures, the nature of the terrain, the presence of great country houses or of oratories, rights of *giusdicenti*, etc.: these are some of the factors the historian usually takes into account to conduct a historical analysis and grasp the specifics of the context under examination.

However, in my opinion, the question of determining the origins and depth of the rootedness of family groupings in the territory is the decisive factor in defining what we can call the *culture* of each single community. And, as is obvious, the territorial roots are related to all the aspects we have described above, save for perhaps having to take into account an almost inextricable historical and cultural *quid*.

It is likely that the network of family relations played an important part in determining the community's identity. As we have said, it was this network that influenced matrimonial alliances and relations between neighbors, and that had affected both the defense against dangerous intrusions from

outside and the preservation of traditions closest to the heart of the community's customs. Thus, it is probably not going too far to state that each community possessed its own *culture*, even if it is also possible to suppose that in the end external political structures had a highly significant, though perhaps not decisive, political importance, above all by making it more difficult for the community kinship network to manipulate decisions.

Thus, kinship and its rootedness in the territory very likely comprised the most decisive factor in defining some of the small community's most characteristic features: its *conservatism*, its attachment to tradition, and a substantial diffidence, and even hostility, towards what, arriving from outside, was perceived as hostile and dangerous. These are the elements that probably gave origin to the classic distinction between *originari* and *forestieri* (natives and outsiders), which was also motivated by the necessity to share local resources *fairly*. In order to be formulated and safeguarded, this distinction had to be grounded in a strong internal ideology: awareness of the community's own traditions and customs.

It was probably this awareness that in the 1560s moved the community of Marzana, in the territory of Verona, to make a deliberation prohibiting all those who had not lived continually in its territory (paying the rates) for at least ten years from using the common fountain. The fountain had, in fact, been owned by the community for hundreds of years, "and there is nothing to the contrary in the memory of man" and its use had always been shared among its families. However, some people had got the clever idea of selling their quote to outsiders and had then left the village, making it difficult for the community to recover the common rights, especially as the new purchasers were "by and large town-dwellers and powerful persons". A lawyer-like way of putting it, certainly, but the fact that the community turned to Venice to have its deliberation approved clearly shows that it aimed both to safeguard its customs and to define new strategies of conflict⁷⁶.

The conservative nature of the small community and of the ideology of custom is a recurrent trait, but it is not always interpretable in the same way, since it originates in both the community's internal characteristics and the specific institutional order it was situated in.

The subject of kinship is obviously related to the community's political structure. Even if the small community did not possess differences of rank or status, it would be ingenuous to think that it was managed on a *democratic* basis. In truth, the existence and force of the *convicinie* (neighborhoods) (*vicinie, rules, etc.*) attested to the absence, in the family sphere, of a right of precedence that could influence political and social relations of force. In any

⁷⁶ A.S.V., *Collegio, Risposte di fuori*, filza 318, 16 May 1564.

case, it is clear that the management of the community's resources and common properties was determined by family networks, their force and their capacity to influence the local feud.

Another interesting aspect that merits further investigation is the social and political process that was created when within the small community some families achieved prominence thanks to their economic force and tried to acquire a social profile characterized by external (i.e., urban) ideological and cultural parameters. To realize their strategies of conquest, these families very often left the small community in search of a *space* consonant with their new identity. But this was not always possible, above all when, in the course of the 1500s, the town councils closed their ranks and adopted much stricter criteria of access. No doubt, the birth of territorial institutions with a wider political range can be connected to this phenomenon (and it would be interesting to study the articulation of kin groups and their allies on a vast territorial scale, as well as their specific identification in important functions such as those performed by the notaries of the vicariates)⁷⁷.

This political and social process certainly had considerable repercussions on the social structure of the small community. Internal differences and conflicts developed that cannot be assimilated to those originating in the usual *growth* of the community in the direction of forms that have been defined as 'almost city'. In the latter case, the emergence of a class that achieves a political profile and a different status can be seen both in differentiations created within the *councils* (nobles and commoners) and in the intensification of the feud in violent and often uncontrollable forms.

By contrast, in the small community the emergence of family groups that the specific internal and external situation did not allow to achieve ideological criteria of distinction aimed at giving them a *right of precedence* probably affected the definition and types of internal conflict and the relations of patronage. The ancient relations of patronage that the landholding aristocracy had with the rural family groups deteriorated. The new subjects articulated and complicated the local feud, challenging the relationship of subjection to the noble landowners. Where this phenomenon occurred, the political space of the small community grew more complicated, and resorted to institutions (such as the vicariate) that traditionally reflected the instrument of control of the city over the countryside. And it is certainly not by chance that it was within these new political spaces that demands of great political relevance were announced (as in the case of the Vicentine vicariate of Orgiano)⁷⁸. Or that conflicts hard to find in prior periods came to the fore.

⁷⁷ Cf. C. Povolo, *L'uomo che pretendeva...*, pp. 65-85.

⁷⁸ Cf. C. Povolo, *L'intrigo dell'onore...*, pp. 76-80 and *passim*.

How can we explain, otherwise, the petition that in 1584 the city of Padua sent to the *Signoria* to context a *contadino* of Casale, a certain Alessandro Ferro? According to the city's attorneys, for a good four years he, as 'minister' had 'tyrannized' the vicariate of Conselve, misappropriating large sums of money. Investigated and imprisoned, Ferro was able to defend himself so well that he had had to be freed. And, the city complained, his ability was so great that it was likely that he would go scot free. It is clear that the very fact that a conflict of this sort could emerge (along with its expository rhetoric) is symptomatic of the new, changed relations of power⁷⁹. Traditional forms of friendship and patronage, such as ancillary concubinage or the management of some kinds of conflict, began to be challenged, sidestepping the control of the criminal justice exercised by the city⁸⁰.

The subject of the community's political character is obviously linked to its relations with external institutional structures, and more generally with the nature and political dimension of the state they were part of. Though in the end it is a question of verifying the articulation of relations between local and state powers, more than, and beyond this, is the matter of investigating the influence of the features of the state's form of power – not so much to claim a possible, decisive influence of the latter on the small community, as to trace the reciprocal adaptation of the dynamics of power dynamic at work in notably different institutional contexts

As we have said, on the historiographical plane it is not very helpful to note the persistence of the ideology called *communalism*, when social practices attest both new social articulations and above all the modification of the procedures regulating what we, following the sociologists of law, can define as *legal claims*. One of the most classic forms of legal claim was the so-called petition, entreaty or *gravamina*. An examination of the institutional paths they followed indicates the existence, in a certain period, of significant changes. What follows are some examples taken from the great Venice archive, examples that illustrate a reading of these documents in the context of the institutional path that brought them to the light.

A fierce dispute had gone on for some time between the Bishop of Ceneda and some families of Costa, a village under the jurisdiction of Serravalle. The object in cause was some plots of land that the rural population of Costa claimed had belonged to them from time immemorial, probably by *titolo di livello* (an ancient form of rural contract). On the contrary, the Bishop claimed that they belonged to the diocese, which had granted them with a deed of rent. This was a very old quarrel, and one that was widespread in other ter-

⁷⁹ A.S.V., *Collegio, Risposte di fuori*, filza 338, 7 aprile 1584.

⁸⁰ A significant example is found in Povolo, *L'intrigo dell'onore...*, pp. 355-412.

ritories as well, though in this case the jurisdiction conferred on the Bishop of Ceneda made it a highly delicate political question⁸¹. On 6 March 1569 the Bishop sent an instance to the *Signoria* relating that, despite many negative sentences, the year before the *contadini* had sent a petition to the *Signoria* to claim their presumed right and request that the information about them be obtained by the *podestà* of Conegliano. But, the prelate went on to say, after the *podestà* had obtained the relative information, the *contadini* had neglected to solicit a written response, which ought then to have been presented to the *Signoria*⁸². And so, in conclusion, he himself was requesting the response. Asking that the requests of the *contadini* be dismissed, the Bishop sent the same petition they had previously presented and the relative response of the *podestà* of Conegliano (written on 9 January 1569 *more veneto*⁸³). Almost at the same time, the *contadini* of Costa themselves appeared before the *Signoria* with a new petition, renewing their request to respect their ancient rights⁸⁴. On 13 October 1570 the councilors decided that their request should be accepted and that the relative information should be obtained by the *podestà* of Conegliano⁸⁵. What conclusions can be drawn from this episode? Apart from its specific contents, it seems to me important to highlight the institutional route followed in the dispute. As in other situations, the context in which the conflict took place was the traditional one, characterized by an extreme, formal deference to acquired rights and pacts. The subjects move within an institutional framework in which justice and administration are joined⁸⁶.

⁸¹ G. and L. Cozzi (ed. by), *Paolo Sarpi. Opere*, Milano 1969, pp. 468-496.

⁸² The Bishop of Ceneda intended by so doing to highlight that the community of Costa, fearing to obtain a negative opinion, had been careful not to solicit the official release of the response of the *podestà* of Conegliano. And as we shall see, in this period, it was up to the petitioners themselves to send on the responses to the highest Venetian organ.

⁸³ The *more veneto* year began on the 1st of March. The *podestà* of Conegliano had observed that “the stronger case is on the side of the aforesaid bishopric...”.

⁸⁴ In the new petition, they motivated the inconclusive outcome of the one previously presented: “upon which, having been entrusted the *response* to the magnificent *podestà* and captain of Conegliano, we appeared before his magnificence to justify it, usual and ordinary, but not only, and at the time this matter was dealt even inside our homes fire was set and documents were burnt. But yet the aforesaid magnificent *podestà* and captain, since we were quarreling with powerful and rich persons, and hardly have anyone who will defend us, our former attorney of Serravalle having been removed astutely and by indirect means, did not want to admit our very real and true justifications, as *Vostra Serenità* had imposed on him; since we are very poor, because of the bad offices of the adversary, tormented and not able to make our reasons avail, not being able to obtain a copy of any public act at Ceneda concerning our name and interests and all that could be helpful about it...”.

⁸⁵ A.S.V., *Collegio, Risposte di fuori*, filza 324, 13 October 1569.

⁸⁶ Regarding the so-called Jurisdictional state of the *ancient regime* cf. *Lo stato moderno in Europa. Istituzioni e diritto*, ed. by M. Fioravanti, Bari 2003.

The initiative lies in the hands of the ones who, feeling that their acquired rights have been infringed upon, solicit a judiciary investigation to assess the infringement committed. In these cases the *Signoria* becomes the guarantor of the conservation of the existing legal state of things. The possible delegation to a higher organ, such as the *Avogaria*, solicited by the subjects themselves, appears to have no other objective than to restore the existing state (though it is hard to deny that this prospect winds up, in the end, influencing the forms of manipulation)⁸⁷. It is the rural population of Costa that asks for the restoration of the status quo. They themselves consign the *Signoria's lettera ducale* (ducal letter) to the *podestà* of Conegliano, soliciting the start of proceedings in order to establish, on the grounds of testimony and documents, the validity of their rights. And, finally, it was up to them to consign the report of these proceedings to the *Signoria*. In this case, this did not happen⁸⁸. And so it was the Bishop of Ceneda who took an active and instrumental pass, requesting that their (first) petition (of which he presented a copy) be rejected. The procedure was linear, intensified in this case by the specific context, but it substantially reveals the development and dynamics of conflicts in this period. It is a route that by and large was able to channel tensions existing within the community towards institutional forms, thereby defusing potential uprisings and revolts regarding infringements of ancient community rights.

In the course of the following decades, petitions still have the dimension of a legal claim granted to the applicant (and so, entrusting a *ducale*, forwarding it to the *giusdicente*, examination of witnesses to prove the validity of the request), but there were certain significant changes. From the 1590s on, the response of the *giusdicente* usually had to be sealed before sending it to the *Signoria* by public corriere (or *disinterested person*). This was a procedural change that influenced the traditional route taken by the petitions arriving at the *Signoria* from all over the state. It is apparently an insignificant detail, but in reality, though leaving the initiative to the petitioner, it substantially limited the instrumental use of the petition, at the same time as it made the work of the local representatives more reliable.

⁸⁷ The petitioners by and large requested that their case be removed from ordinary jurisdiction and be delegated to the *Avogaria* or other judge.

⁸⁸ In the second petition, the community of Costa did nothing more than repeat their former claims, while stressing that the obstacles put in their way by their powerful adversary should be eliminated: "Your *Serenità* be content to deign to transmit to the magnificent *podestà* and captain of Conegian, or where you please, that on our aforesaid petition, *servatis servandis*, will get that information about the things contained in our petition and are offered to prove, iusta il solito et ordinario *ut in similibus*, with the authority to enable us to give all those copies of documents and public acts concerning our name and interests, both in Ceneda as elsewhere...".

Here is another example: We are once again in Serravalle, jurisdiction of Ceneda, in 1605. A certain Andrea Maddalena appeals to the *Signoria*, reporting that he had been attacked and wounded by a rival, who boasts not only connections with the most important families of the locality, but also the protection of the *podestà* himself. He therefore asks that judgment be removed from the jurisdiction of the representative of Serravalle and entrusted to any other court. The *Signoria*, accepting the petition, charges the *podestà* of Treviso to respond (in the ways we have already mentioned), but it also specifies that the *response* be sealed and marked with the name and place of origin of the petitioner, and then be sent with the petition itself “by courier or other public person”⁸⁹.

This detail was not insignificant, and in some cases could become decisive. In the same year, but in a locality near Vicenza, there occurred a well-known episode that is furnished with an abundant ‘description’. The community of Orgiano sent a long series of *gravami* against the local nobles. The *podestà* of Vicenza, Vincenzo Gussoni, is charged with gathering information. Having obtained the *ducale*, the community keeps it for over a week; there is discussion and division, and then finally the decision to present it to the *podestà*, requesting that witnesses that will be indicated by examined regarding the contents. Everything is regular, therefore. On the basis of the new procedures, Gussoni should have proceeded to initiate verbal proceedings and then, after hearing the testimony, to write a letter to send directly to the *Signoria*. But this new procedure opens up unforeseen possible developments. Judging that the matter is more serious than expected, Gussoni does not stop at writing up the usual verbal account of proceedings. He investigates, he examines the town archives and, in the end, he becomes convinced that it is politically more opportune to inform the Council of Ten. This decision challenges all local expectations. The trial that is started by order of Venice’s highest political-judiciary organ included the inquisitorial rite, and so makes manipulation or compromise (which the ancient procedures allowed) impossible⁹⁰.

The petitions sent by the communities were usually of considerable political importance, in that they bore witness to their capacity to defend acquired rights, and so they were also a sign of the social and political changes that had occurred within them.

Historiography had paid great attention to the ties connecting local and external powers (city, state, etc.), stressing, according to the perspective chosen, the prevalence of the order of pact of the *ancient regime* (which, if

⁸⁹ A.S.V., *Collegio, Risposte di fuori*, filza 358.

⁹⁰ On the inquisitorial rite of the Council of Ten cf., *Il processo a Paolo Orgiano (1605-1607)*, ed. by C. Povoletto with the collaboration of C. Andreato, V. Cesco and M. Marcarelli, Rome 2003.

disregarded, could lead to dangerous uprisings), or, on the contrary, the emergence of new powers able to present a new institutional and decision-making logic from outside. This is a subject that, especially when examined through the instrument of petitions and entreaties, reveals the features and the typologies of political communication in the sphere of an articulated, polycentric power⁹¹.

If the persistence of a strictly community way of thinking cannot be denied, even after the end of the *antico regime* (we need only think of the anti-tax uprisings in the years of French domination), it is equally clear that in the course of the modern period a transfer of functions towards outside decisional centers takes place. To bear witness to this there are a series of observations of doubtless significance: the weakening of local feuds and the reference to patronage relations that come from the center; the change in judiciary (in the broad sense) procedures in order to weaken manipulations of conflicts by local forces; the evident capacity of the dominant center to absorb, swallowing them, social forces active at the local level. From an anthropological standpoint, this last aspect certainly gets around the interpretative *impasse* on the institutional level, since it refers to what we can consider the heart of the problem: the distribution of powers in a well-defined territorial context.

It is clear that where a hierarchical power structure comes into being (hierarchical on the judiciary, fiscal and, broadly-speaking, political planes) the political dimension of local powers is in any case constricted by a logic that comes from the center and acts either at the institutional level or, where this is weak (as for instance in the course of the formation of the Italian nation state), by recurring openly to forms of patronage and *clientela* (friendship networks).

In a power structure lacking hierarchical connections between center and periphery (as, for example, in aristocratic republics) municipalism and *communalism* were emphasized to the highest degree ideologically. What is more, the impossibility for local forces to achieve more complete forms of power worked to create a sort of juridical *separateness* that heightened conflicts and their municipal dimension (making every form of uprising a rather isolated case)⁹².

The new nation states that grew stronger during the course of the 19th cen-

⁹¹ Besides the references already mentioned, cf. also A. Würigler, *Voices from among the "Silent Masses": humble petitions and social conflicts in Early Modern Central Europe*, in "International review of social history", 46 (2001), Supplement, pp. 11-34.

⁹² C. Povolo, *The creation of Venetian historiography*, in *Venice reconsidered. The History and Civilization of an Italian City-State. 1297-1797*, ed. by J. Martin and D. Romano, Baltimore 2000, pp. 491-519.

tury would have to take into account the *inheritances* of the *antico regime* and the persistence of a community culture still strongly attached to its own customs. It is certain that other institutional procedures and mechanisms would make the forms of manipulation employed in the sphere of the community increasingly complicated and difficult. But the fate of custom was still far indeed from reaching a definitive final end.

FEMININE RESTLESSNESS

LAURA MARIA GHELLINI

Introduction

Daughter of Antonio and Ottavia Capra¹, the countess Laura Maria Ghellini, both as wife and as daughter, clearly expressed the evident contradictions of the 18th-century aristocratic family. In the year 1765, only a few days after her marriage to the marquis Nicolò Colocci of Iesi, Laura Maria was forced to ask her parents to help her escape from her bizarre husband's tyranny and his absolute lack of affectionate interest.

Despite the long, painstaking negotiations carried on between the two families in preparation for this match, in the end Laura Maria's parents were still not fully persuaded. They were not at all pleased by the young Colocci's haughty and at times rude attitude, which had even led him into conflict with the countess's mother. And then there was the scandalous attachment for his male secretary, displayed openly by the marquis during the time he was a guest, with relatives and friends, in the splendid Villa of Villaverla. In the end, however, these doubts were put aside. Though Laura Maria had at first been reluctant to accept the match imposed by her family, when she

¹ The Ghellinis and the Capras were among the most ancient and prominent aristocratic families in Vicenza. Antonio was the son of Agostino di Lelio. The collected family documents of the side branch from which Antonio Ghellini descended are housed in the Bertoliana Municipal Library of Vicenza. From these documents it is possible to find some information about him, though it is scarce. In 1720 count Alessandro Ghellini was proxy for the children who were wards of his deceased brother, Agostino. Agostino made his will on 26th January, 1708 in the presence of the notary Giovan Pietro Tomba. Both branches possessed large estates and Sunday residences in Villaverla, cf. Biblioteca civica Bertoliana, *Archivio Ghellini*, book 31 cc. 6, 7, 173, 210, 427, 489. for information concerning the genealogical succession of the two branches. On 20th January 1765, Antonio and Lelio Ghellini purchased from the Zago brothers and other owners the part of a palace adjacent to their own residence: "a house located in this city in the quarter of Carpagnon, *sindacaria del Domo*, the which house is occupied with two apartments, each with two rooms and granary, with a wooden stair, an attic on the middle level with a canteen on the ground floor and another one below ground... both apartments with attics with own entrances and doorways...", cf. *Archivio di Stato di Vicenza, Notai di Vicenza*, busta 15286, num. 211 and 212.

met Colocci in Vicenza, where he had come to stipulate the terms of the agreement, she could not resist the fascination of the young marquis, despite his reputation as a man who was arrogant and somewhat strange. It was as though the parts were reversed – even when faced by their suddenly love-struck daughter, Antonio Ghellini and Ottavia Capra came very close to annulling the agreement.

In the end Laura's parents and her uncle, the canon Lelio Ghellini, were not able to retrace their steps: after all, how could they justify second thoughts in the eyes of the whole city? So the wedding was held with great magnificence, in the Church of the Madonna delle Grazie in Vicenza² and, as was the custom at the time, a collection of lofty poems was published for the occasion³.

Accompanied by the increasingly troubled and suspicious canon, Laura and the young marquis Colocci set out for Iesi with a large retinue of servants and household staff. Unfortunately, the initial bad impressions proved to be well-founded. On his return the canon reported the strange attitude of the marquis, who was so inattentive and insensitive to his lovely young bride that, to the great surprise of the numerous followers, he made no effort to hide his lack of interest in sleeping with her. And then, what to think of his

² Archivio della curia of Vicenza, *Registri dei matrimoni*, 29th August, 1763: "The noble lord marquis Nicolò son the noble lord marquis Adrian Colocci of the city of Iesi, on the one side, and the noble lady countess Laura daughter of the noble lord count Antonio Ghellini of the parish of the cathedral, on the other, having omitted the customary publications by virtue of the Episcopal mandate falling under the day 25th issued and signed by our eminent Cardinal and Bishop Antonio Marin Priuli, servatis servandis, *per verba* of those present, were joined in matrimony by the noble lord count don Lelio Ghellini, canon of the cathedral, especially delegated by the most reverend lord canon parish priest don Giuseppe Troncato, assisted by myself don Lorenzo Bergamo, curate of this cathedral, in the church of the *reverendi padri della beata vergine delle grazie*, with the celebration of the holy mass and blessings. In the presence of the authorized witnesses the noble lord count Tomaso Piovene, the noble lord count Francesco and the noble lord count Pietro Zago, of the deceased of the noble lord count Ortensio".

³ Garland of flowers offered for the wedding of the most noble lord marquis Niccola Colocci, patrician of Rome and of Iesi, and the countess Laura Ghellini, patrician of Vicenza, Rome, 1765. In the brief introduction to the collection of poems, Count Conte Maurizio di Belfort appended a hagiographic note on the families of the bride and the groom. Obviously, he did not fail to dwell on the virtues of the newly-wed, especially Laura's: "Your modesty will suffer as I shall finally please that elevated idea that I have of you and that I can release my soul by telling you, together with those who talk about you, your unparallel beauty, you marvelously combined honest ways, polite manners, and to those favorable and noble ways you add the qualities of the mind: To express everything in a few words, that in You there are equally Fortune and Virtue, the beautiful gifts of the soul e the most rare features and that you have fully met the expectations and the hopes of your most wise Parents, The Count Sir Antonio Ghellini and the Countess Lady Ottavia of the most Noble Family Capra. Then, you were only missing, Sublime Lady, only a groom who wouldn't be of a lower level compared to you and who deserved the fate to possess you."

unhealthy attachment to the young valet – Giuseppino – who was treated as an intimate even in Laura Maria’s presence?

At the beginning of October 1765, Antonio Ghellini received a letter from his daughter in which she confirmed what by then everyone feared but did not dare to state openly: the marriage had immediately revealed itself to be a disaster; marquis Nicolò Colocci not only ostracized his young wife, he also continually subjected her to unwarranted and cruel psychological harassment. Between October and September there followed other letters from Laura Maria, in which her anguish and fear were increasingly evident: not only was she a victim of her husband’s wrath and frequent eccentricities, but she was also painfully aware of being considered an intruder and obstacle by her mother-in-law, the marquise Vittoria.

Seeing the gravity of the situation (confirmed in letters of friends and confidants), in the end count Antonio Ghellini decided to undertake a serious but by then inevitable step. Aply relying on the network of friends and acquaintances that his House boasted, he arranged to have Laura Maria carried away from Iesi and brought back to her native Vicenza. The worst had been avoided, but the honor of both families had suffered a heavy blow.

And it was on the delicate grounds of honor that the final episodes of this affair were played out. The request for *divorzio* made by Laura to her husband – which envisioned, if the request was granted, the annulment of the marriage or at the very least the separation of the spouses – would have inevitably decided wholly in favor of the Ghellinis the outcome of a conflict that had taken place under the watchful eyes of a curious public all over the Italian peninsula.

The personal drama of Laura Maria left wide scope for other interlocutors disposed to discover (and fear) that behind this story of the unhappy union of two young aristocrats there were dense symbolic meanings that could represent a potential fracture in a society whose class and political structures were very fragile. The skirmishes between the two families very soon became a matter of jurisdictional conflict between ecclesiastical and lay authorities, putting into clear relief the political importance assumed by Laura Maria Ghellini’s flight from her husband’s home.

The Colocci family immediately opposed Laura Maria’s request for *divorzio*⁴, appealing to the highest ecclesiastical authorities. At the end of February 1766 the papal nuncio in Venice presented to the *Collegio* a formal protest for the way in which the young woman had been removed from the conjugal

⁴ At the beginning of January 1766 the Ghellini family had in fact presented a formal request for *divorzio* to the curia of Vicenza, motivating it “ex causa saevitiarum, molestae cohabitationis, odii capitalis cum evidente periculo vitae...” cf. Archivio di Stato di Venezia (=A.S.V.). *Consultori in iure*, filza 520, c. 23.

home, adding the explicit request that this political body should order count Antonio Ghellini

“...to bring the above-said daughter back to Iesi, where she shall be put in a safe place, until the time when either he manages in some way to reconcile her with her husband, to which end your Sanctity itself is willing to lend himself with his paternal care, or she produces the reasons to bring suit as seems best to her, as she can be sure of receiving the justice due to her cause.

Your Serenity, your excellences very well understand that it is neither just nor decent that the wife, whatever her pretension may be, should in such circumstances remain in total liberty and abandon the place of her husband's home, especially when in it she is safe from molestation, which Your Beatitude will commit all his authority to...”

The *scandalous* situation of a wife who had left her husband's home in fact represented a serious offense to the families' honor. The theoretical preliminary requisite for the suit for *divorzio* to be begun and carried on was that with her husband's consent the wife should go into a convent while she waited for the resolution of the judicial controversy⁵.

On 1st March, 1776 the Venetian Senate asked the *podestà* of Vicenza for information. He replied on the 25th of that month, attaching the *memorial* of

⁵ A brief memorandum attached to the file presented by count Antonio Ghellini made it clear that in any case the question was anything but simple: “Around the year 1734. Some arguments arouse between husband and wife, which were merely caused by a difference of temperament and way of thinking. The quarrels grow without any positive sign of violence, and the wife began to consider the idea of leaving her husband's house, who, on the other hand didn't agree on this decision; and even if he seemed to show indifference to the idea of his wife, when he saw her about to resolve the issue according to her idea, he then revealed his different view, and he made clear to her that once she left from his home he would have never looked for her or accepted her, believing that such a threat and consequence would have led her to withdraw from such a precipitous step. This healthy intimidation was pointless and the wife left, finding shelter in an alienated state from the husband. To make even more clear the repulsion he had of the actions of the wife, after a short while he had respectable people looking for her, and he tried to recur to ecclesiastical and secular authority, but all the attempts were vain as the wife before coming to the meeting would put forward her conditions and agreements. This request was never granted by the husband on the account that this would only lead to new and maybe easier quarrels instead of facilitating the peace between the spouses. Therefore, the matter was left untamed and perpetually open.”, cf. A.S.V., *Consultori in iure*, filza 520. Nevertheless, on 15th May, 1766 the Ghellini family presented a certificate from the physician Giovan Maria Pigatti, who declared that Laura Maria “is presently indisposed by health condition, that need medication at present, she is tending to that and she is especially tending the need of those morbid affection of which she is naturally inclined to because of her temper, she would undergo an evident danger of severing her health issues if she was obliged to live confined in distress in a monastery.”, cf. *ibidem*.

count Antonio Ghellini⁶, along with Laura's documents and letters, which would demonstrate marquis Nicola Colocci's hostile behavior⁷. A few months later the Senate authorized the ecclesiastical authorities of Vicenza to proceed with the divorce suit already begun on initiative of Laura Maria Ghellini. After some years, the Vicenza court decreed the annulment of the marriage contracted in 1765 between the countess from Vicenza and the marquis Nicola Colocci. And so, at least for the time being, the matter was favorably concluded for the Ghellini family. But a bitter surprise was still in store for count Antonio Ghellini.

In June 1772 Laura Maria Ghellini contracted a second marriage, after eloping from her father's home. Her new husband, Francesco Rizzi, was a cleric in the town cathedral and the rite chosen was very different from the one envisioned by ecclesiastic canons, as it had been secretly performed early in the morning. Count Arnaldo Arnaldi Primo Tornieri, a sharp and sardonic chronicler of what went on in the city, did not miss this new flight of Laura Maria and noted in his diary:

"Some years ago the countess Laura Ghellina, daughter of count Antonio Ghellini, a young lady adorned with many lovely qualities, was joined in marriage with the marquis Colocci cavalier of Iesi. But upon her return to Vicenza a short time after, by the sentence of our bishop the above-mentioned matrimony was de-

⁶ Cf. p. 9.

⁷ Some years later, in the course of the trial prepared by the Magistrate's Court of Padua on the occasion of Maria Luisa's flight, the Episcopal attorney Giovan Francesco Zanadia summarized the main phases of the lawsuit "...I think, not keeping a clear memory of it, that it was towards the end of 1765 or more or less the beginning of 1766, that the said countess began a quarrel with the marquis Nicola Colozzi in this court of Vicenza. First of all she obtained letters of summons from our Lord Bishop for her husband the aforesaid marquis to appear in this court to see the divorce, reserving afterwards to attempt to obtain an annulment; these letters were forwarded to the Episcopal curia of Iesi, the hometown of the marquis. After obtaining the responses with the opinion of the curia, the marquis not appearing, nor sending anybody in his place, the countess also neglected to pursue any other act in relation to the divorce, as though she had not taken any steps.

Some time later, if I am not mistaken in 1769 or 1770, she forwarded new requests with a summons of the aforesaid marquis on the issue of the annulment of her marriage; and having sent them to the curia of Iesi to effect the summons, but the last letters of that curia not having been executed, it became necessary for the countess Laura to appeal to the most excellent Senate, providing papers and documents pertinent to the matter, from which Senate, our Lord Bishop having been barred from going on with the dispute, he obeyed the public will to come to the judgment of that suit, confronting the fiscal promoter don Gaetano Monari, entrusted to defend the rights of sacrament as is usual in similar cases, when there is no party allocated to defend such a subject. The fiscal promoter despite this having performed his duty, the sentence that came out was in favor of the countess Laura, at which the Lord Bishop annulled the marriage. And this is how the dispute was defined in this court..." cf. A.S.V., *Consiglio di dieci, Processi criminali, Padua*, b. 36.

clared null. Now this morning, while the parish priest Marchiori was celebrating mass in the Cathedral at eight o'clock, just as he was pronouncing the benediction, this lady presented herself together with an altar-server of the same Cathedral (a youth of about nineteen, not yet in sacris), as I have said they presented themselves before the priest and the altar-server, having thrown off his vest, saying: 'this is my wife and the lady saying: this is my husband in the presence of two witnesses.

The priest expressed his astonishment and took them to task, but they moved off at once and the altar-server having thrown aside his clerical habit they left together for Venice, as far as we know. This altar-server is the son of a poor man and has no possessions. This unexpected new turn of events has stupefied the whole city. The lady is about 28 years old, she has a father, a mother, siblings. Ah what an affair, what a misadventure..."⁸.

Though the misogynous count Tornieri saw nothing in the affair if not one more reprehensible instance of the unhappy times in which he was obliged to live, count Antonio Ghellini was once again forced to defend the honor that had been damaged by his daughter's unpredictable – or at least so it seemed – behavior.

In the two *memoriali* presented to the *podestà* of Vicenza, Ghellini complained of the serious offense he had suffered, emphasizing that his daughter had never shown "the idea of choosing a new condition". But suddenly, "we saw accomplished by her along with a certain Francesco Rizzi, a lowly plebeian, the most feared and unforeseen fact". On the morning of June 2nd 1772

"My daughter was already prepared, ready with two witnesses, when at the end of the sacrifice, while the priest was giving the benediction, to his surprise he heard Rizzi call my daughter his wife and she call the same Rizzi her husband. With this cursed clandestine marriage thus accomplished, they both climbed onto a boat made ready for the purpose, and left together for the Dominante.

With what grief and confusion the mind of an unhappy father and an innocent family is afflicted, what great sense of sorrow is felt by all the other noble families related by blood, can never be adequately expressed ..."⁹.

On being informed of the matter by the *podestà* of Vicenza, the Council of Ten immediately delegated the case to the Municipal Court of Padua. Actual proceedings were not started until April 1773, with the initial examination of witnesses at the *Due Rode* inn, where the *giudice del maleficio* of Padua had taken lodgings.

⁸ Biblioteca civica Bertoliana, *Memorie di Vicenza del conte Arnaldo Arnaldi Primo Tornieri (1762-1822)*, ms. 3108, c. 40.

⁹ A.S.V., *Consiglio di dieci, Processi criminali, Padua*, b. 36.

While acknowledging the gravity of an episode that had cast a shadow on his family's honor, count Antonio Ghellini expressed himself with comprehension and benevolence towards his daughter, who was now in Florence. He concluded by begging the *Principe* to concede a pardon to the two run-aways¹⁰.

This was the conclusion of the troubled affair of Laura Maria Ghellini, who seemed finally to have found the happiness she had long desired¹¹. All things considered, it is likely that count Antonio Ghellini was equally satisfied. His daughter's sudden elopement had certainly saved him the expense of a dowry, which was always considered an excessive burden on the difficult finances of an aristocratic family, even one with large landed estates. And after all was said and done, though contracted with a person of humble origins, the marriage had put an end to any possible further claims on the part of the powerful Colocci family. And perhaps we are very near the truth in imagining that after his daughter's unhappy marriage, what count Ghellini most desired was to prevent any further trouble from a family so well-connected with the papal curia¹².

¹⁰ Cf. his testimony of 4th April 1773 in A.S.V., *Processi criminali, Padova*, b. 36. After summing up his daughter's misadventures, Antonio Ghellini underscored: "Since from the beginning of my memorials sent to the Excellency, I have not forwarded any particular instance against my daughter or against Rizzi, on the contrary I recommended the cause of my honor to the Prince, for the reasons expressed therein and for the suitable expedients, far less reason for concern have I now, since I have news from Florence where she is located together with the husband, of their regular dealings and honest behavior, and I am also very moved by the arrest they suffered there, procured by the archbishop of the court of Rome, perhaps caused by the dealings of a prelate partial to the Colozzis, seeing how the first marriage ended, but having both my daughter and Rizzi justified the end of the wedding to that sovereign, by producing the documents of annulment, they were both freed and made hopeful through the forgiveness of their own natural Prince and the absolution from ecclesiastic censure of some useful and honorable occupation, for both of them. For all these reasons I beg it to come from the Prince that their by-gones are forgiven, and I have nothing more to say..."

¹¹ In her testimony, given in April 1773, Laura Maria's maid, Giustina Santin, obviously denied any involvement whatsoever in the secret marriage, but added some interesting details on the countess's emotional state:

"Being surprised from that resolution [leaving the paternal home], worrying that she would throw herself on the river, since she had told me a while back how she couldn't go with that life, that she was desperate and wanted to kill herself or jump in the water, complaining about her situation where she was missing what she needed and in fact a night being so desperate, she tried to kill herself from a balcony of the house and she would have done so if I hadn't interfered." After Laura Maria's elopement, Giustina Santin left the Ghellini house: "for fear of the master scolding me...and furthermore I kept living far away from the house Ghellini, considering the need of the Countess Laura, even if with my own means, I supported her of what I could considering how she used up all of her means in the quarrel of her first wedding. cf. A.S.V., *Consiglio di dieci, Processi criminali, Padova*, b. 36.

¹² As the *podestà* of Vicenza pointed out in his letter of 3rd June 1773, addressed to the Heads

Laura Maria and her husband came back to Vicenza, the same city that roughly a year before had seen them perform their sudden *coup de main*. At least this is what the following report seems to indicate:

“14 June 1773. By order of the most illustrious and reverend My Lord the following record is made: 2 June 1772. Signor Francesco Rizzi of Signor Giacomo Rizzi and the noble countess Laura, daughter of the noble Signor count Antonio Ghellini, both parishioners of the cathedral, have contracted their matrimony per verba of those present at the altar of Santi Nicola e Nicolò in the main sacristy of the same cathedral, in the presence of myself, don Francesco Marchioni curate in the same cathedral. In the presence of Filippo Belotto di Vicenza and Giovan Battista Carraro di Sivestro, both of the parish of Santo Stefano, witnesses”¹³.

I have found no further trace of Laura Maria Ghellini, except for a brief but significant note in the will of her mother, Ottavia Capra, drawn up several decades later:

“I leave to the countess Laura, my third daughter, for the rest of her natural life, two liras a day, which are to be paid to and administered by her and disposed of by her without any dependence on her husband, in monthly divisions on the condition however that if the above-mentioned person, on any pretext or for any reason whatsoever should in any way harass my heir, I intend and desire that upon formal notification of the first document she shall ipso facto forfeit this legacy...”¹⁴.

of the Counsel of Ten, the sentence of annulment obtained by countess Laura Maria on 11th April, 1771 had never been officially served to the Coloccis, cf. A.S.V., *Consiglio di dieci, Processi criminali, Padova*, b. 36. Therefore an appeal by that family seemed highly probable.

¹³ Vicenza, Archivio della curia, *Registri dei matrimoni, Cattedrale*, b. 42/1208, of the date. However, in correspondence with the date on which the secret marriage had taken place (2nd June 1772) an empty space had been left, which was filled in with the following cross-reference: “Here in this record of the wedding of Sig. Francesco Rizzi di Giacomo with lady Countess Laura daughter of the noble Sig. count Antonio Ghellini of the day 14th of June 1773”.

¹⁴ Archivio di Stato di Vicenza, *Notai di Vicenza*, b. 16650, n. 155, 19 aprile 1804. Orazia Capra assigned as her heir her son, Gaetano Agostino Ghellini “as a reward of that love as a son, that respect and assistance that he has constantly been showing me and as a sign of gratitude of that decency and manners that have always been distinguishing him in”.

Laura Maria Ghellini Colocci

Letters¹⁵

1

My most beloved and esteemed parent,
Hague, 8 October 1765

At the present moment I am in the villa and your much esteemed letter has been faithfully consigned into my hands. My dear parent, how much *consolation* is brought to me I cannot explain, I already understood your love, but I see that by the mercy and permission of blessed God, who wishes it for my good, it continues.

Since my Signor uncle judges it best to tell you what for your peace of mind I had begged him to keep hidden, since my silence comes from no other motive, now expressing that sincerely to the one who gave me life, I shall give my explanations.

Unfortunately what my uncle has informed you of is true, but I must add that if I go on like this, my misfortunes will not last long, as they will end with my life. This is how it is, my dear and much beloved father: I do not exaggerate them, even more because there is no remedy for me, what my uncle saw is nothing compared to what I suffered afterwards and am still suffering. There is no one but my brother-in-law, who having suffered and suffering still a thousand incivilities from my cruel husband, and knowing him perfectly, for this reason is on my side, but what consolation is this for me, nothing but hearing another unhappy soul who like me laments. As for the marquise and the marquis, they are affectionate with me, but if only you knew how much this costs me and how I have to behave and how many things it is best that I hide, but what consoles me most is the thought that I am right and that the whole town of Iesi loves me very much, but, as for the rest until now they know nothing about what I put up with, because I man-

¹⁵ Laura's letters were transcribed by the notary from Vicenza, Giacomo Nichele, on 15th March, 1766 based on the original present in the Ghellini family archive. They were then attached to the file presented by Antonio Ghellini to the podestà of Vicenza, following the request for information by the Venetian state, cf. A.S.V., *Consultori in iure*, filza 520. We have faithfully followed the transcription as made by the notary (even if there is the possibility that he may have distorted some of the terms), making some changes only as regards punctuation, abbreviations and capitalization. Along with the eight letters, I have also included certain other documents that make it easier to follow the development of the entire affair.

age with the greatest prudence to pretend and when I am in company to seem merry and at ease, but oh God what it costs me to best myself.

I know very well that this whining of mine, as I call it being already dead to tranquility, to peace and to even the most just and rightful joys, you will say that he who is the cause of his troubles should cry for himself, but it is true that with my obstinacy and stubbornness I was asking for my misfortune; and a charitable person who wanted to defend me and take my side could do no more than produce to my advantage these thoughts, and they are that by the hands of my father this match was offered as a good and desirable thing, that when for the first time it was dissolved I adjusted to his will and when it was picked up again I was again of his wise opinion: these are the first arguments in my defense.

But for the last one, what can be said for me except for the reflection that there were only a few days left to be married and that I was uncertain of my destiny: it is true that with such dear, such good and loving parents I could not be lost, even the more so as I was assured of this by them, but as to what would be said by the world, which has always persecuted me, the triumph of the malicious and then the force of destiny, as God leaves us lords of second causes very often we decide it ourselves, especially since we never believe things are as bad as they are when unfortunately we live through them; but these are all weak reflections that are easily defeated. And you can see dear father that I do not even dare to say them as my own, but they are born of the mercy and love of that third person mentioned above, and I do not delude myself that I will find this person except in my beloved father and dearest mother, who even if they have many children and I am far away, still they consider me part of their inmost being, first fruit of their chaste love and their own blood, so much have they done for me and now I am certain they will not abandon me to the mercy of my unhappy fate.

I wish they could see me: I am writing this letter on my knees to beg their love and help. More than by ink, my letter is written in tears, which are my only relief. I do not know who to talk to, without friends, relatives or allies as I am.

I have no other companion than my invisible sorrow, always there to rent my heart.

And already this sadness of the spirit has affected my person, making me thinner and taking the color from my face, the brightness from my eyes.

Here, hinted at in part, are my misfortunes, but what I have written is no more than a short summary, I shall wait to let you know it all better by the voice of a person who will soon be going there, if however I think I can trust him, since much prudence is necessary. It is superfluous for me to recommend this to you, who are well-supplied with discretion. What I can tell you

is that my husband has spies in Vicenza and particularly the valet of marquis Repeta, an intimate friend of the perfidious Giuseppino, with whom I dissemble as much as I can, but the poison eats at me. And I must add that you should never recommend me to the bishop or the governor, because in these lands, contrary to what I believed, they can do nothing and it would be much the worse for me, they would bring on greater troubles, so for the love of heaven do not do anything before I first see if things change, and if I see on the contrary that they do not I shall throw myself into the arms of my beloved parents.

I beg you not to show this to my mother, as I do not want her to be overly troubled, which would be bad for her health; and forgive me if I am so bold as to beg you to shut it up in your casket, since no precaution can be too great, that even if fart fetch, unfortunately everything can come to the ears of those we don't want.

Tell my mother, too, that if anyone inquires about me she should generally answer that I am well, that my in-laws and the town love me, that I always praise them, and as for my husband, she should not mention him, neither for better or for worse, but with nonchalance cut off the talk, and for heaven's sake she shouldn't trust anyone if my life is dear to her. Giustina, poor woman, tries to comfort me, but also she suffers for me, seeing me in such a bad condition, she is sending you her regards. I embrace my dear brothers and sisters and I humbly kiss your hand and those of my mother and uncle.

Of yours beloved parent,

P.S. I have burnt your respected letter for caution's sake. I will make a cover for this for the same reason.

Your most devoted and obedient,
affectionate servant and daughter
unfortunate Laura

2

My dear parent,
Iesi, 25 October 1765

Instead of coming to an end, my husband's bad features are getting worse: he almost got to the point of trying to beat me the other evening, and he would have if his own parents with his uncle at the head hadn't rushed in to

keep him from it; their authority counted for nothing – only the force of violence with which they held him back, and the struggle lasted for quite some time. What the reason was for this rush of anger I'll tell you now truthfully, without leaving anything out.

I was in the courtyard in the company of the whole household, who were passing a bit of time there after the Rosario had been told to enjoy the lovely evenings we've been having. I was strolling up and down with my brother-in-law, when my husband called me and said he didn't want me walking around, it was improper, and that I should remember I was a woman and a lady. To which I answered that first of all I didn't think it improper to walk around in such a small place and in the company of so many people; and as for the second point, I considered it superfluous for him to remind me that I was a woman and a lady, that when my parents had taught me my duties as a Christian, they also instilled those of a lady, and he should know me by now, since I'd already given him proof of my character, thanks to the wise heaven above, and should allow me to do things that are right and honest things. I said no more.

He went on insulting me, but I did not answer: my heart was too grieved at hearing myself insulted like that in public for no reason. I climbed up to my room and shortly after I saw him arrive: he sent everyone away and, luckily for me, only half-closed the door. He started with a thousand reprimands and really seemed out of his mind. I was stung to the quick, and answered that I did not deserve to be treated like that, that it was really out of a desire to humiliate me continually and that he treated me too cruelly; because God would defend me knowing my cause to be right. See for yourself if I said anything wrong; but he grew so irate that if his parents had not come when they heard my cries, since I'd deliberately raised my voice, God only knows what would have become of me.

Since that day he does nothing but scowl at me. But he does all these things for no other reason than to give vent to his hatred for me and for my mother. Believe me, dear father, that I am so unhappy that I shall never be able to explain it to you. And why did I not listen to those who for my own good had advised me, now I wouldn't find myself in these straits, since not only do I have to put up with my husband, but I see the truth of everything that was said about other things as well and that we thought were malicious tongues but to my misfortune they were not. And countess Bianca Pagello was telling the truth; if only I could have the consolation of unburdening my troubles to her, but I am so far away that I can hardly have the small comfort of writing to her, I say hardly because the letters that arrive to me from them and those that I send have to pass first through my husband's hands; and only because one day I dared to send and receive them at the door, there was

so much murmuring about it that it lasted for two days. And he knew for certain that I had not received any letters except from my family from the postman himself, from the official of the post that on his side. And it was a heaven-sent inspiration, the one my most esteemed father had, otherwise he'd never have had sincere news from me because I am very afraid of them, since he well knows that for the goodwill and providence of heaven they love me very much.

I beg you, my father, not to take any measures for me above what I have said, before I myself communicate it first. I want to see how things go, if from a beast he decides to become a reasonable man and I shall put into practice all the advice given me before I left, and that to tell the truth up to now I've done as much as I could, and even my uncle the canon can testify for me, since he has witnessed by behavior, but I am afraid I won't succeed, because I have to do with an ungrateful, cruel-hearted man with a twisted mind. Besides that, I can't avail myself of womanly arts, since I've already found them to be useless.

My most beloved parent, pray God for me, as I have the greatest need, not wanting for my quietness that patent miracles for the safety itself of my life, which to tell the truth I do not think if very safe, but don't pay attention to this and think it only a poorly founded suspicion on my part. I also advise you not to recommend me either to the bishop or to the governor, I can already advise you that they can do nothing, as I had vainly thought before I left, this would make things worse for me, especially since to my misfortune he is so clever that he doesn't show his ill-will against my person in public, on the contrary he makes people think he loves me very much and I have to go along with him if I don't want to make things worse, so the world thinks we get along in perfect harmony and peace. But dear father when I can no longer bear all these hardships I shall throw myself into your paternal arms, hoping you will want to help me rather than see me die of sorrow and I swear that I tell you less than I might, so as not to cause you grief. I remind you once again for your knowledge that here in Vicenza there are spies and they well not fail to pay attention to anything they can report to harm me. I pray you to keep your affection for me, as I have no other consolation or hope. Send my reverence to my dear mother, do not tell her all my troubles, so that she will not suffer, and with all my respect kissing your hands I pray for you blessing.

Of the Most esteemed father,

Most Humble, devote and obedient servant and affectionate daughter

Laura Maria Ghellini Colocci

3

Most beloved mother,
Iesi, li 31 ottobre 1765

To explain what is happening to me this time instead of my Signor father I'm sending the secret letter to my most dear Signora mother and by post I shall write about inconsequential things to my father, since that will have to pass under the rulers, that is through the hands of my husband you see how true it is that he who is at fault lives with suspicion.

The parish priest is coming there and he could be there on the 6th or 7th of next month; for mercy's sake show him the greatest courtesy, but at the same time do not trust him, because he is partial. It is true that up to now I cannot complain, since he has always taken my side, but how could he do less, seeing how clearly I am in the right? It is true that he is a pious and righteous man, but nevertheless with him you can talk but never tell him what you have thought to do for my peace of mind and safety. This person will tell you something because he knows (I told him so that he would speak too and be my witness); so I told him that you were already informed of what my barbarous consort makes me live through, so for this reason he will tell you something, since he cannot contradict what my uncle the canon has testified, but as I said reveal anything except what you have planned to do for my tranquility, so that this person does not inform his sister and my lady. I pray you, dear mother to take my advice and you will not be sorry, I know what I say and I have my good reasons. I beg you to do everything with the greatest refinement both because he deserves it and to be politic speak to him about me again and as much as you like, but take care only about the point I have mentioned.

Giovanni, the servant of the priest as I imagine he has told you, seems to me the ray sent by heaven for my good, because I should never have been able to receive nor send a secret letter if he had not been the means and I'd never have learnt about many things if he had not been there, because I warn you for God's sake not to trust my stableman Antonio, who has been corrupted, in part with my husband's threats and in part with his gifts, and so since he has become his partisan I'd be betrayed. If it be added that since the fever is still there and don't know what it is caused by it is likely that he will leave my service, so for one reason and the other do not avail of him anymore. You will learn everything from the above-mentioned servant of the priest and he will explain in detail my unhappy lot, which I do not hope to see changed except with my death and with your maternal help, which for mercy's sake I beg you to grant me.

I pray you also to show the greatest courtesy to Nane who will come with the priest, since I can say I owe my life to this young man and I recognize it almost as a miracle, since when I prayed the Lord to show me a person to entrust my letters to, he disposed that this young man should offer himself and show himself of his own will, even though he could put his life on the line with the betrayals that my husband's cruelty would have done to him. With all this, my misfortunes made him pity me so that he exposed himself to everything, and that made him stay without interests e I had to then insist as he would take some little recognition, since I could put do little, having nothing but what I'd brought and I need to think of everything, and when these few coins are finished I do not know what I shall do and this is used as an answer to the request that you asked me over the founding: they have iron stomachs, these persons I have to do with their decency is based on their twisted brains . I think you understand me. I shall not continue because Nane has gone to see my letters, so I shall wait to close this one when he arrives.

I received a letter from my father and although he did not have time to write at length, still he told me enough to console me. I leave it entirely to what you believe is best for me: so do what God suggest to you, through means of cautious way, but I beg you to do it all with the greatest secrecy.

I am still in the villa and I nourish myself with my reverse gaiety, but with such a great delirium I can't go through just even the first year, I won't say happily but not even fairly content.

Giustina is sending her best regards and says to give everything to the brother-in-law, since having to pay the small change. I shall do what you asked me to about writing to my aunts the nuns and your thought is a very good one. I pray you to hug my dear Giacomo for me: tell him that I am grateful for the memory he holds of me and I do no less of him, and not a single days passes that I don't mention him and thank heaven for his good health and for the danger that he has happily overcome and that I only wish to hear he is completely recovered, and I am pleased that his heart is like mine, which I can boast to have tender and loving, but heaven forbid that his luck is like mine, and I hope for him it will be totally different; and if I have found a hard lot, his will be a mild one.

Embrace my other brothers and sisters as well, and I offer my devoted and most affectionate regards to my father and uncle, my reverence to count Pietro, Signor Alvise Zen and Lodovico, if they are still there, and also Scipione (only too greatly have I experienced what he foretold: I can say with the prophetic lip) and also my dear Signor Rinaldo Fioretti. Tell Bastiano that I do not know why he deprives me of his letters, he should at least reply when I write him. Give my greetings to my goddaughter and to the steward. I do

not leave out to recommend all possible care to burn this letter with your own hands, because we cannot trust anyone and I pray for your maternal blessing.

Of the Most Beloved Mother,

Most Humble, devoted and obedient servant and affectionate daughter,
Laura Maria Ghellini Colocci

4

Most beloved parent,
Iesi, li 9 novembre 1765

For the same reason that the letters arrived there late, it followed here too, so instead of Tuesday they arrived on Wednesday, which made me very sad counting the days and waiting for it with greatest anxiety, and I am mortified when I see my hope disappointed.

This is the truth, most beloved parent: I love you so much that I do not know how to express it, since I know that it is really not possible to find on this earth parents with greater kindness and affection. I talk about those who resemble you, and in the straits I find myself in it is no small, nay it is a great consolation for me to think that I have parents who are so good and so concerned about me.

By now you will have received the letter I wrote before this one and have understood everything, but you will understand much more from the priest's servant and from the priest himself, even when he desires to speak sincerely and like a Christian. In this letter I can only confirm to my great sorrow what I have written up to now and what you will understand and learn from what is above-mentioned. What I urge is to do everything with the greatest secrecy, since my life is at stake and nothing less I have to do with persons so astute and false that when they show good grace is when they are thinking of deception. What sorrows me most is not having a person I can unburden myself with and who can advise me, instead I live in constant sorrow and fear.

This letter, if I am able to send it by another post I will, given that Nane has left the Priest I have no one I can trust, while since I am in the villa (I put the date as though I were at Iesi, so that the letters don't get lost and instead of getting to me they go to Hague in Holland); so since I'm still in the country I don't know by whom to send them to that third person. Enough, I'll see what I can do. If ever I could send it to you I'd do so willingly. In any case, I'll tear

it up rather than expose myself. A great mishap my living in constant fear for no fault of mine.

My most esteemed father love me and remember your poor unfortunate daughter; my respects to my mother and my uncle the canon. Be careful not to trust the nobles, nor the marquis Adriano, who could betray us out of simple-mindedness; and kissing you hands I ask for your paternal blessings.

Of the Most esteemed father,
Most Humble, devoted and obedient servant and affectionate daughter
Laura Maria Ghellini (and by misfortune) Colocci

5

Most beloved parent,
Iesi, li 16 novembre 1765

I shall not be as lengthy as would be necessary, since I am so watched that it is a miracle if I arrive at explaining these few emotions to you, my beloved parent.

I am truly desperate: my husband continues to behave so inhumanly and unreasonable towards that I cannot go on living; and what is worse, it seems that the marquises are afraid of him. The marquis Adriano would willingly take my part, but the marquise dissuades him, she does not blame me openly because she cannot, but she thinks by saying to me that many princesses and distinct ladies suffer as many torments from their husbands; she thinks, as I say, to console me and then concludes that I should be patient, but they who are father and mother should take measures, even more so that last Tuesday evening, just when I arrived in town from the country, they saw what he is capable of, since it wasn't enough for him to torment me with a thousand insults, also touching on my paternal house, but he wanted to but wanted to add blows.

I know for sure that my life is in continual peril, because that same evening, if my father- and brother-in-law had not come between us, I don't know if you would now still be in time to help me. Please my dear father, do not wait to come to my help, since unluckily I already know that the hope I had to restrain him with good intent was false.

So my dear father, I throw myself into your arms, come and take me away from this cruel man if you want me alive (because if you knew how many fear for my life). If you can find a companion, above that it all happens sud-

denly, whereas if my husband ever came to know you were headed for Iesi, I know he would give me a poison. So when you do leave let it be known that you are going to Venice on business, because, as I have said in another letter, there are many spies there, I know this for sure. So do it with the greatest caution and when you have arrived at Iesi, say you have come for a vow you made to go to Loretto in thanks for Gaetanello's rapid recovery, and then we shall plan together, but once again I say to you, dear father, urging is superfluous but you will need resolution. Dear come and save me out of piety.

I cannot go on because of the great abundance of tears that bathe this paper (thinking about what my atrocious lot forces me to do) and then also for fear of being caught while I'm writing. I expect that from the trusted messenger you have heard of my unhappy state, that is from the priest's servant and from the priest himself.

I had another letter written before your last and I did not mention it in the last one I wrote you, since at the time I hadn't yet received it, as that trusted person was only sent to fetch it three days later, so as not to arouse suspicion, just as before it was not possible to send that other person you know already.

I pray you give my respects to my dear mother and uncle, embrace my brothers and sisters and especially Gaetanello, who I hope is already completely well, and to my beloved parent. Kissing you hands I ask for you blessing.

Most Humble, devote and obedient servant and affectionate daughter
Laura Maria Ghellini Colocci

6

My most esteemed Mother,
Iesi, the 24th November 1765

Since I must answer my father's letter by ordinary post to avoid being noticed for using the special post I'll write to you my dear revered mother, as not only does my husband count the minutes I shut myself up in my room, but my father and my mother-in-law as well, who like Argos always watch my comings and goings, but it is no wonder that those who are in the wrong live constantly in suspicion, I could use the hours of the night to write to you, but since my husband has a door that give directly into my room and which I cannot lock on my side, so even if I know that he never comes to me, still I don't want to stay up late, since in my situation I cannot be overly cautious.

What I can say of the present is as usual and like a like time that roars keeps even if it keeps apparent calm, always afraid that a greater fury will explode, especially as there is no strong protection as there ought to be, and this in the persons of the marquises Adriano and Vittoria. But, whether they cannot or for reasons of diplomacy, it is sure that I do not confide in them at all. The former, that is the marquis Adriano, is too good and therefore weak; the marquise Vittoria is a fox, so I let you with your excellent discernment be the judge of what circumstance I find myself in. They always say we will do something, but when the time arrives they only know to say or do, be patient. But that is not enough for me.

It is true, patience is good and lovely and I wear it in a way that I can say has totally changed my nature, but if I see that it's all the same, it is therefore absolutely necessary to find another way, and I don't think there is another so direct and safe as to arrive at leading me to the most loving arms of my parents, who remembering that I am part of their inmost selves and of their own blood, will receive me very willingly and even more willingly when they recognize the justice of my cause.

And so I deserve all their compassion, as I receive for the same reason from all the inhabitants of Iesi, both from the nobility and from the common people as well as the ladies themselves; you see how far it goes! And already everyone expects that my revered father will come to get me (though I have of course never said this, I wouldn't be so foolish, it seems that is what they are saying, but think it odd that they speak about this as such, wondering what they would do if I were their daughter, this shows that they are well aware of what we are planning .

And this must be, as this secret I keep inside me and no one knows this except for Giustina, but these words said in my favor console me, because when my father comes to get me so everyone will say that he does well and that we are right.

The bishop was here to see me and told me that my uncle the canon had written to him and asked him to look after me: and he did what he could in my favor. What a fortunate opportunity to open my heart to him! But I couldn't even begin because the marquis Adriano soon came to interrupt, as usual he spies on all my actions, so as soon as he knew who was in my company he came, as I have said, so that I wouldn't have room to speak. They know their own consciences and that is why they behave like this. The bishop himself realized this, but prudently pretended not to. Then his vicar was with me and they repeated the same scene; they are afraid I will speak and so they would be totally disgraced if I told only half of what I go through, but let them do what they will, everyone is on my side.

Dear and beloved mother, have me taken away from this purgatory, I don't

call it hell since I have the hope of being set free by blessed God through your intervention. I shouldn't want my father to come alone and if count Piero would accompany him I should be very glad. In brief, I entrust myself to my dear mother, I know she has granted me all that was right and that she will do so in this too. My dear mother, I pray with tears in my eyes to free me, I ardently beseech you.

I'll do what you said about going to church, but I think it would be a good thing for my father and his companions to stop in a city near Iesi, but in secret, that is under another name and place of origin; and meanwhile they should send me the provost's Nane in disguise, because even if he is with his master, it would be enough for you to write to him under some pretext that he should go to Vicenza unbeknownst to his master, that I'm sure that since he is a very able man he would manage things well to our advantage. I don't say Bastiano, because he can't disguise himself like the other can, with his brows and black beard, which the other doesn't have ... would change the idea and advise me of their proximity, so by voice I can explain to them what is absolutely impossible for me to say in a letter. And asking for your blessing for the love of Christ I put myself in your care.

Most Humble, devoted and obedient servant and affectionate daughter
Laura Maria Ghellini Colocci

PS.: if you write to Nane make certain that the letter does not come into his master's hands, but only into his own.

7

Most dear and esteemed parents,
Iesi, the 13th of December 1765

I cannot express what consolation was brought to me by the messenger you sent, more so since he was accompanied by a letter from each of you. Going without your highly revered letters for two ordinary posts had made me excessively worried that perhaps the man with whom I send you my letters had betrayed me to that third party, or himself but I recon not to be so, but since I cannot go to that person for fear of being noticed, Giustina will go, so tomorrow I shall write you by post the positive certainty: whether I find them guilty (heaven forbid) or if they are (as I hope) innocent, but I shall express myself metaphorically in that letter like a poor prisoner or, better, an unlucky wretch condemned to live in constant sorrow, looks for the happy news that his liberation and absolution is near, so I with the same attitude

received the happy news that my dear parents are about to set me free from this purgatory, which I do not call hell in the hope that I hold in the blessed Lord, that thanks to them I will get away from there.

That the Signor provost told you exactly how things are going, though he is the marquis' brother, even though of the fear, does not surprise me, first of all because he is good Christian and then because even if an enemy of mine knew about or witnessed by circumstances he would be moved to pity. Oh just think a bit how great my misfortunes are.

As for the hope you have in my father-in-law the marquis, put it aside, because he is such a weak man that his bravura consists in nothing but words, and he trembles in front of his son, and hat under the cloak of Christian piety and her pretended love of me, knows how, I repeat, she leads thing in a way that I express myself and in concert with her son, so then she can gain her continuing absolute supremacy with fear that I might overshadow her, without my husband's support, so I am forced to not do the opposite from what you my most loving parents have told me to do.

So I am forced to ask her to be so kind as to let me have the horses (there are only a couple of them), which she rarely grants me unless she come with me. And just imagine my dear how hard it is for me to have to go with one I know for certain is my bitterest enemy, even more terrible as mistress of the house and false towards me; and I suffer everything, but that I hope in God and in you who will free me, otherwise I'd be forced to drown myself, and I'd certainly go out of my mind.

As for the point if my husband comes with me I tell you not even in shadow, I mean shadow because if only so as not to give the world so much to talk about he should come for propriety's sake, that there wouldn't be any risks that I might trouble his dreams, that it would be like having near me a shadow or a spirit, and I wouldn't take notice of the body. If he goes out at night I cannot tell you. That he is completely free to do so is certain, because in his apartment he has a stairway and a secret door, by which he can go out whenever he wants without being noticed.

Now I come to the detail of the valet, and I assure you he is really most cunning, but all the evil comes from the head which, as I've said, is too weak in marquis Adriano and then in my husband's evil heart, because how could the valet for no reason set him against me, and how (if he were good-hearted) could my husband (even if he doesn't love me), how could he as I say torment and abuse me without any reason? So we can reach the conclusion that they are both perfidious and wicked. So if the valet was dismissed (which will certainly never happen), even in this case it would be the same for me if not worse, because, and be persuaded of this my dear parents, that they will make him go in a nice way, and he and his master will not consent, or nicely

but contrived, for instance that some distinct personage desire him. Against his own interest, Hecate would not be separated from his Aeneas: therefore the marquis Adriano would be forced, through that person, to use the force of authority: and the one who would be in the middle would be me, because no one would get it out of his head that I was not the cause, so on this point there is nothing to hope, for the reasons I've mentioned, but on the contrary to fear, for this reason.

Then as concerns my garments and other things, it is necessary to hide them in some way, because there are many things that he did not undersign as having received and this will amount to more than eight hundred ducats at least. And if I do the inventory it will not be worth anything, but when my father is in a nearby city (but not the nearest) he should send me a trusted messenger to let me know, and I hope I will find a way to hide my things and hand them over either to a lady who is my friend, who has given me proof of being able to trust her (though I've told her nothing of our plans, not because I cannot trust her but to be as careful as possible) or to My Lord the vicar of the bishop. But if in the end I don't succeed I'll leave it as you told me, but don't neglect to let me know as soon as you are nearby. For greater precaution change your name and surname, come with trusted servants and in the most circumspect and cunning way as possible.

One more thing I urge you: as long as I am here do not assert any of my rights. In brief, entrusting myself to my dear parents I assure them that when I am in their company I shall certainly give them no reason to be sorry, I entrust myself to their affection and ask their blessing and kiss their hands. Greetings to my brothers and sisters.

Most humble, devoted and obedient
servant and most loving daughter
Laura Maria Ghellini Colocci

P.S.: I have kept the messenger here one more day in order to know for certain about the business of my letters. But, as in this letter I told you I wanted to do, I sent Giustina to the third party who to my joy assured me that the bearer of my letter was faithful, so consequently I am sending you this by the usual secret way, so that it reaches you sooner (since the delay of the others was accidental, and by now you'll have received them) and the reason was that the friend corresponding to the one from Iesi was in Ferrara: now that he is in Venice it will be easier to send them to you quickly. I add that since the messenger has been seen and is known to be from Vicenza, they might send someone after him to take away my letter either with promises or threats, so for safety's sake I'll send it another way.

8

Most esteemed father.
Iesi, day ... December 1765

The last ordinary post I did not have the chance to write you, as I was constantly being watched either by my father-in-law or by my husband and my circumstances are such that it is impossible for you to understand them, nor can I who am trying to explain them.

What I can say for sure is that I do not think there is a lady more unhappy than myself on the face of the earth. I'll leave it to you to consider a little.

A young bride of some high spirits and without (praise be to God) bodily defects, should find herself quite content, at least the first year. Even peasant women enjoy this, but for me it is the opposite. Patience as far as one can resist, but I am tyrannized to such a point that I cannot bear it any longer.

I find myself surrounded by enemies with whom I must live and converse far from parent, relatives and friends who can console me at least with their advice. But what should I do with the marquises if I have tried every means to win them over? But it was the same as making a hole in water. And what hope remains to me? If marquis Vittoria, towards whom I observed the most respectful behavior possible (which my uncle the canon was witness to), as I say being the most two-faced, false woman it is possible to meet, is joined with her son in tormenting me. And this is her motive: she is to the highest degree a proud and avaricious woman, and in this way she saves both her interests and her ostentation, thanks to my oppression.

Besides this there is another particular reason, that is revenge, because I am, to tell the truth, beloved by the whole city. But since I follow your advice and my mother's to be courteous to everyone in general, so I have the consolation in the midst of my trouble to see myself loved and pitied (for my deplorable situation). Beloved, then, and pitied by the rich, the nobles, and the common people, by both men and women. I cannot say how much this displeases my mother-in-law. With me she pretends, but I who know her am aware of how much this bothers her, what biting and most unfair rebukes I have to swallow, how I am tempted to answer her only thing only and with this make her turn all colors, but I keep my peace because this is what my dear father has ordered and this is the voice of prudence, but if you do not come to my assistance soon I shall either die or shut myself into a hermitage, since any sorrowful and disastrous place I would find safety, it would still be less disastrous than this tormenting company which to my disgrace I find myself with now.

As far as the marquis Adriano is concerned, he lets himself be led by his wife

to such an extent that he only does what she tells him to, but the worst of all is that they are such false and spiteful and worse yet crazy and voluble people that not even a saint could live in peace with them: and I say this sincerely. But my beloved father do not wait long to come to my assistance, I beg you out of pity and by the body of Christ, for love of the Virgin Mary and all the saints.

The last ordinary post I did not receive your letters as the courier could not pass because of the rain, but maybe he will come this afternoon. I am pleased that the provost has been here, so he or his servant Nane will, as you told me, inform you of my situation.

Come, do come, I beg you.

The open letters have come and I have received them, but what surprises me is that by the secret route I have not received any, which troubles me greatly. Tell my mother that I can certainly not give her an account of receiving her letters through the other ways because I can't understand how they get lost. However, in the last post I received two: one on its own and one included in a letter from my uncle the canon. I put them up to a fire to see if there were words out of fear [sic], but I didn't see anything, not even hidden. By this ordinary post I did not receive letters from you my father, I don't know what this means.

My most beloved parent, I beg your affection and ask for the paternal blessing

of her most beloved Father,

PS.: The reason why my secret letters are delayed in arriving is that that person not being sure of the wisdom of posting them at Iesi so he sends them to a friend of his in Ferrara to send to Vicenza, but if they do not find the courier then they are late. This is extremely trying for me, but he does it for safety's sake.

Most humble, devoted and obedient
servant and most loving daughter
Laura Maria Ghellini Colocci

Antonio Ghellini, father of Laura Maria, presented a petition to the podestà of Vicenza, requesting that his daughter's divorce suit be dealt with by the Episcopal curia in Vicenza. On that occasion he presented numerous documents (including Laura's letters) to corroborate his request, summing up the events that had involved his entire family:

Most illustrious and excellent Signor Podestà Vice-Captain,

In obedience to the orders of your excellence regarding the revered *ducali* of the most excellent Senate before the current one, I hereby expound with all sincerity the painful story of my troubles and those of my greatly beloved daughter Laura.

To my and her misfortune, on 10th October 1764 I concluded the marriage of this daughter to marquis Nicolò Colocci of Iesi, whom I had been led to believe was a kind young man of Christian behavior, which was celebrated in the eyes of the Holy Church last 29th August.

For his incivility, rudeness and haughty behavior in the time of his stay in Vicenza at my home before the upcoming marriage, both my wife, the countess Ottavia, and I realized that he was of a strange temperament and we considered dissolving the agreement almost as an omen of future mis-
haps, but for the opposition of our daughter Laura who, being innocent and in love with him and made uneasy by the imminent announced marriage thought that dissolution was not opportune.

However after the wedding, accompanied on the long journey to Iesi by the canon count don Lelio my brother and her uncle, it made an impression that he paid no attention at all to his new bride, resting with her only once during the journey, and that not by choice but because of the smallness of the hotel, so much so that from these premises and this beginning, similar in the course of time to his home in Iesi, with good reason he feared the misadventures that afterwards arose. Indeed, both while in Vicenza and on his return home, he showed unduly passionate attention to his young valet, whom he kept beside him both day and night, so faithful did he show himself to that young man's desires.

Having thus left my poor daughter in the power, I will not say of a husband but of a tyrant, my ecclesiastical brother returned to our Land very unhappy about him, when on the 8th of October past I received my daughter's first letter, which I humbly present with the ones that followed, which I shall have the sad occasion to speak about, all of which informed me of his poor treatment of her, the threats, the excesses, including even armed attempts, avoided not out of respect for his father's authority but by his forceful intervention, the disastrous effect on her and the offences he inflicted for no imaginable reason; these were made clear in the following letters along

with the omission of any proper or necessary measures, the dangers for her life and her desperation, and other trustworthy persons of good character, whom I also indicate for clarification, confirmed these, that I should arrive there and get her before receiving news of her death.

Only a father can say how troubled my mind was about such a serious calamity of a daughter so far away from me and her family. Whence, having procured and obtained the authorization along with the broad passport of the My Lord apostolic nuncio, accompanied by count Pietro Zago and our servants, leaving on 12th December last, I hurried to effect her salvation. I had the above-mentioned count Pietro Zago leave me at the last postal station, called the Cà Brugiate, eight miles distant from Iesi, so that before my arrival he would present the authorization and the fore-mentioned passport to the noble My Lord Governor Savorgnan, as he did, and at the same time inform him of the nature of my journey, which was to take my daughter away with me to safety. He, who already knew of the unreasonable misfortunes she had suffered, attested by her letters which I also humbly submit, replied that as regarded him no opposition would be made, but that it was opportune to discover first the sentiment of the My Lord bishop, because since the separation of a wife, even if ill-treated and roughly dealt with by the husband, is an ecclesiastical question, it was his prerogative to give permission. He therefore had him come and I arrived after on the same day of the 17th at about 11 p.m., dismounting as quickly as possible at the public apostolic palace upon his extremely kind prior invitation. The Colocci home is almost directly opposite his palace, from which in the sight of Zago, my daughter having already understood that my arrival was imminent from my previous letters, she came away from her husband's house, reaching shelter with the above-mentioned My Lord governor; and this only a few minutes before I arrived. She was nearly fainting and afflicted and with daughterly affections she embraced her father the liberator, and sobbing she related her misfortunes, the tyrannies she suffered and the danger she was in, confirming with more details what she had written to me, universally known in Iesi where everyone pitied her, and asked for help and shelter.

Then to my modest and just appeals to My Lord the Bishop, made with the aim of saving my daughter by taking her back to the paternal home, he consented and having agreed on the departure, wishing the husband to be advised of this as well, hopeful as in his letter, and in consideration of his respect, that she would return once she had breathed her native air and the matter would be reconciled and the husband brought to more Christian and honest ways.

Therefore I resolved on the idea of leaving that place and taking my unhappy daughter with me back to her home, but My Lord governor most courte-

ously prayed me to stay with him that night. Meanwhile more than one of the noble cavaliers related to the Casa Colocci, seeing my behavior in not having gone to that house upon my arrival for the unhappy causes, tried at that time to intervene to get me to go there, but not having agreed on the most honest intentions, I had to resolve to leave the next morning, as I did. My distressed daughter spent that night in the palace of the My Lord governor, resting in my bedroom and as we were leaving there arrived a contrived dissent from the uncivil husband, with a claim that precious objects had been taken away, submitted by this ecclesiastic office, which was immediately answered with a solemn protest at the foot of what was described, to safeguard the indemnity and the honest behavior of my daughter, a separate note of what she had with her, consisting in gifts received at the time of her novitiate.

So having left with the public consent of the most illustrious My Lords bishop and governor, distant therefore from his own concerns and authority and moved only by fatherly love and duty, my daughter got into the carriage in which I had arrived, driven with his own hands by the above-mentioned My Lord governor, in the sight of the whole populace which gathered outside the shops, in the streets and at the windows was rightly moved by her misfortune, sympathizing with and applauding my paternal decisions. I cannot explain enough the general arousal of all classes against the husband, as certain of the letters that I present prove, that if at our departure anyone had raised a voice, the population would have risen up against that House and the improper husband, so great was the hatred that had been conceived and the love that in only a few days, for her good character traits and honest demeanor, my daughter had won, as can be seen in the letters.

They detested him and even his own relatives detest him, as their letters prove and trying with a righteous mind to bring him back to the honest Christian path, by now almost impossible, they are attempting to remove his valet from his side, who is believed to be the cause of the scandal and of every disturbance in the family. And while they sigh for reconciliation, they are trying to persuade him to follow religious precepts.

Having reached Vicenza with my daughter, it was called for by necessity to propose a *monitorio* and a divorce suit. And so on 9th January last in the Episcopal curia of this city, to which she is subject by birth, by both the betrothal and marriage contracts, as well as by universal public laws; with the dimissory letter of the 18th issued by the Episcopal curia on the 17th in the first instance was given the faculty to enjoin the convened marquis Colocci, in reference to the allegation of the aforesaid 18th, following the issue of letters of reply, without any sort of objection on the part of either the legal

authorities or the husband, as would have occurred if an appeal to the court had been deemed proper.

This is all as it happened and which I expounded most sincerely. And if proof is sought of all this, hearing count Pietro Zago, count Enea Arnaldi and count Scipione Piovene, his neglect, the contemptuous behavior and incivility he showed my daughter before the holy union while staying in Vicenza and in my home will be revealed; his behavior to his wife during the journey will be revealed by count don Lelio, my brother the canon, by Sebastiano Toniazzo his servant, and by the chamber-maid Giustina Santina; you will learn from my daughter's letters the poor treatment, the threats, the violence, the attempts, which reached me not only through other letters from worthy persons, for which reasons I undertook for her the long and terrible journey; to which will testify the above-mentioned Giustina Santin and Giovanni Muraro, who resided in the Colocci house and who are now here. And they will also confirm, along with the aforesaid count Pietro Zago, as well as Giovan Battista Gottardo called Gatton, Bortolamio De Marchi called Ribello and Bortolamio Ebene and the aforesaid Sebastiano Toniazzo, servants come to Iesi with the father, when I arrived in Iesi the daughter was in the palace of My Lord governor: My Lord bishop came there after being summoned; that that night the daughter stayed in my room; that the following morning I left with her and that My Lord bishop himself led her to the cart which she got on and left.

Once your excellence comprehends with all the most charity and diligence the above- mentioned events, you will see how far it was from my own discretion, since the unhappy daughter was given back to me by the authority and the hand of the ecclesiastic and secular justice, and you will also verify the universal compassion and emotion of the people of that city when they saw her parting.

Once this information, truth and facts that can be established in so many ways are received, my most serene and august Prince cannot but extend, even against any attempt of the part of the adversary, his high protection over an innocent and oppressed daughter, his subject betrayed together with her father, but will save in his house as a safe place not against customs, by ecclesiastical discipline and holy decisions for the undeniable consequences on the cause of the justly proposed divorce in Vicenza as a result of the contested serious causes that are presented together with this pious petition.

Thank you

Among the statements examined by the podestà of Vicenza, Count Pietro Zago in his testimony summarized in detail the rescue of Laura Maria by her father.

Before the past month of December the count Antonio Ghellini received news from Iesi, where his daughter was living in marriage, of how she was mistreated and begged me to join him on a journey there in order to bring back his daughter to his house, as he felt she was in risk of imminent danger. As a friend I could not deny him my help and, if I am not mistaken, on the 9th of that month we both left with one domestic and two servants from the house Ghellini.

When we arrived in Sinigaglia I sent a note to the Lord Governor Savorgnan whom I already knew, telling him that I had urgency to visit him on the following day. Another note was sent by Antonio to his daughter the countess Laura to let her know that on the following day he would come to Iesi to fetch her.

The following day I went to Iesi with only my servant and two miles outside I was joined by the aforesaid governor. I presented him a letter from the papal nuncio, and there I explained to him fully that the father of the countess was not too far from there and had the intention of taking back his daughter to Vicenza, so as to remove her from the danger and the strange treatments she was suffering in the Colocci home.

He answered me that he was aware of many of these things for it was being much talked about and that he had in effect already been waiting the arrival of this gentleman. I then begged him for hospitality, which he granted not only for me but also for count Antonio, and I immediately sent word of his compliance to the count.

Meanwhile, countess Laura came in response to a gesture I made at the window; and shortly after also count Antonio her father and decided for the departure, considering that there was no other remedy for these evils.

The Lord Governor suggested calling the Lord Bishop, who came, and who was also very well aware of what was happening, even if neither side had come directly to him to tell him. And he even went on to say to count Antonio that he could not understand how he could have given his daughter Laura to marquis Colocci, and had she been his niece he would have never have married her to such a person, for his character and behavior.

In the meantime, the Lord Governor had the aforesaid marquis Niccolò called to inform him of the arrival of count Antonio with the purpose of taking his daughter back to Vicenza. This marquis was met by the Lord Bishop and informed by him of the events and his answer was that he wanted to discuss it with his father before giving an answer and then left.

Instead of the marquis, the Cavalier of Malta Ripanti came, and he said the

marquis was sorry that count Antonio had not taken lodgings in the Colocci house and that therefore he extended the invitation. Count Antonio replied that in that situation he could not accept the invitation, but he thanked him and readily accepted Cavalier Ripanti's proposal to go that evening to the Colocci home also in the company of his daughter to pay her respects to the Marchioness and to return again to the palace the following morning before leaving and get into the carriage from there, so as to remove all reasons for gossip among people, but nothing was accepted by the husband refusing that count Antonio should carry out his design of taking the daughter away with him.

These chivalrous compliments took some time and the Colocci House, in particular the ' father of marquis Niccolò, insisted in repeating the invitation for the count to lodge with him, but even this was refused as the son did not want to agree on anything.

Therefore, My Lord the Bishop, as there was no hope that the House of Colocci would agree on this parting without complaints, went to his palace; but despite the attempts that followed also on the part of My Lord the Governor nothing was successful.

We all spent the night lodging in the home or better the palace of the Governor himself. The following morning count Antonio received a paper on behalf of the marquises Colocci that stated dissent for his departure with his daughter, mentioning that she could not take away the things she had brought with her.

To that paper, which had already been sent to the bishop's palace, count Antonio answered with a solemn protest and at the same time the list of all the personal property that the countess Laura had with her was shown. And since was no inclination to chivalrous reconciliation could be seen, nor to the good sense to which both count Antonio and the mediators the Lord Governor and Cavalier Rampanti had tried to appeal to, the departure from the Governors' palace was concluded, and the Lord Governor himself took the trouble of escorting the countess to the carriage, or perhaps cart.

A considerable group of people had already gathered and they were all declaiming against the husband, showing affection and consideration for countess Laura.

This is all the full and detailed account of the facts of the case. Furthermore, coming to I state what I was able to know and understand of the aforesaid the marquis Niccolò, I will say that even before the wedding took place I realized that he was not very fond of countess Laura and for him it was a matter of word and commitment: and I made a bad omen to the countess herself, which was equally recognized by her parents, who if truth be told regretted the agreement even before going through with the wedding, but

the countess Laura deluded herself that the marquis would change his mind and gradually detach himself from the obvious affection he was known to have for his valet, and she decided not to follow the advice of her parents in order to avoid becoming a topic of gossip in the city. But she was wrong, because after her removal to Iesi the marquis made his extravagant temperament even more evident and she had to feel the evil consequences. And the main cause is considered to be the evil insinuations deriving from what is said about the aforesaid valet.

THE EMERGENCE OF TRADITION. CLANDESTINE AND SECRET MARRIAGE FROM THE SIXTEENTH TO THE EIGHTEENTH CENTURY

A singular episode (beyond clandestinity and secrecy)

Francesco Brigo lived in Granze di Vescovana, a small village in the territory of Padua, which fell under the jurisdiction of the Podestà di Este¹. A cluster of houses gathered around the parish church made up a small community that traveled along cartroads running almost uninterruptedly through a vast expanse of fields and canals. A visitor from outside who possessed even a minimum of insight and capacity of observation could easily see in that flat, almost desolate landscape clear signs of the great landowners of Venice and other cities. Like the majority of those in its nearby surroundings, this small village did not show the features that usually marked the identity of a community characterized by small farms or the existence of common property. The hovels, cottages, houses and manor that seemed an integral part of the landscape had by then become a distinctive feature of the lowlands stretching from the foothills of the Colli Euganei and Berici towards the Adige River, then to spread out towards the long course of the River Po². The affair that had as its protagonist Francesco Brigo could most certainly be considered highly original. In any case, there is no doubt that the events that led to its disclosure and appearance on the desk of an illustrious jurist, who in those years worked as *consultore in iure* for the Venetian Republic, were original. First word of the affair had reached the Venetian representative of Este, who did not hesitate to judge it very serious and consequently to decide to inform the Senate, one of the highest organs of government of the

¹ The story told is taken from the *consulto* drawn up by Count Giovan Maria Bertolli on the 6th January, 1697 (*more veneto*), housed in the Archivio di Stato di Venezia (=ASV), *Consultori in iure*, filza 149, alla data. On the figure and activity of Bertolli see the chapter dedicated to him in this volume.

² For a social and economic picture of the Basso Padovano and above all its socio-economic transformations, I refer to M. Vigato, *Il monastero di S. Maria delle Carceri, i comuni di Gazzo e Vighizzolo, la comunità atestina. Trasformazioni ambientali e dinamiche socioeconomiche in un'arca del basso Padovano tra Medioevo ed età moderna*. Padua 1997.

Dominante. And then, as often happened for cases deemed to have a certain political and legal relevance, it was decided to have one of the *consultori in iure* express his opinion about an affair that directly involved the ecclesiastical authorities.

Count Giovan Maria Bertolli had been acting as *consultore in iure* for many years. The opinions he was asked for by organs such as the Senate or the Council of Ten chiefly concerned all matters whose particular nature presupposed, or in any case allowed to be presupposed, the overlapping of interests and jurisdiction between the ecclesiastical and the temporal powers. His activity had been carried out with noteworthy technical and juridical expertise, though his opinions occasionally reveal the intellectual and political tension that had in more than one case characterized the by-then consolidated cultural tradition of the *consulenza della Repubblica*. What is certain is that his work encompassed a vast number of cases of consultations that included very diverse matters. He had also intervened on more than one occasion in cases regarding marriage, always showing a certain expositive and ideological equilibrium³.

Giovan Maria Bertolli was simply not able to comprehend the affair that had seen Francesco Brigo as its protagonist. At first reading, the report of the *podestà di Este* that had been sent to him towards the end of 1697 led him to believe it was one of the usual marriage suits that arrived in the ecclesiastical or secular law courts for the predictable breach of promise or the sudden clandestine union carried out without respecting certain formalities foreseen by the Council of Trent. In reality, it was the incredible outcome of this affair that had surprised him to the point of making him lose his habitual prudence.

In his *consulto* Giovan Maria Bertolli reminded the Senate of the facts of the case. Francesco Brigo, a farm worker, had had an affair with a young woman, Domenica Francato. It appeared that this affair had been preceded by the classic promise of marriage. But very soon after, Brigo had turned his attentions to another young woman, Barbara Malacarne. This time he had at once showed serious intentions, so much so that he had quickly contracted an official act of engagement (*sponsali*) with her. Soon after, the young woman who had been abandoned decided to assert her supposed rights and, with a formal act presented to the ecclesiastical court in Padua, she opposed the new union that the faithless suitor now intended to make. Determined to

³ See, for instance, the *consulto* drawn up on 24th November, 1689 (ASV, *Consultori in iure*, filza 140) concerning two clandestine marriages celebrated in the territory of Brescia, or the following one, written on 28th August, 1692 (*Ibidem*, filza 143), regarding a case of deflowering and breach of promise that occurred in Istria (about which, see the chapter dedicated to Bertolli).

reach his goal and caring little about the act of formal opposition presented by his by now ex-beloved, Francesco Brigo then turned to the village curate to celebrate his marriage with Malacarne anyway. Upon receiving the curate's predictable refusal (evidently in absence of the necessary *fedi di libertà* that had to be issued by the diocesan administration), the youth did not give up. He could have tried the classic surprise move: to present himself unannounced with the aspiring bride before the priest himself (perhaps while he was celebrating Sunday mass) and express their mutual desire to be considered husband and wife. But – and here Giovan Maria Bertolli was not able to hide his amazement – Brigo thought instead of a very practical way of solving the delicate question that touched him so nearly by resorting to the cultural tradition he belonged to. This was a sort of community law that evidently still survived even in that endless plain dominated by great landlords and their logic of appropriation and power.

By-passing every canonic disposition, the young farm worker from Granze di Vescovana had turned to a figure that still held a certain amount of authority in the village. After approaching the village smith and being assured of his collaboration, he and his sweetheart went to the village cemetery, which surrounded the parish church with its tombs and crosses. In that place, considered by the whole community as the space where past and present, sacred and profane found an intimate symbolic fusion that marked its cultural identity, the smith celebrated (even issuing a written certificate of what had taken place)⁴ what to Giovan Maria Bertolli's eyes must have seemed a totally absurd ceremony.

Francesco Brigo and Barbara Malacarne had thus exchanged rings and declared their reciprocal wish to be joined in a bond before the man in whom they evidently recognized authority in religious and civil matters, and in the presence of the silent witnesses who still, according to their belief, sealed the sacredness of the rites and customs of the village. In his *consulto* Giovan Maria Bertolli reconstructed what could be defined as the traditional picture of the affair: the appeal to the ecclesiastical court by the first young woman, the presumed validity of the promise Brigo had made to her, her possible defloration, and finally the possible appeal to the secular court to claim compensation. However, as regards the turn taken by things afterwards, Bertolli

⁴ Extremely interesting are Gabriel Le Bras's observations about the figure of the smith: "Certain trades, like the smith or the miller, exercise a relevant influence on their clients, but above all in the field of politics. Until the end of the 19th century, the forge was a gathering place for farm workers, "the wash-house of the men", and the smith enjoyed great authority. He was often the only craftsman who worked iron, and so was also cartwright and farrier". But it was in fact to other activities that he owes his popularity: "He was often resorted to, because he was at the same time wizard, healer, doctor and veterinarian". G. Le Bras, *La chiesa e il villaggio*, Turin 1979 (Paris 1976), p. 140.

was not able to find a logical basis to justify what had happened, and he did not hide an unpredictably harsh opinion that those responsible for what had happened should be severely punished by the secular authorities:

Claiming the functions of the parish priest, acting in a cemetery, performing a marriage by placing the ring and issuing a certificate is madness and amounts to making fun of religion or in any case not taking it seriously, nay, it is an offence to the position of priests along with the dignity of the Church. This sort of disregard for things of such great importance is not tolerated by Catholic principles and if scarce respect for holy temples or orations sung in an adulterated way call for the lash and rigor of the courts, how much more what falls within the sacraments that are the fundamental principles of our holy faith. Nay, if by more than one decree of the most excellent Senate, those who with their bride and witnesses take themselves before the parish priest and say, the one: this is my wife, and the other: this is my husband, are punished criminally as more serious than swearing, both by the magistrate and in the Terraferma by the public representatives and if for no other reason than that this formality differs from the holy Council of Trent, what must we say in the present case where instead of the priest there is a layman exercising his ministry? Therefore both Brigo and the smith deserve, for the matter itself and for the form, and so that both serve as an example, to be chastised and punished⁵.

From the heights of his juridical and learned culture, Giovan Maria Bertolli was not able to grasp the cultural dimension of an episode whose origins and very *raison d'être* dated back to a sacramental conception of kinship and piety which in prior centuries, especially in the rural world, was intimately joined with the spirit and life of the community. Despite the considerable cultural and political changes that took place in the course of the 1600s, which the Council of Trent had, if not without contradictions, comprehended and interpreted, this vision of the world and society had managed to survive and maintain itself apparently intact a century later, though in a social and economic context marked by contents and purposes substantially extraneous to it⁶.

⁵ ASV, *Consultori in iure*, filza 149, 6 gennaio 1697.

⁶ Regarding these problems, see J. Bossy, *L'occidente cristiano. 1400-1700*, Turin 1990 (Oxford 1985) and *Ibidem, Dalla comunità all'individuo. Per una storia sociale dei sacramenti nell'Europa moderna*, Turin 1998.

State, Church and marriage policy

In the course of the modern age, antagonism and conflicts between secular and ecclesiastical power reached a degree of intensity that involved some of the most important sectors of social life. This intensity, as well as the complexity of the relations existing between the two powers (besides the obvious dichotomy and, at times, convergence of their mutual goals), leads us to reflect on the nature and the exact meaning to give to the notions of State (as it was understood in the *ancien régime*) and Church. Considered essentially as institutional structures, these two hierarchical entities, more than simply influencing society directly, drew from society their origins, purpose and development. All things considered, an investigation of the concrete nature of the conflicts that occurred between these two powers, even one limited to those relevant to the topic of marriage, means dealing with one of the historiographical issues that most closely touches the life of institutions over the course of the modern age.

The affair that had Francesco Brigo as its resourceful protagonist clearly takes us back to social practices, legal traditions and religious customs which had not only been alive and consolidated in preceding centuries, to the point of constituting the sacramental notion of marriage that was part of the *religiosity of kinship* widespread in all social strata. To a certain degree they also constituted the cultural and interpretative substrate upon which canon law and matrimonial doctrine itself were situated, and to which they loaned their learned and *culta* formulation. Although these cultural traditions were not completely ignored, the Council of Trent fixed new legal rules whose greater rigidity aimed, as John Bossy well put it, to transform marriage “from a social process which the Church guaranteed to an ecclesiastical process which it administered”⁷. As a matter of fact, these changes were only fully carried out over a long period of time, above all because of the strong resistance shown, especially in the rural world, to a matrimonial doctrine whose new rules were so profoundly extraneous to an intimately sacramental conception of life and interpersonal relations⁸.

The new matrimonial doctrine produced by the Council of Trent was in effect careful to move cautiously in a matter that regarded long-established social practices. In the end, its aim was to reconcile the need to exercise order and control over a society undergoing profound changes with a prudent defense of social equilibriums and structures whose cultural substratum was firmly rooted in traditions and rituals only minimally expressed on a formal

⁷ J. Bossy, *Christianity in the West: 1400-1700*, Oxford 1987, p. 25

⁸ J. Bossy, *Dalla comunità...*, pp. 13, 18-19.

legal level⁹. Thus, the Counter-Reformation matrimonial doctrine had the effect of bringing to light, at times manifestly, but in any case as a problem seen by both secular and religious authorities to be politically relevant in its presumed dimensions and consequences, social phenomena that had up to then co-existed, often pacifically or at least without important tensions, with a class structure that, on the anthropological and political plane, found its ideological justification in a deep-felt sense of honor and privilege¹⁰.

In the course of the 17th century and even more in the one that followed, matrimonial policy was seen above all in the light of phenomena which, like clandestine marriages, were felt to be dangerous and even harmful to established authority. If they were secret marriages, they were considered a source of social disorder or in any case a disturbance of a correct and orderly transmission of property. Clandestine and secret marriages thus comprised a significant political problem all over Europe¹¹. Social practices until then accepted or at least tolerated and that held great power over class equilibriums now took on a negative and potentially dangerous value. Gradually, secular power claimed a larger jurisdictional sphere in a question (matrimonial policy) that until then had been the exclusive competence of ecclesiastical power. State and Church thus had to redefine their strategies and choices. The conflicts that arose (or, on the contrary, in some situations were appeased) show that it was not an inconsequential matter. What is more, they show that, far from being a significant part of a complex political strategy characterized by accepted roles or goals shared by the two powers, it aimed to redefine existing social equilibriums through choices made along the way or, on the contrary, to keep them intact.

The Decree of Gratian and clandestine marriage

When in 1765 his protests had finally reached the supreme Venetian courts, Bortolo Rocco di Rovigno could certainly be considered one the many *pater familias* (to whom many others would be joined over time) whose honor had been defamed not so much by the behavior of his daughter (which he himself would probably have no doubts in calling irreprehensible) as by the

⁹ John Bossy has observed in this context that “there are many arguments to support the viewpoint that sees the greatest obstacle to Tridentine uniformity not in the repercussions of sin at the individual level, or in Protestant resistance, but rather in the internal structures of a society where kinship was the most important bond and the feud, even if in an “agreed-on” form, the most flourishing social activity” J. Bossy, *Dalla comunità...*, p. 11.

¹⁰ J. A. Maravall, *Potere, onore, élites nella Spagna del secolod'oro*. Bologna 1984, pp. 75-86.

¹¹ J. Gaudemet, *Il matrimonio in Occidente*, Turin 1989 (Paris 1987).

loopholes offered by ecclesiastical matrimonial doctrine to men who were unscrupulous or in any case disinclined, for self-interest or personal feelings, to keep the word they had given.

The story of Giovanna Rocco is known to us – after her father’s claims had followed a long, winding institutional path – through a brief, dense narration punctuated with legal observations, written by a *consultore in iure*. As was customary, he had been asked to give his opinion in a matter that closely touched the fragile and apparently insubstantial border separating ecclesiastical from temporal jurisdiction¹². Giovanna had been betrothed to Antonio Binussi, who was also from Rovigno. It was an official engagement, celebrated in the by-then distant year of 1757 in the presence of friends and relations. This act had sanctioned before the entire community the mutual commitment made by both young people to one another. But in fact things did not go as they should have. Antonio had started to see another young woman, Eufemia Sustichi, and to no avail did Giovanna’s family protest (and, we think, threaten) the young man. At that point, the family turned to the institutions for redress, with a very positive outcome. Giovanna and her family had obtained from the ecclesiastical courts fully three favorable sentences. Indeed, the *sponsali* contracted between the young woman and Antonio Binussi were considered entirely legitimate, first by the *Curia vescovile* of Parenzo (under whose jurisdiction Rovigno fell), then by the metropolitan Curia of Udine and finally by the Apostolic Nunziature itself. Antonio Binussi was therefore not only held to the commitment made to Giovanna Rocco, but could never again contract a union with any other woman. Even after the doctrine formulated by the Council of Trent, the *sponsali*, that is, the official act of betrothal by which two young people made the commitment to marry in a more or less definite future, had theoretically conserved the character of *sacredness* that had characterized them in past centuries. And the Church, with its law and its courts, had repeatedly confirmed the binding character of what could to all effects be considered a contract made before the whole community.

The fact is, however, that things had actually changed greatly after the new matrimonial doctrine introduced by the same Council: a true, legitimate marriage union (which before the Council was called *sponsali de praesenti* to distinguish it from the act of betrothal, or *sponsali de futuro*), though still focusing on the mutual exchange of consent between the two spouses, could not be considered as such unless it was celebrated before the parish priest and in the presence of at least two witnesses¹³. Though the *sponsali de futuro*

¹² A.S.V., *Consultori in iure*, busta 230, 23 febbraio 1764 m.v.

¹³ On the elaboration of the decree of Trent *Tametsi*, cf. Gaudemet, *Il matrimonio...*, pp. 213-221.

had kept their binding character towards the community, in fact they had in the end lost the essence that had distinguished them originally, given that the definitive exchange of consent had to be celebrated in church and in the presence of the priest¹⁴. The new institutional form given to marriage had sanctioned for good the separation between contract and sacrament, two notions that in the sphere of the community had co-existed for centuries within a religious conception of kinship and friendship.

What is certain is that the Church was on the watch to assure that the commitment made through betrothal (and with it a mutual and binding exchange of consent for the future) be respected: the granting of so-called *fedi di libertà* by diocesan administrations were in reality meant to prevent people already committed by an official act of engagement from contracting a different marriage, and so oblige them to respect the contractual commitment made by two families or two groups. But how could abuses and injustices be avoided in a society that was so profoundly divided internally, both socially and economically?¹⁵

Moreover, the marriage norms deliberated by the Council of Trent were only apparently rigid. In fact, despite the pressure of countries¹⁶ like France, on that occasion the illegitimacy of so-called clandestine marriages was not definitively imposed. By clandestine marriages was meant unions celebrated without respecting all the legal formalities envisioned; though not constituting the essence of the union (which was given by the free exchange of consent and by the presence of the parish priest and witnesses), these were still required to attest a marriage's lawfulness.

In reality, after the adoption of the Tridentine provisions, the essence of the notion of clandestinity underwent a significant change, at least on the formal level. While before what defined clandestinity was the absence of any form of publicity in the exchange of consent between the two spouses, after the Council of Trent it was determined by the absence of the so-called *stride* (that is, banns) that had to be hung on the door of the church for three successive Sundays¹⁷. The ecclesiastical institutions thereby became to all effects guarantors of the validity of the union to be contracted.

However, it would be misleading to stress unduly the role of subtraction played by the Church as regards consolidated social practices. The Triden-

¹⁴ D. Lombardi, *Fidanzamenti e matrimoni dal Concilio di Trento alle riforme settecentesche*, in: *Storia del Matrimonio*, ed. by De Giorgio, M. e Klapish-Zuber, Bari 1996, 225-227.

¹⁵ On this, see the caustic observations of fra Paolo Sarpi in the *consulto* drawn up regarding the complicated affair whose emblematic protagonist was the young Polissena Scroffa, cf. pp. 55-57

¹⁶ D. Lombardi, *Fidanzamenti...*, p. 221.

¹⁷ J. Bossy, *Dalla comunità...*, pp. 30-31.

tine marriage laws – like the imposition on parish priests to keep canonical registers – reflected the necessity (felt by various actors) to cope with deep social and economic changes which especially required more careful control over the ideological transmission of genealogical and patrimonial values¹⁸. Clandestine marriages first of all clearly reflected the tensions always existing between conterminous generations, i.e. between those in charge of the authority of family groups and those who, above all by direct filiation, were subject to that authority – in short, between those who held a patrimony and the cultural values that defined it and who felt themselves responsible for and guardians of their transmission, and those who were to receive these properties and values (by legitimate or testamentary succession). By describing alliances and kinship, the institution of marriage (along with testamentary succession) defined the nature and specific features of inter-generational relations. To eliminate any form of clandestinity, it would have sufficed to decree clearly the authority of the head of the kinship group, thereby requiring the consent of the head of the family for the legitimacy of the marriage union¹⁹.

It is likely that the Church did not adopt strict measures against clandestine marriages (at least measures tending to eliminate them definitively) because it was aware that if the new marriage regulations were to be accepted and internalized at all levels of society, they would have to be somewhat flexible and vague. Though this is a plausible conjecture, it does not fully explain the continuance of substantial ambiguity in the matrimonial doctrine adopted at Trent. It is highly likely that clandestine marriages (obviously defined as such in terms imposed from on high) reflected social practices and cultural traditions that were deeply rooted in a society based on status and honor. In this society, marriage constituted above all the sanctioning of alliances and new kinships, as well as the rank enjoyed by each family in the social

¹⁸ On the cultural importance of these changes, cf. A. O. Hirschman, *Le passioni e gli interessi*, Milan 1979.

¹⁹ It should be noted that in the society of the *ancien régime* certain juridical institutions, such as parental authority and testamentary succession, legitimated the passage of property from one generation to the next only upon the death of the person who held the property (and not at the time of the marriage of the person who was leaving the family). This factor amounted to a strong control over the generation that was to take over the management of property. It is clear that this control interacted with choices involving marriage and inheritance. It is presumable that families of the great aristocracy that held political and religious power were easily able to influence not only the matrimonial choices of their children but also the obtainment of annulment of unions made clandestinely or secretly. Thus, the function of the Council of Trent's renunciation of paternal consent as a decisive element for the validity of a marriage had the function of avoiding making the institution excessively rigid, so as to allow the continuity of social practices that were still felt as vital.

ladder. What is more, every marriage redefined property equilibriums, and in some cases significant transfers of wealth. Where honor and wealth were in conflict, it seems clear that flexible and vaguely defined marriage regulations would facilitate alliances that were not completely above reproach²⁰. The very existence of voluntary abduction as a widespread practice, ambiguously set in the terrain of generational conflicts and imbued with the values associated with feminine honor (the girl who was abducted would be dishonored unless she was married afterwards), probably aimed to redefine only seemingly consolidated social hierarchies²¹.

Thus, in the conflict-ridden realm of honor, the practice of clandestine marriages acted as a safety valve in a society imbued with the values of honor and the prerogatives conferred to status. It is perhaps not by chance that a clandestine marriage (often anticipated by a consensual abduction) was performed to get around what seemed to all intents and purposes the firm opposition of the family group, and it was not rare that it came after a previous engagement (*sponsali de futuro*) made by one of the two young people. In this case, however, the implied contradictions with Tridentine marriage laws were evident. Indeed, compared with nuptials celebrated officially in the presence of the relations of the engaged couple and the whole commu-

²⁰ In this connection, the scholar James Casey has observed: "Catholic and Protestant marriage doctrine were tending to converge, but each may have been better adjusted to its own kind of society. Clandestine betrothals and runaway marriages can probably be tolerated only in certain types of community. In the first place there would have to be some confusion about the true nature of the disparagement of *mésaillance* alleged by the parents of one of the parties. In the Mediterranean area there were two competing hierarchies of wealth and honour; this tension the action of the Church courts helped to ease ...; secondly, and an allied consideration, there will tend to be some confusion over authority in a lineage society" cf. J. Casey, *The History of the Family*, Oxford 1989, p. 107.

²¹ On abduction and the relative bibliography, cf. G. Ribordy, *Mariage aristocratique et doctrine ecclésiastique: le témoignage du rapt au Parlement de Paris pendant la guerre de centans*, in "Crime, History and Society", 1/2 (1998), pp. 29-48. This is a good analysis of the judiciary records through which abduction with intent to marry emerges at the institutional level, though it fails to grasp the deep connections that legitimated the disputed practice of abduction on the social plane. Instead, there are some interesting observations in J. Casey, *The History...*, p.105: "It is out of the ambivalence of Mediterranean courtship that the typical institution of abduction is born. It was no doubt, to facilitate reconciliation and avoid feuds between families that the Catholic Church developed its face-saving device of the legalized elopement... Runaway marriages could enjoy ecclesiastical protection only if they did not go too much against the social grain - if indeed they served (as we have argued above) as a bridge between two rival concepts of social hierarchy, an older one based on honour and a newer, focused on wealth. Love, or passion, which defies the convention, has to content itself with living beyond the law". Some significant examples of manipulation of the practice of abduction carried out by aristocratic families of the Terraferma are also found in V. Cesco, *Due processi per rapimento a confronto. Repubblica di Venezia, seconda metà del XVI secolo*, in "Acta Histriae", VII (1999), pp. 349- 372.

nity, how could a marriage celebrated clandestinely, by surprise and against the wishes of the celebrant himself, be considered valid?

This was a problem that the ecclesiastical courts had had to face long before the Tridentine reform but, as we have said, the notion of clandestinity changed greatly in the last decades of the 16th century. Inevitably, following the new rules, it paradoxically became part of an institution of marriage now managed and controlled by the ecclesiastical institutions. The paradox (if we can call it that) consisted in the fact that the Tridentine regulations had in fact sanctioned a more marked distinction between sacrament and contract. Before Trent, the Church had interpreted instances and expectations identified in the ceremony of the *sponsali*, which comprised the visible evidence of the contractual bonds effected by the new union towards the community. After the *Tametsi* decree, with the ecclesiastical wedding ceremony made official, the marked distinction between a sacramental notion of marriage (now attested by the church ceremony) and the contractual one (still expressed by agreements and pacts mainly focusing on the ceremony of the *sponsali*) became evident²². The paradox mentioned above emerged clearly since the Church, while confirming the sacramental bonds created by the *sponsali*, also had to attest the legitimacy of unions celebrated clandestinely before one of its representatives.

It was probably this difference between contract and sacrament that motivated the interference of the secular power in a matter that the Church had autonomously interpreted for centuries. We could say that by making itself the voice of new social instances and giving a more distinctly institutional character to marriage (though, as we have seen, without refusing to consider age-old cultural traditions), the Church found itself in difficulty precisely in the management of its customary function of mediation and re-elaboration of social pressures and values. The difficulty lay in having to mediate between contract and sacrament, between a society imbued with the values of honor but weakened by the rising hierarchy of wealth; and, again, between an ideological conception based on the values of lineage and kinship and another hinging on the authority of the head of the family. The contrasts between the secular and the ecclesiastical powers probably came out of the difficulty of wedding these conflicting values. But, we might add, they also resulted from fundamental choices in the resolution of social and

²² “The Council of Trent, in particular, passed a marriage code in opposition to the collectivistic and contractualistic traditions of the morality of kinship, invalidating marriages not celebrated publicly in the presence of the parish priest..., all this therefore constituted a vigorous attack against extra-sacramental betrothals and *fiançailles*, which continued to be grounded in the contractualistic theory of marriage well into the 17th century”, cf. J. Bossy, *Dalla comunità...*, pp.13.

class conflicts that directly influenced political-institutional arrangements. It is likely that Antonio Rocco di Rovigno did not grasp the subtle distinctions between contract and sacrament, but it is sure – and there can be few doubts about this – that he was perfectly aware that he had strong arguments in his favor, arguments still supported by tradition and, paradoxically, but canon law itself. On the contrary, the *consultore* Fanzio, who had been charged by the Venetian authorities to deliver a legal opinion on the question, was well aware of just how tangled a skein this was.

The *consultore* at once recalled that the *sponsali* constituted a promise of future marriage and, like all commitments, implicitly held a binding contractual value:

This promise is of the same nature as other promises and no less than the others obliges the parties to fulfill [it] in good time, that is, at the celebration of the marriage, constraining them in such a way that though they can free themselves by common accord, never can only one of them arbitrarily withdraw from this commitment; which could not be done without serious injury to justice, unless there came about some reasonable causes to attest her repentance.

In the case of Antonio Rocco, it could not be seen how the bridegroom could break the *sponsali*, and so it seemed desirable that in the end secular justice should oblige him to keep the word given, also to avoid the scandal and inevitable retaliations that would arise within the community. In reality, however – continued the *consultore* – things did not appear to be so simple. If the clandestine marriage had actually been accomplished,

The aforesaid Binussi could not be obliged to marry Giovanna Rocco, since the clandestine marriage celebrated with Eufemia Sustichi would be valid, albeit illicit, and consequently it would be an indissoluble bond that would tie Binussi much more strongly to Sustichi than the *sponsali* that tied him to Rocco, whereby the glorious prudence of *Vostra Serenità* well perceives that before obliging him to observe the promise made to Rocco it is necessary to certify that the marriage attempted with Sustichi was attempted in vain ...

As regards the marriage made by Binussi clandestinely, which is the second point of our very humble considerations, the Council of Trent condemns not only clandestine marriages contracted without the presence of the parish priest and two witnesses, but also those celebrated without the previous three banns wisely prescribed by it, however making between the one and the other this difference: that the former are not only illicit, but also invalid, whereas the latter are not invalid but only illicit²³.

²³ A.S.V., *Consultori in iure*, busta 230.

Thus the *consultore* Fanzio indicated the diverse notion of clandestinity born of the Tridentine laws, as well as the insubstantiality of the contractual value of the *sponsali* compared with a clandestine marriage celebrated in the presence of one's own parish priest²⁴ and witnesses (even casual ones). Emphasizing the illegitimacy of pre-Tridentine clandestine marriages (which were such because celebrated secretly), he indirectly felt the paradox implicit in the doctrine that came out of the Council of Trent. This is not so for another *consultore*, Dalle Laste, who in 1783, when asked for an opinion on a clandestine marriage celebrated according to the rules, stated that the presence of the parish priest, even if he had been taken by surprise, along with witnesses, was sufficient to transform an exchange of consent into a real, legitimate marriage. And, he continued, there was nothing to marvel about in this:

The act in this form will be illicit or sinful, but not invalid, nor can it be invalidated either by the lack of the blessing of the parish, or by the omission of the *stride* ordered by the Council itself, or the diocesan sentence in favor of a contradiction, since the promise made to another woman does not invalidate the marriage contracted with another. And this is also decided in very clear terms in the decree of Gratian: that he who has given his word to one must not take another for his wife; if then he takes another he must do penitence for his lack of faith, but he stays with the one he has taken, since so great a sacrament must not be broken²⁵.

With a veritable *subterfuge* Dalle Laste thus found a sort of continuity in the doctrine formulated from the 12th century up to the Council of Trent. Yet he failed to grasp how the shift in stress in the concept of clandestinity had modified the substantial contractual value inherent in the exchange of consent between the two betrothed²⁶. As proof of how much the interpretive

²⁴ In a *consulto* drawn up in 1793, Piero Franceschi briefly recalled that this requisite was essential: "... concerning the case attended in this most high court by father Ludovico Gallo, superior of the *padri Minimi* of this *Dominante*, there is a manifest transgression committed by five persons unknown to him, that is three men and two women, who having entered the church two of them went up to the altar at the moment that the same priest towards the end of the holy mass was about to give his blessing to the people, and the woman shouted: this is my husband and the other: this is my wife, after which taking a boat they went to the inn of the Empress of Moscovia at San Luca. Without the intervention of the parish priest or of the priest especially delegated every marriage is clandestine and null, as is the present one" (ASV, *Consultori in iure*, b. 288, 9 December 1793). The presence of the parish priest or of the specifically appointed minister evidently had the function of verifying the actual freedom of the contractors.

²⁵ A.S.V., *Consultori in iure*, busta 267, 2 maggio 1783.

²⁶ With the new marriage provisions, the manipulating power of family groups was nota-

and conflictual framework had by then changed, there was not only the testimony of the intervention of the secular power in what we might call the contractual aspect of marriage suits – before Trent almost exclusively the competence of the ecclesiastical courts – but also the open intromission of state courts in a jurisdictional sphere like clandestine marriages, whose intimate connection with the essentially sacramental aspects of marriage should have made it the competence of the religious authorities²⁷.

Thus, as regards the policy of marriage and clandestine unions, far from working together in a sort of division of responsibilities, state and Church were subject to the considerable pressure (and selection) that social forces put on judiciary institutions. As a consequence they elaborated frequently controversial choices, if not actual ideological strategies, which would over time inevitably influence class and political equilibriums²⁸.

The emergence of tradition

Thus, starting at least from the late 1600s, both the secular and the ecclesiastical powers were pressed by the complexity of social issues to find juridical-institutional and, even more importantly, judiciary answers to the problems that arose. In the jurisdictional discourse that was developed between the 17th and 18th centuries, these answers aimed chiefly at clarifying and sharpening the distinction between contract and sacrament. But they also reveal the preoccupation of the secular authorities to intervene more strongly and decisively in a matter like marriage, which so closely touched on the defense of the family and its underlying ideological and patrimonial equilibriums.

The Church's traditional competence in the sacramental sphere underscored its adhesion to values and interests whose roots lay in a society still pervaded by a sense of honor, family and status. The very hierarchical structure of the Church could in a certain sense be considered as the direct reflection of a society deeply steeped in distinctions of caste and status. While reflecting

bly reduced, but the ecclesiastical institutions had to face the contradictions implied in such a clear divergence between sacrament and contract (the latter very soon laid claim to by the secular power).

²⁷ See the observations of the *consulatore in iure* Giovan Maria Bertolli in his *consulti* on marriage, and especially in reference to the law emanated by the Venetian Senate in February, (*more veneto*) on pp. 97-99. For example, in the territories of the Venetian Republic clandestine marriages began to be persecuted by courts on which, like the *Corte pretoria* of Padua, considerable jurisdictional authority was conferred directly by the *Dominante*; cf. on this problem C. Povolo, *Il processo Guarnieri. Buie-Capodistria, 1771*, Koper 1996, p. 56.

²⁸ Strategies that were significantly redefined in the 17th and 18th centuries; cf. again, in this context, the observations made in the essay dedicated to the *consulatore* Bertolli.

general values which, like those linked to male and female gender, defined the entire society, the language of honor also defined the position of each individual and group according to a hierarchy of precedence and juridical status. The marriage doctrine formulated by theologians starting from the 11th century expressed this state of things and, far from presenting itself as a system of impositions, reflected values substantially shared by society as a whole. It was up to canon law and the ecclesiastical courts to manage the variety of instances that reached the institutions and, consequently, to mediate and manipulate existing rules in light of the needs of the upper social orders and their expectations concerning property and inheritance. An institution like presumed marriage, for example, which tended to consider as theoretically valid a promise of marriage (even if informally given) immediately followed by sexual relations, expressed the reply given by canon law to instances that could not be tempered by an excessively rigid matrimonial doctrine²⁹.

As we have already said, by making stricter marriage rules explicit, the Council of Trent indirectly gave prominence to the existence of social practices which had until then proliferated in the informal sphere of relations of family and caste³⁰, as well as to the essential role played by the ecclesiastical courts themselves in adapting legal rules to the variety of instances and interests involved. While this more incisive Tridentine marriage doctrine had been formulated under the pressure of needs that the new economic and social context had by then made unavoidable, it was also true that a substantial and influential part of society was still strongly oriented towards the past, its cultural values and, last but not least, the sticky sphere of honor and status. As a consequence of the new conception of marriage and family, age-old institutions, which up to then had performed an important role in preserving existing equilibriums, began to be seen as extraneous or even hostile to the new sensibility with which the family and its role in society were perceived.

It is likely that the tensions that came out of the complex social and economic repercussions of the Tridentine rules in the end favored the emergence

²⁹ On presumed marriage, see Gaudemet, pp. 134-135, who observes that “the theory of presumed marriage was, in fact, not accepted by theologians without resistance. Leaving to canonists its evaluation by an external court, for the validity of marriage in an internal court they insisted that the union be accompanied by a real assent to the marriage”. It is likely that the institution of presumed marriage actually worked to endorse social practices which, like consensual kidnapping, were quite common in Mediterranean society.

³⁰ What Jack Goody has defined as the hidden economy of kinship; J. Goody, *Inheritance, property and women: some comparative considerations*, in *Family and inheritance. Rural society in Western Europe, 1200-1800*, ed. by J. Goody - J. Thirsk - E.P. Thompson, Cambridge 1976, pp. 215-227.

of the contradictions implied in the Church's matrimonial policy and in the difficult job of mediation and interpretation performed by its courts. As we have remarked, these tensions arose out of the necessity to accommodate new instances and interests while at the same time recognizing that broad segments, if not the majority, of society were still based on a traditional idea of the family and kinship. These contradictions inevitably took on a political dimension, above all when they touched the decisive terrain of inheritance and the cultural values associated with it. It was perhaps precisely to tackle the political dimension of the institution of marriage and its doubtless reflections on the equilibriums of caste that the secular power came to intervene more and more directly in jurisdictional sectors that had traditionally been the virtually exclusive prerogative of the Church. At times these claims were ones of principle, but more often this interference chose the more pragmatic judicial and procedural path.

Among the institutions that the Council of Trent's new regulations indirectly brought to the surface, for its complexity and political relevance a prominent place was held by the so-called secret marriage. That this institution was not a thing of little weight is shown both by the measures taken against it in some states by the secular power, and by the negative choice made in other political contexts not to interfere out of fear of the strong repercussions on the existing social equilibrium that might result.

The legitimacy of Eurimedia Saraceno

Pietro Saraceno di Biagio belonged to an illustrious aristocratic family of Vicenza. As a result of a guarded matrimonial policy, as well as of some chance demographic events, at the close of the 16th century the Saraceno lineage was represented by only two genealogical lines of descent. Nor had Pietro Saraceno been careful to make a marriage alliance with another aristocratic house in order to assure a male descendent to inherit the family name and the considerable lands accumulated by his ancestors. These consisted in a vast amount of real estate located in the Basso Vicentino, mainly in Finale, a locality in the village of Agugliaro. And it was in Finale di Agugliaro that his ancestors had built an important residence, called Palazzo delle Trombe, while Pietro's father, Biagio the Younger, had called on Andrea Palladio to renovate an old family dwelling. Unlike the majority of those of his class, Pietro had preferred to live in this rural world, where he undoubtedly played a leading role, and so he took up fixed residence in the severe Palazzo delle Trombe³¹. The violent

³¹ On the two villas of Finale di Agugliaro see I. Cavaggioni - C. Del Zoppo, *Villa Saraceno a Finale di Agugliaro attraverso i documenti e la cartografia*, in "Arte Veneta", LLIH (1989-90), pp. 142-152; *Il territorio nella cartografia di ieri e di oggi*, ed. by P.L. Fantelli, Venice 1994, pp. 96-97.

and intransigent temperament of this personage, known to many as a ‘fearful man’, had been the cause of several run-ins with the law.

It is highly likely that his financial means did not correspond to his considerable landed estate. In fact, his ancestors had tied up a large part of his inheritance through strict entailments. And this most likely explains the relationship he carried on in the early 1670s with the widow Trivulzia Braccioduro, who also belonged to the Vicentine nobility, and with whom there was a distant blood relation that would have made the possibility of marriage difficult³². This was a very informal relationship, characterized more by interest than love, to the point that to achieve his purpose Pietro Saraceno had at first moved into this woman’s house in Noventa Vicentina. Later, he went back to the Palazzo delle Trombe in Finale, where in September, 1574, his daughter Eurimedia was born³³. But the relationship with Trivulzia was certainly not his only one. It is likely that for some time he had carried on what can be thought to be a relationship of true love with a ‘*donna di casa*’ – a young household servant who worked in the Palazzo delle Trombe. This *side* relationship, which everyone knew about, which had led to the birth of at least two natural daughters, who³⁴ could, in theory, be the beneficiaries of legacies left to them by their father, as sometimes happened³⁵.

The arrival of Trivulzia Braccioduro in Palazzo delle Trombe, followed by the

³² The episode here recounted has been reconstructed through the records preserved in the State Archives of Vicenza, *Archivio private Caldogno-Curti*, in particular packages 103-104.

³³ The registration of Eurimedia’s baptism clearly reflected the ambiguity of the union between her parents: “On the day of 30th September 1574, a daughter of Signor Pietro Sarasasino [Saraceno] and the Signora Trivultia Brazzadur was baptized by me, Don Innocentio Ricco and she was given the name Uriena [Eurimedia] Antonia. The godfather was”, Archives of the Curia of Vicenza, *Registri canonici di Agugliaro (Vicenza), Battesimi*. The parish priest had thus deliberately avoided mentioning the presumed irregularity of the union between the two parents. During the inheritance suit, however, Eurimedia’s adversaries stressed the absence of the term *giugali* (husband and wife), which by contrast appeared in other registrations of baptisms. The priest’s declaration also allowed them to reveal the absence of any sort of registration of marriage between Pietro Saraceno and Trivulzia Braccioduro.

³⁴ In the canon registers of Agugliaro there are two baptisms recorded. The mother is not indicated in the first, but it was the common practice of the parish priest of the time (Don Marcantonio Buttafuoco) not to indicate her in his registrations: “6 June 1572. Angiola daughter of Signor Pietro Sarasino was baptized, the godfather Messer Alovio Barbarano, the godmother the old woman who raises babies”. A decade later, the new parish priest recorded the later baptism of a child born, in all likelihood, of the same union: “Isabetta daughter of Signor Piero Saraxino and of Alba of his household, was baptized by me aforesaid pre Piero on 8 February, 1582, the godfather the Reverend priest Francesco Aquani and the godmother Paula Belverata”, cf. *Ibid.*, on these dates. The presence of the two daughters was later attested in the conflict that arose between Eurimedia and her aunt Ludovica Ghellini (cf. below).

³⁵ Some examples are found in my *L'intrigo dell'onore. Poteri e istituzioni nella Repubblica di Venezia tra Cinque e Seicento*, Verona 1997, pp. 396-397.

birth of Euriemma, inevitably created a climate of conflict. This was very likely determined by Pietro Saraceno's reluctance to make a marriage that he might not have felt to be completely adequate to his lineage, and which in any case would have compromised his relationship with his servant. But things came to a head in 1577, when Trivulzia Brazzoduro, then seriously ill, just a few hours before making her will demanded and obtained from Saraceno the marriage she had long desired. This was a secret union, celebrated by a priest who was a friend of the family, in the presence of a sole witness, Trivulzia's relative Count Giuseppe da Porto. However, Saraceno insisted that the marriage should remain a secret without any written registration. In her will, Trivulzia left her daughter Euriemma the considerable sum of five thousand ducats as a dowry, but she could not avoid naming Pietro Saraceno as sole heir of the rest of her fortune³⁶.

And so, on her deathbed Trivulzia Brazzoduro succeeded in extracting what amounted to a real secret marriage, but one which certainly did not have the legal requisites established by the Council of Trent³⁷. Theoretically, it would have no consequences at all as regards succession unless it was explicitly made public by Saraceno himself, which the man took good care not to do. Euriemma was quickly sent to a convent in the city, where she remained until she was eighteen. When she returned to Finale, she was forced to live in Palazzo delle Trombe for another ten years, while her father did nothing to arrange a marriage for her³⁸.

In 1603 Pietro Saraceno died. Some members of the Saraceno family, headed by Pietro's sister, Ludovica Ghellini, hurried to Palazzo delle Trombe and, after taking possession of the greater part of the family archives, took Euriemma with them to Vicenza. Though she was almost thirty by then, the young woman was still considered a highly desirable match. So much so that only a few months later she escaped the supervision of the Saracenos and, with the help of her influential relative, Count Giuseppe da Porto, she was joined in marriage with Scipione Caldogno, an important representative of the Vicentine nobility. Inevitably, a harsh conflict arose between the Saraceno family and the two spouses concerning the large family fortune, which had been subject to various entailments and limitations since the early 16th century.

³⁶ Who successfully insisted on not being named as her husband. The bond is, however, indirectly attested by a successive pass in the will, which Trivulzia succeeded in inserting: "Si autem predicta pupilla decesserit sine filiis vel filiabus legitimis et naturalibus, tali causa ipsa domina testatrix substituit loco illius d. Petrum infrascriptum eius patrem aut heredes ipsius d. Petri".

³⁷ See the later observations written by Euriemma's lawyers.

³⁸ An occasion that would have obliged him to disburse the five thousands ducats that were to be Euriemma's dowry.

Furthermore, Ludovica Ghellini took action personally against Eurietta, openly challenging the legitimacy of her birth and her parents' presumed marriage. According to the claim soon made by her lawyers, almost all of Pietro Saraceno's personal estate was hers by right, by law and by usufruct, since the union between Trivulzia Brazzoduro and Pietro Saraceno had been completely informal and lacked any of the requisites that would attest to its legitimacy. It was a bitter conflict, with no holds barred, since it inevitably involved questions of honor and social position. Only with great difficulty could that wedding, celebrated hurriedly and above all secretly, justify conferring the sanction of legitimacy on Eurietta, especially since the aunt had immediately appealed to the ecclesiastical court. That Ludovica Ghellini was certainly not inclined to use half measures could be seen from the very start of the conflict, if we consider the presumed removal of the family archives from Palazzo delle Trombe and what Eurietta denounced as a veritable case of kidnapping. To counter the accusations of her adversaries, Ludovica Ghellini affirmed in a long written document:

I went to Finale at the time of my brother's death; I went [having been] advised by a messenger, purposely sent me by her, through whom she informed me of her extremely unhappy state. For this reason, aggravated by such an occasion as the loss of an only, most dear brother, if I decided to go to Finale on this occasion I do not believe it to be a reprehensible act. And since my late brother was departed; and seeing the signora Eurietta, though a young woman of high spirit and an adult of thirty, remaining at home in a villa situated in the midst of the countryside, without the management of men, having offered her my house in Vicenza, instead of making another decision that might have been displeasing to her, I do not see how she can reproach me for an action like this, having kept her in my home with greatest honor, not only her but the two sisters on her father's side, with her mother, a boy and others who depended on her for the space of four months.

This amounted to a real blow below the belt, as it made clear not only the existence of Eurietta's two half-sisters but also, indirectly, the dubious conduct held by Pietro Saraceno in the previous decades³⁹. But obviously the real problem was that distant secret marriage. In a recommendation written by a jurist consulted by the two spouses to help them find the best path

³⁹ It was difficult for Eurietta to refute this statement, except by bringing to bear her superior condition of status and honor: "insidiously in the recently presented document, my person is compared to two daughters who are said to be natural daughters of the late Pietro my father, born of one of his domestic servants, who were always kept as my personal maids, the truth of which the aforesaid Signora Ludovica cannot dare to deny, as she did not dare to deny that I was always kept and treated according to my father's words as a legitimate and natural daughter that should be his heir".

to take to oppose the suit, it was stressed that Euriemma should appeal to common knowledge, which was evidently sensitive to her social superiority, while avoiding entering into the merit of a union that had been celebrated in clear contradiction with the new canons established by the Council of Trent:

Besides this, we will have the public voice and fame that he married her and regarded this as his daughter and this is the most solid foundation, since to many it seems that, on the contrary, if it is proved that the marriage made in the presence of only two, of whom, seeing that the priest performed the office of the pronouncement, there remains only the relative as sole witness, it will be prejudicial and for this reason it is felt by some that we should not mention the form of the marriage nor look into this, but base ourselves only on the public voice and fame that he married her and regarded this [daughter] as legitimate.

These were sensible arguments, but ones that could hardly suffice to hold up a case held in the ecclesiastical court on the basis of documentation that irrefutably attested the irregularity of the union⁴⁰. The Tridentine rules were clear but, as the jurist went on to observe, taken as a whole certain aspects of this story could be ably taken advantage of in the Venetian courts, which were susceptible to appeals based on a spirit of *fairness*:

We wish to know what we may hope regarding the validity of the marriage and the legitimacy of Signora Euriema, not only according to the rigor of the Council, the canons and the imperial laws, but also according to the honesty and equity of the judgment of Venetia, where the case will be decided and where, when there come to light the promise of marriage first and the father's blandishments towards the mother gentlewoman in order to enjoy her and her property and the maltreatment used against her, whom he always kept tightly under control; and that finally *in articulo mortis* he married her, but with great secrecy and without the necessary requisites, and that he did not even deign to have himself called husband in the will and to name the wife in writing; and that he had a will drawn up so unofficially, despite leaving a third to their legitimate daughter and that after death all his property was sold, to the detriment of the poor girl; and that instead of wedding her at 18 he kept her until 28 and after taking her from the convent made her live an extremely unhappy life as though buried in a room of the ground, with a prostitute in the house, because of which she led a miserable life, but meanwhile always making it public that she was a legitimate daughter, and intending to have her make a noble marriage and give her an ample dowry. According to the jurist, despite the strictness of the Tridentine canons, when the case reached the Venetian courts the result would almost certainly

⁴⁰ Such as, for example, the baptism records, or the absence of the registration of the marriage.

be favorable. And indeed, in 1610, considering the uncertain outcome of the conflict, which had meanwhile been transferred to the Venetian court, and probably also because the dispute had by then grown to proportions that touched on the honor of the entire family, Ludovica Ghellini chose to reach a compromise with Eurimedia and abandoned all attempts to contest the legitimacy of her birth.

This lawsuit concerning inheritance rights inside the same lineage brought to light an age-old practice, that of secret marriage. This was probably in use at all levels of society, but in the aristocratic sphere it inevitably joined with the need to assure the integrity of estates, which entailed prudent matrimonial strategies. But the conflict between Eurimedia Saraceno and Ludovica Ghellini was indirectly aggravated by the Tridentine regulations. In setting far more definite and stricter rules for defining the legitimacy of a marriage, these regulations forced the emergence of social practices until then entrusted with flexibility to tradition and the social role of the subjects involved, thereby clearly revealing their instrumental and ambiguous nature. In the course of the following two centuries, secret marriage continued to be widely practiced and used by all social subjects. But, as opinions drawn up by the *consultori in iure* at the request of the highest Venetian organs show, it came to be seen as a source of juridical uncertainty and social instability.

Secret marriage

Between June and August of 1790, Piero Franceschi, illustrious *consultore della Repubblica*, delivered two opinions on secret marriages⁴¹. The *Capi* of the Council of Ten had asked for these opinions at the request of two appeals that came from Brescia and Bellun. Both were very confused cases and both involved the inheritance of a conspicuous estate⁴².

The first concerned the daughters and heirs of Giuseppe Rocca, who openly requested the secular authorities to intervene with the diocesan administration of Brescia to obtain a specific declaration concerning the presumed existence of a secret marriage between Maria Pizzimenti, widow of the deceased, and Francesco Feriani, her agent and employee. For some years a lawsuit between the heiresses of Rocca and his wife had been pending. The wife had been expressly named as usufructuary of the inherited property. The right of usufruct was, in fact, conditional on the continuance of the state

⁴¹ On Piero Franceschi, see M. Selva, *L'ultimo dei consultori in iure: Piero Franceschi (1786-1797)*, in "Il diritto della regione", 2 (2009), pp. 133-199.

⁴² These two opinions are found in ASV, *Consultori in iure*, b. 285, 16 June and 10 August, 1790.

of widowhood, and a second marriage, even if celebrated secretly, would be prejudicial to the will of the testator.

The context surrounding the second affair was full of even greater tension and conflict and involved an entire family of Belluno. In May of 1790, when he had just turned eighteen, Paolo Antonio Odoardi had secretly married Francesca Pagliaro. He had not had to face significant problems in making this choice, since the death of both his parents had left him free from paternal authority. The marriage could certainly not be considered socially irreprehensible. Francesca, in fact, came from Cison, and had recently arrived in the Odoardi home as a domestic servant. The groom's young age and higher social standing had therefore suggested the idea of a secret marriage. However, as the *consultore* Franceschi observed, it had been a perfectly regular marriage. The union had been celebrated by a priest specially delegated by the bishop, and in the presence of two witnesses. The registration of the act and the relative certificate of *fedi di libertà*, along with the exemption from the usual publications of banns, were secretly housed in the archives of the diocesan administration in Ceneda, the young bride's diocese.

But a few months later, when Odoardi's siblings and uncle learned what had happened, they reacted severely and put so much pressure on Paolo Antonio Odoardi that in the end he gave in to their demands. Through a lawyer chosen by the family, the young man asked the diocesan administration to publish the marriage, and so make it conform to all other unions. Once published, in fact, it could be impugned and invalidated. The Odoardis had thought it best not to attempt a suit in the ecclesiastical court (also because it was in another diocese). And so they appealed to the *Capi* of the Council of Ten, pointing out certain presumed irregularities committed by the priest who had celebrated the marriage and even to some presumed abuses on the part of the bishop's clerk responsible for issuing the copies of the marriage certificate. Considering the evident legal and jurisdictional complexity of this request for intervention on the part of the secular power, the *Capi* of the Council of Ten decided to submit the case to the attention of Piero Franceschi for his opinion.

Both these cases involved a secret marriage and the inevitable implications of its *publication*, not only for the contracting parties but also for their families and relations. The secret marriage had some features in common with the clandestine marriage. Both were characterized by a significant fact: the absence of the legal formalities which, while not invalidating the marriage, kept the union from finding the community's explicit or implicit consent. However, in contrast with clandestine marriage, secret marriage was celebrated without the required banns (and without being registered in the canon marriage registers) by authorization of the ecclesiastical authorities

who, once the legitimacy of the expected requirements had been verified, could delegate a priest who was not of the bride or groom's parish to wed them. Given its secrecy, this type of marriage obviously did not have immediate civil consequences, unless its eventual publication made it conform to other marriage unions.

Clandestinity and secrecy are two concepts which, though conferring a different legal status on the marriages celebrated, in reality lead to a single interpretation: the need felt by canon law to interpret flexibly and to mediate social practices that evidently, given their deep roots and wide diffusion, would be difficult to integrate into the existing matrimonial regulations. As we have seen, it was just these regulations that led to the clear emergence of these practices from the terrain where they had prospered for centuries, and showed them to be a political and social problem of no small consequence. In short, clandestine and secret marriage indicated the existence of a juridical pluralism that was the direct emanation of a society divided into castes and amalgamated by the code of honor.

Paradoxically, therefore, it was the open mediation proposed by the ecclesiastical authorities to accommodate social pressures and instances that characterized the *clandestinity* or the *secrecy* of the union celebrated. If, as clearly happened during the course of the 18th century, these pressures were to change profoundly, the two institutions would wind up losing their precise profiles. As Franceschi observed in regard to one of the two cases submitted to him by the *Capi* of the Council of Ten, the destiny of the secret marriage "is found wavering in private discretions unseen by the Prince; and that secret bond, which so closely resembles the clandestine marriages banned by the aforementioned Council, passes happily in common opinion as a private subject of the conscience, belonging only to the court of the soul".

In the opinion he wrote for the case of Brescia, Franceschi showed his clear grasp of the problems implied in the existence of secret marriage. It was a very old institution or, better, a practice that canonists traced back to the second half of the 12th century, following a decree of Pope Alexander III. He noted that secret marriage had been banned in France for a long time, with the consequence that children born of these unions were excluded from all inheritance rights, whereas "in Italy and the Dominions of the Veneto they were tolerated to the present day, since authority over these questions, there being no law, is left in the hands of the priesthood"⁴³.

Franceschi well understood the fact that this practice had its origins in a society that was still imbued with the values of honor:

⁴³ ASV, *Consultori in iure*, b. 285.

The reason for giving these permissions, or we might better say dispensations from the true solemnity prescribed by the Council of Trent and protected by many sovereign laws can be deduced from the need for absolutions for hidden offense, from the object of converting concubinage to marriage, from the notable difference between the spouses, from the desire to conserve the reputation and peace of the families, from the presumed need to provide for good consideration and from other particular respects of the contracting parties ⁴⁴.

Very different pressures could therefore suggest taking advantage of an institution whose essential requirement of secrecy had the clear purpose of making sure that the marriage should produce no legal effects on property and inheritance rights. Even more visibly than clandestine marriage, the secret marriage was the expression of a society in which characteristics of status and honor rigidly defined the quality of social relations. Indeed, we might say that while clandestine marriage reflected the tensions existing within a society undergoing the emergence of new values based on wealth and economic relations, the secret marriage was the expression of the strong resistance put up by social forces that identified their prestige and their very right to exist in tradition and in the continuity of its ideological values. As an instrument of manipulation for the matrimonial strategies of lineage, the secret wedding evidently found easier acceptance when defense of the family patrimony went hand in hand with the political prominence of its members. As V. Hunecke has shown, this institution was widely used, for example, by the Venetian governing class⁴⁵. It was a very flexible instrument which, as we have already noted, helped to keep the family patrimony intact; but it could also give needed support (by changing it to a regular marriage through publication) to a matrimonial policy which, because of its fundamental choices, often had to cope with negative biological events. In the course of the modern age, wherever a social hierarchy strongly characterized by the values of honor and privilege was subjected to pressures coming from economic and social changes that gave determining importance to wealth, the secret wedding explicitly and visibly revealed its manipulative character, serving essentially to maintain predominant equilibriums of caste. In countries where a central monarchical power favored the emergence of an elite and the rise of new classes, this institution was openly pointed to as a practice dangerous for the correct social order. And in fact it wound up losing all political significance in the face of the determined will of the secular authorities to define precise legal criteria for assessing the validity of the marriage union and, conversely, its contractual significance.

⁴⁴ Ibid.

⁴⁵ V. Hunecke, *il patriziato veneziano alla fine della Repubblica*, Rome 1997, pp. 131-132.

As Franceschi noted, initiatives of this kind were not undertaken in Italy, where the weight of tradition and of the values hinging on honor was greater. Even less could they be taken in a state like the Venetian Republic, dominated as it was by an aristocratic caste. In the end, the secret wedding constituted an instrument indispensable for resolving the contradictions existing within the great aristocratic families, and for characterizing a matrimonial policy aimed at assuring the mode of property transmission most consonant with keeping and managing power. Indeed, in contrast with what happened with clandestine marriages⁴⁶, there were never any legislative initiatives to limit or condemn secret marriages, which were widespread among the middle-upper classes.

However, some of the opinions drawn up in the second half of the 18th century indicate that, in the context of the general redefinition of the relations between the ecclesiastical and the secular powers concerning marriage policy, the institution of secret marriage was also seen as a problem. It was felt to be out of tune or even in open contrast with the new sensibility with which the family was perceived.

What brought the question of secret marriages to the fore, in all its political relevance, was a bitter quarrel between two aristocratic families of Vicenza in 1755. Two young people, Orsola Tornieri and Muzio Negri, had for some time been conducting a secret relationship. The hostility of both families had led them to contract a secret union in the Venetian parish of Sant'Apollinare. As a result of the tensions this caused, the case was submitted to the *consultore* Montegnacco, who found not only manifest irregularities in the union between the two young people, but also the growth of a submerged phenomenon that the secular authorities had found it difficult to discern clearly. As Montegnacco observed, not only did the priest of Sant'Apollinare keep an irregular register of secret weddings, but in previous years he had also celebrated these unions without the required authorization of the Patriarch, and had also endorsed abuses and irregularities (such as, for instance, celebrating secret marriages between persons not belonging to the diocese of Venice)⁴⁷.

⁴⁶ The measures taken against clandestine marriages can be reasonably explained by the fact that their aim was to limit social practices which were becoming more difficult to control and which, with respect to their original function, had grown and spread far beyond the usual limits of mediation predisposed by the ecclesiastical authorities.

⁴⁷ Montegnacco's lengthy *consulto* is found in ASV, *Consultori in iure*, b. 234, cc. 355-364. The *consultore* dwelled particularly on the papal briefs granted by the Roman Penitentiary which, like diocesan dispensations, allowed the celebration of secret weddings: "Similar papers of the penitentiary, that is, of this second quality, do not exist in France, since every sort of marriage lacking the solemnities sought by that law being prohibited by edict 1697, no curate would dare to contravene the decree by using foreign papers that could in any form render

The marriage between Orsola Tornieri and Muzio Negri was annulled by the bishop of Vicenza, to whom Montegnacco had recommended referring the decision of the case. Though he upheld the right of the secular power to penal intervention against anyone who had committed abuses in a matter like this one, still the *consultore* realized the political implications underlying the celebration of secret weddings. The Prince had the power to punish “not only over the laity, but also over ecclesiastics the wrongs done to God, with the abuse of their ministry and sacraments, as well as those caused to the Principality, endangering the public quiet, the private peace of subjects and the state of the families through their rashness”⁴⁸. After all, the *consultore*, recommending the greatest prudence, could certainly not openly claim jurisdictional prerogatives in a question in which the Venetian patrician caste was fully and contradictorily involved.

In 1764 the Patriarch of Venice ordered all registers of secret marriages to be deposited in the curia. This was exactly what Pope Benedict XIV had already decreed in a bull a little more than twenty years before. The patriarchal decree immediately suggested to the *Capi* of the Council of Ten to ask their *consultori* for their opinions on this question. Commenting on the contents of the decree, the *consultore* Fanzio did not hesitate to note that “the custom in Venice is that these marriages are registered separately, sometimes by the parish priest and at other times by confessors, that is, by those to whom it is specially entrusted by the penitentiary to assist the afore-mentioned; these notations at times get lost because they pass from hand to hand, and other times it is not possible to find them, for they are in hands completely unknown to those who need to consult them”⁴⁹. Though perhaps somewhat exaggerated, these observations indicate that secret marriage was a widespread institution managed at the discretion of the ecclesiastical power in answer to the great variety of needs determined by the social context. In any case, the situations that requests for official opinions brought to the attention of the highest Venetian magistracies show how this delicate problem emerged thanks to its implications for rights of succession and inheritance. Thus, conflicts between or within families grew more bitter due to the persistence of an institution whose flexibility (as we have seen, the marriage could be made public at the discretion of the two contracting parties) was in contrast with the existing legal norms and with the increasingly felt need for certainty in the law. It is highly likely (as in fact was the case with other questions that arose for political reasons) that in the last decades of the cen-

it invalid”.

⁴⁸ *Ibid.*

⁴⁹ ASV, *Consultori in iure*, b. 230, 14 September 1764.

ture secret marriages were no more common than they had been in former years. What is certain is that, despite some reluctance to confront it directly, it was now felt to be an embarrassment that contrasted with the new social sensibility in matters of family and property.

This aspect is clearly revealed, for instance, in Franceschi's words when, in the context of the two cases submitted to his attention, he could not but recommend the highest degree of caution and the avoidance of any intervention in a question that only the ecclesiastical authorities could manage with the necessary attention. Though realizing that this was a question closely touching the personal and religious spheres, the *consultore* at the same time perceived the often explosive and negative effects that the use of secret marriage had in social contexts prone to frequent judicial conflicts. Indeed, he observes:

It cannot be denied, however, that there can be many serious negative temporal outcomes for the interests of the subjects of a simulated and equivocal condition, while under the mantel of this secret unrecognized heirs, dowry obligations, simultaneous polygamies, decisive deceit regarding the trustworthiness of contracts and notable frauds to the family estate are often covered against the good order of the new society⁵⁰.

These very penetrating observations were however accompanied by the recommendation to intervene only with the greatest caution, and only in cases where manifest injustice was found⁵¹. A recommendation that may even have been superfluous, considering the political position of the interlocutors.

⁵⁰ ASV, *Consultori in iure*, b. 285.

⁵¹ In the Rocca case, Franceschi observed: "in truth, we could not deny the Prince full right and use of the means to dissolve this spell which as presented by the women who are petitioning presents a picture of oppression and justice denied. But considering the space of almost three years spent in silence by both parties after the first acts, and observing in the petition to the bishop of 19th of July 1787 the mention of several quarrels fatally found by the co-heiresses in the usufruct, it seems to us indispensable to have some better confrontation and clarification of the reasons for this inaction before recurring to the exercise of authority". Differently, in the Odoardi affair not only did the *consultore* emphasize the instrumental nature of the appeal, but he also recommended that "if the step seems opportune, to inform the petitioners in the voice of the public representative that their petitions are dismissed ... at the same time warning them that in the future they should take more reverent and well-founded measures before presenting similar appeals". However, he did not hesitate to note that "it will be up to the maturity of judgment of Your Highnesses to recognize to what point of abuse the industry of appeals is cultivated and transmitted nowadays by the shrewdness of the legal profession in order to multiply marriage controversies", cf. ASV, *Consultori in iure*, b. 285

Only a few years later, the Republic fell. The new laws imposed by the political order would bring about the long-hoped-for certainty of the law. In reality, however, things did not change so easily, due to the extreme sluggishness and attachment to tradition of the Venetian and the general Italian social context⁵². What is certain is that the institution of secret marriage lost much of the subversive character it had displayed in the last years of the ancient regime, though it proved to have far greater vitality than the aristocracy that had made such ample and uninhibited use of it over the centuries.

This history of secret marriage is, then, largely tied to the complicated story of family relations and matrimonial strategies. Its visibility, as the affair of Eurimedia Saraceno illustrates, is in essence linked to social conflict, above all as regards the inheritance rights that characterized the life of the family and of lineage. But, especially starting from the second half of the 18th century, the *consulti* indicate that secret marriage had changed from the customary, highly informal institution it had always been to take on an important legal dimension that could no longer be ignored by the secular and religious institutions. What is more, these *consulti* also allow us to see how secret marriage played a significant part in Venetian law and in its republican and pragmatic implications.

⁵² On the resistance in Italy to the introduction of the Napoleonic Code see P. Ungari, *Storia del diritto di famiglia in Italia (1796-1942)*, Bologna 1974, pp. 85 and ff.

A LOOK AT POPULAR PIETY: THE INQUIRY ON RELIGIOUS HOLIDAYS PROMOTED BY THE VENETIAN SENATE (1772-73)

Popular piety: from folklore to legal anthropology

In the last decades of the 18th century the vast and vague phenomenon of popular religiosity and the festive rituals associated with it took on great importance all over Catholic Europe. Both ecclesiastical and secular authorities described this phenomenon as having decidedly negative features that called for urgent institutional measures to change its character¹. “*Soverchia molteplicità delle feste*” (an excessive number of festivities) was the idea repeated again and again, in a variety of tones and manners, but always with the clear idea of underscoring the negative aspects of the phenomenon.

A large number of documents were drawn up in those years by the institutions of the Republic with the aim of arriving at a reform in agreement with the ecclesiastical authorities, which would limit as precisely as possible the

¹ As has been noted by Peter Burke, this phenomenon can be seen in the context of the cultural movement defined as *Il ritiro delle classi dominanti* (*The Withdrawal of the Ruling Classes*) or, better, of the relevant division between dominant culture and subordinate culture which held partially shared values as late as the 1500s. Both on the part of Protestants and Catholics, though with different force and for different reasons, there was strong opposition towards many aspects of popular culture. The reformers “objected in particular to certain forms of popular religion, such as miracle and mystery plays, popular sermons, and, above all, religious festivals such as saints’ days and pilgrimages....The crucial point in all these examples seems to be the insistence of the reformers on the separation between the sacred and the profane. This separation became very much sharper than it had been in the Middle Ages”. Religious holidays were considered “occasions of sin, more especially of drunkenness, gluttony and lechery...”; another moral argument against many popular recreations was the suggestion that they were ‘vanities’, displeasing to God because they wasted time and money”. As Burke stated “Catholic reformers of popular culture were less radical than Protestant ones. They did not attack the cult of saints, but only its ‘excesses’, such as the cult of apocryphal saints, or the belief in certain stories about the saints, or the expectation of worldly favours, like cures or protection, from the saints. They wanted festivals purified but not abolished”. P. Burke, *Popular culture in early modern Europe*, New York 1978, pp. 208-216

holidays that studded the variegated popular rural calendar². These were *external* interventions, whose modes of description and aims reveal a “cultivated” and “superior” viewpoint which for today’s historian suggests at the very least a significant gap between what can be defined as the *dominant culture* and the subordinate popular culture, especially widespread in the countryside³. Certainly it is this viewpoint, whose features are univocal though perhaps somewhat tendentious⁴, to suggest how the lively world of popular culture could be examined from an *external* perspective intended mainly to *describe* an uncertain and indistinct phenomenon with origins dating back to remote centuries⁵.

The cultural, economic and political changes that had come about by the second half of the 18th century probably contributed to delineating this new detached viewpoint. Though this detachment was clearly aimed at intervention and containment, it also became one of the first *looks into* a world which,

² As we shall see, this “*soverchia molteplicità*” was attributed both to the holy days of obligation (the holidays approved by the ecclesiastical authorities) and to the more widespread “*feste di popolare devozione*” (*holidays of popular devotion*).

³ The question is, in a certain sense, very topical, as it highlights at a theoretical level certain relevant problems concerning religious concepts and their relation with other perspectives from which men interpret their world. Clifford Geertz, stressing that the religious perspective is a particular way to interpret the world, observes that it differs from *common sense* in that it completes everyday reality by recurring to other, broader *realities*. And it also differs from the scientific perspective in that it casts doubt on everyday reality in function of greater truths. Through ritual the religious conception is strengthened and acquires the conviction of its validity. All this has a clear social impact. Geertz observes that the impact of religious systems on social systems “will have rather diverse effects on social and psychological functioning. One of the main methodological problems in writing about religion scientifically is to put aside at once the tone of the village atheist and that of the village preacher, as well as their more sophisticated equivalents, so that the social and psychological implications of particular religious beliefs can emerge in a clear and natural light. There remains, of course, the hardly unimportant questions of whether this or that religious experiences are possible at all. But such questions cannot even be asked, much less answered, within the self-imposed limitations of the scientific perspective”, cf. C. Geertz, *The interpretation of cultures: selected essays*, New York 1973, pp. 122-123.

⁴ The reference is not only to the openly stated aims behind the reduction of popular holidays (cf. *infra*, pp. 205-212), but also to the way in which, as we shall see, the phenomenon was generally perceived from a prejudiced viewpoint that considered them as mere *superstition*.

⁵ In this regard, Peter Burke shows that it was the separation that had come to exist between the two cultures that led intellectuals and *reformers* to observe popular culture from a standpoint aiming at *description*: “the change in the attitudes of educated men seems truly remarkable. In 1500, they despised the common people, but shared their culture. By 1800 their descendants had ceased to participate spontaneously in popular culture, but they were in the process of rediscovering it as something exotic and therefore interesting. They were even beginning to admire ‘the people’, from whom this alien culture had sprung.”, cf. Burke, *Popular culture...* p. 286.

from this rather prejudiced viewpoint, was felt to be different and in a certain sense operating according to *other* cultural codes. Already this great sea of customs, characterized by orality and presumed attachment to tradition, was being investigated, and what was coming to the surface seemed anti-*thetical* not so much to the existing legal order as to the political and cultural tensions soon to appear regarding the supremacy of law and legal codes⁶. Some decades later this *subaltern* world, where religious and cultural beliefs seemed to coalesce in cultural codes of an apotropaic nature, began to be described in the context of studies soon called *folklore* or *popular traditions*⁷. These were studies whose *scientific* claim lay essentially in the explicit objectives that were formulated: the *description* of a culture which, even if felt as *diverse*, was still perceived in the light of parameters and cultural codes deeply influenced by writing and abstract styles of interpretation. The affirmation in the course of the 19th century of ethnographic studies and

⁶ Louis Assier-Andrieu has investigated the first studies that dealt with the subject of custom, in particular those of P.J. Grosley, who sees in it “an element of the capacity of adaption to the changing reality of human relations, that can be immediately inferred from the empirical observation of social fact, and an element of the essential fundaments of these relations, inscribed in an unavailable regularity and in a permanence that denies all historicity. Custom is therefore both the living locus of change and the peremptory call of obedience to the origins or, as we should say today, to the *structure*, which is a-temporal and a-historical by definition”. With the reflections of A.Y. Gouget, the concept of custom acquires historical status and dynamism, as it is linked to a specific material context: “while research on its primary source leads, as we have seen, to an a-temporal representation of custom, research on its material causes induces us to relativize its influence in the context of a determined society, in a given moment of its evolution, and to situate it in relation to a plurality of social factors that at this point it ceases to incorporate...”, cf. L. Assier-Andrieu, *Il tempo e il diritto dell'identità collettiva. Il destino antropologico del concetto di consuetudine*, in “Sociologia del diritto”, XXVI (1999/3), pp. 20-21 and 27.

⁷ Such as, for example, the project promoted by the *Accadémie Celtique* between the first and second decades of the 19th century, aimed at studying the spread of certain popular traditions. On the application of this project in Veneto cf. F. Riva, *Tradizioni popolari venete secondo i documenti dell'inchiesta del regno italico (1811)*, in “Istituto veneto di scienze, lettere ed arti”, XXXIV (1966), pp. 3-93; and U. Bernardi, *Gli studi sul costume e le tradizioni popolari nell'Ottocento*, in *Storia della cultura veneta. Dall'età napoleonica alla prima guerra mondiale*, 6, ed. G. Arnaldi and M. Pastore Stocchi, Vicenza 1986, pp. 311-341. Also, P. Clemente, *Dalaura il girondino. Qualche appunto sull'inchiesta napoleonica in Italia come occasione di riflessione sulla storia*, in “La ricerca folklorica”, 32 (1995), pp. 45-50. Clemente points out that “the inquiries are projections of conceptual models that were translated into the questions presented to a variety of interlocutors; they were, moreover, intellectuals or well-educated people or those responsible for political activity. The notions concerning the ‘different’ daily uses and customs of country vs. town people were being defined according to philosophical-literary perceptions that existed among forward-looking intellectuals but had not yet always reached the horizon of the intermediate level of intellectuals” (pp. 46-47). Despite profound differences in institutional, political and cultural contexts, the ‘cultured’ ideological connections between this investigation and the one promoted by the Venetian Senate in the 1770s are clear.

the first anthropological experiences of *field research* obviously complicated the notions of *diversity* and *tradition*. This is also true of historical studies more precisely concerned with the subordinate societies of the past. The very notion of *popular culture* and the ways it mingled with or differed from hegemonic cultures became more complex, with differing interpretations that, especially in the 20th century, influenced anthropologists in their studies of so-called *primitive societies*⁸. The formulation of interpretative concepts that were defined as *near* and *distant*⁹ began to be used to study the cultural and social dimensions of 20th century European communities themselves. Concepts such as *feud* and *honor* or *friendship* and *mercy*, whose interpretative proximity to 20th century European culture varied in degree and intensity according to the context they referred to, began to be widely adopted by historians and anthropologists¹⁰.

⁸ On the terminology and meanings linked to the definition of popular culture, cf. A. M. Cirese, *Cultura egemonica e culture subalterne. Rassegna degli studi sul mondo popolare tradizionale*, Palermo 1973. As can be seen in these pages, the term *popular culture* (or *religion*) (as used in the singular) is understood above all in its legal and customary dimension, characterized essentially by orality and by the flexibility and openness of its propositions. To stress the multitude of the forms of popular culture may seem obvious from the historical standpoint, considering the multiplicity of contexts that characterized them. However, by highlighting the term custom, above all in the phase under examination here, we mean to emphasize certain common features at play within popular cultures.

⁹ The concepts of *near* and *distant* used in Clifford Geertz's interpretative anthropology, are clarified by Ugo Fabietti as follows, "According to Geertz, the process of understanding is composed of two types of concepts, according to how "near" or "distant" they are from native experience. The former are those "that anyone ... in our case an informant, can use naturally and effortlessly to define what he and his colleagues see, feel, think, and imagine, and that that they would readily understand when used in a similar way by others". "Experience-distant" concepts are those with contrary features: "love" and "nirvana" are two concepts near to experience for us in the first case and for Hindus in the second, just as "object cathexis" and "religious system" are, for the majority of lovers or of believers, respectively, two concepts "distant" from experience. Geertz says that anthropological understanding oscillates between these two poles, between taking concepts "near" and "distant" from native experience, in what we might call an ongoing attempt to achieve a *controlled translation* of the former into the latter", cf. U. Fabietti, *Antropologia culturale*, Bari 1999, p. 299. As we shall see in connection with the great Venetian inquiry of 1772-73, the matter of *description* takes on significant historical importance, in that customary culture (and the rituals connected with it) was essentially handed down only orally; it is for this reason that the role and function of the *interpreter* take on such great significance. The *reading* given by the interpreter presumes first of all the historian's awareness of the complexity of the operation of decodification implicit in every written document, all the more if institutional in character.

¹⁰ A significant example is found in the text of J. Pitt-Rivers, *The People of the Sierra*, London 1954. In the second edition (Chicago 1971), Pitt-Rivers treated some of the interpretative problems connected with his investigation of an Andalusian community. In his opinion, the anthropologist "must therefore recognise as a preliminary step to the investigation of another culture that the ideology of his own society is no less an ideology than that which

In the particular Italian context, as has been observed, the study of popular traditions, or *folklore*, always prevailed over later ethnographic studies¹¹. The specificity of the tradition of Italian anthropology as compared to other European countries very likely depended on Italy's delay in reaching political unity¹². While the continuation of a culture of community, city or regional states favored the folklore tradition over ethnology, especially from the late 19th century ethnology was profoundly influenced by historical-juridical studies traditionally oriented towards the study of the classical world¹³. The history of law, traditionally sensitive to the world of custom¹⁴ that comprised all that was informal and connected to orality in society, rightly set out to give the newborn Italian ethnological school the interpretative tools it needed to escape from the impasse of folklore¹⁵. As has been justly observed, the legal-historical approach presupposed a vision of public law that privileged

he is studying. It is part of *his* culture. For anthropology gives western civilization no special dispensation. Its premises must be drawn from the comparison of the whole corpus of *other* cultures...The ethnographer who does not lay aside his own culture risks the discovery that he has used the people he was studying only as a mirror to return him his own image and prove to himself the correctness of his prejudice..., cf. *Ibid*, p. xxii.

¹¹ An important example of this folklore approach is P. Toschi, *Guida allo studio delle tradizioni popolari*, Turin 1962.

¹² Cf. U. Fabietti, *Antropologia culturale...*, pp. 126-127, who also recalls the opinion of Ernesto De Martino, according to whom the folklore tradition prevailed over the ethnological one as a "consequence of the overly short duration of Italian colonial rule".

¹³ Cf. U. Fabietti, *Antropologia culturale...*, pp. 129-130.

¹⁴ An excellent example of the connections between law and anthropology is N. Tamassia's *La famiglia italiana nei secoli decimoquinto e decimosesto*, Milan-Palermo-Naples 1910. Highly stimulating and open to research is P. Ungari's *Storia del diritto di famiglia in Italia (1796-1942)*, Bologna 1974, in particular the first two chapters, where the theme of custom assumes great importance.

¹⁵ An impasse that in recent years has affected folklore studies themselves. The controversial relationship between folklore disciplines and cultural anthropology is dealt with by P. Clemente, *Il punto sul folklore*, in *Oltre il folklore*, ed. P. Clemente and F. Mugnaini, Rome 2001. Clemente observes that the word folklore was introduced in research at the start of the 19th century: "thus folklore arose out of the need felt by Romanticism to use the cultural resource of 'the root of peoples', and it conserves its potential to be the locus of appeal for civilizations", p. 192. The investigation carried on by a scholar of folklore or one of popular traditions is considered an entomologic activity, tending to classify and be interested in the *drama* of the virtually inevitable disappearance of popular traditions. Clemente goes on to say that "in reality, folklore studies lacked an exact theory of social and cultural change, and they made use of very simple models that led to an historical way of opposing the old and the new: the old and the new exist in every generation", cf. *Ibid*, p. 194. We could add that the concept of tradition can be considered a variation of the customary world and that customs, as we shall have occasion to illustrate regarding the great Venetian inquiry of 1772-73, constituted an *open* juridical system, whose propositions were intimately connected to social facts.

the legislator's point of view¹⁶. Yet, in the end the legal historians' exploration of the world of custom illustrated certain anthropological and political dynamics¹⁷ that the folklore tradition had played down in its attempt to give a mono-directional (top-down) description that rarely took into account the internal dynamics at work in the phenomenon being described¹⁸.

¹⁶ Fabietti observes that the historical-juridical perspective "depended on a 'rationalist' formulation of the problem, projecting the legislator's point of view onto the very origins of the process of the constitution of order", cf. U. Fabietti, *Antropologia culturale...*, p. 130.

¹⁷ As an example of this approach, see N. Bobbio, *La consuetudine come fatto normativo*, Padua 1942 and, by the same author, the entry *Consuetudine (teoria generale)* in *Enciclopedia del diritto*, IX (1961), pp. 426-433. Despite the presence of the law-custom dichotomy, Bobbio's observations dealt with some of the most important historical-political problems of customary law.

¹⁸ The relations between law and anthropology have grown closer and more fruitful in recent decades, thanks above all to their reciprocal influence. Of special interest, even if many of the topics dealt with have to overcome the problem of theoretical and interpretative suggestion, is A. M. Hespanha's, *Introduzione alla storia del diritto europeo*, Bologna 2003 (Lisbon 1997). Hespanha underscores the complex and multiform vision of medieval and modern law: "Law could also incorporate very profound anthropological contents in organizing and controlling social relations....In a certain sense, the jurist made explicit what was implicit but operative in daily life. Like analysts who reveal the individual unconscious through reasoning and explanation, the jurists made the social unconscious explicit in theories. Then they returned it to society in the form of a structured ideology that was converted into norms for action, further reinforcing the spontaneous primitive imagination....This is why the history of law cannot be ignored if one's goal is the understanding, whether global or particular, of early European society". And as regards the questions treated here: "The pluralistic reading of power and discipline in the society of the *ancien régime* goes beyond law as it is conceived today. Law constituted (and constitutes) a minimum order of discipline interwoven with other more efficient and everyday orders. An example is what in the literature of common law was called 'rustic law (*iura rusticorum*), that is, the practices to which common law did not even attribute the dignity of custom, but which instead constituted the norm of behavior and parameter for resolution of conflicts in rural societies", cf. A. M. Hespanha, *Introduzione...*, pp. 29 and 45. Also of extreme importance are the works of Norbert Rouland, characterized by a pluralistic vision of law and society. In particular, *Antropologia giuridica*, Milan 1992 (Paris 1988), in which the pluralistic vision of law is based on studies conducted principally on African societies. Closer to Europe and its legal-anthropological problems, viewed from a long-term historical perspective, are other studies by the same author: *Aux confins du droit*, Paris 1991 and *L'état français et le pluralisme. Histoire des institutions publiques de 476 à 1792*, Paris 1995. Rouland shows that legal ethnology developed in Europe starting from the 1960s, therefore at the same time as the process of decolonization, which caused a return of ethnographers towards Europe. Differently from "folklore experts, these ethnographers have the advantage of having the field of reference of exotic societies, and this makes a comparative approach possible, if not actual. This relatively recent broadening of methods and objects marks the real birth of the ethnology of Europe. While folklore experts cannot pretend to have achieved as much, still they should be given credit for an inestimable job of gathering materials". Rouland adds that, despite the obvious differences in the contexts, some lines of analysis can coexist and "the simultaneous presence of different ideal models in real societies is one of the points that current comparative theories emphasize most", cf. N. Rouland, *Antropologia giuridica...*, p. 379.

In all its evocative power, the theme of popular piety has not only attracted the attention of numerous disciplines (obviously with diverse viewpoints and interpretations), but it has also received a variety of labels, according to the point of view of the investigator. Popular piety, rural customs, folklore rites and saints cults are only a few of the many formulas that have been used in an attempt to define this complex and varied phenomenon, whose identity seems to have been first traced from the perception of a culture that arrived at its description through “distant” cultural concepts. Understanding to what degree these concepts have actually come close to the realities reported in historical sources (described by numerous *interpreters*) is obviously part of the historian’s equally complex and unresolved effort to arrive at a comprehension of popular culture¹⁹.

Venice and the reduction of religious holidays

In September, 1772 the Venetian Senate opened an important inquiry concerning the popular holidays widespread both in Venice and State of the Terraferma²⁰. The measure had actually been prepared for by an earlier deliberation of 2nd January 1769, which appointed two experienced patricians, Sebastiano Foscarini and Francesco Pesaro, to write a report on the question. A similar appointment was also given to the *consultori in iure*²¹.

¹⁹ Above all in this case, the operation of decodification carried out by the historian is not so very different from the anthropologist’s. Speaking about anthropology, Fabietti observes: “Going beyond orality and the unconscious nature of phenomenon are both processes realized thanks to the intentionality of the anthropologist. As such, they inevitably bring with them the reflection of what can be defined as a form of ‘pre-understanding’. This is made up of the epistemological-interpretative categories that allow the ethno-anthropologist to select his experience, that is, to approach his object and then re-detach from it in the movement of writing”, see U. Fabietti, *Antropologia culturale...*, pp. 116-117. The fact that historians rely mainly on written documentation (which obviously in itself involves a first level of abstraction) only apparently makes their interpretations more complex, if we consider that “in every description what is ‘described’ is not so much a ‘reality’ in front of us, but things in some way already situated within representations at the moment we perceive them, on the plane of the senses as well as on that of reflection”, cf. *Ibid.*

²⁰ The *parte* of 17 September 1772, with attached opinions and consultations drawn up for deliberation, is housed in the Archivio di Stato di Venezia (=A.S.V.), *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 105. B. Cecchetti dealt with the reform of festivities in *La Repubblica di Venezia e la Corte di Roma*, Venezia 1874, vol. I, pp. 101-109, recalling the most important laws passed; cf. also M. Berengo, *La società veneta alla fine del Settecento. Ricerche storiche*, Firenze 1956, p. 225; and F. Venturi, *Settecento riformatore*, vol. V: *L’Italia dei lumi*, tomo II, *La Repubblica di Venezia (1761-1797)*, Turin 1990, pp. 108 and ff., where the topic is treated in the context of the broader interest in the rural world on the part of institutions and intellectuals.

²¹ The two patricians presented their relation on the following 29th January, while the

The *incipit* of the law summed up very well the spirit in which Venice's highest governing body had determined to deal with a matter that could no longer be procrastinated. It was a lengthy, carefully reasoned *incipit* which, like many other measures taken at that time, betrayed some hesitation about interfering in so delicate a matter:

Long experience, solidly proven in the writings of magistrates and the sentiment of reputable citizens and the opinions requested of canonists, has unfortunately led the knowledge of the Senate to understand that the more easily one allows the populace to profane the exterior order of our Catholic religion, the more one sees the growth over time of the number of annual holidays that prohibit manual labor. So that the repose that for the institution of piety is prescribed on holidays, having become by now too common among the populace, to the grave awareness of the good ones and the extreme harm of the nation, seems only to serve to foment vice and crime through idleness, at the same time as it keeps the populace from the exercise of the actions that are the more appreciated by God the more they are useful to society.

The excessive number of holidays had, therefore, lessened the people's industriousness, increased its inactivity and consequently favored suspicious immoral behavior. The law went on to say:

... from this overabundance of holidays, besides the spiritual harm of profanation, there derives a pernicious neglect of agriculture, crafts and trade that has no little cost to the national wealth. Indeed, our state registers the disadvantage all the more, since the useful solicitations and edicts of the most religious sovereigns, who in these times have diminished the festivities, have created the means abroad and especially in the bordering populations to employ themselves more frequently than our subjects in the cultivation of both the crafts and the land, so that the farmers and artisans are able to deliver produce and artifacts in larger quantity and at lower cost and can more easily than ours support their families, having more days to earn a living with fewer holidays.

three *consultori*, Trifon Vrachien, Natale Dalle Laste and Giovan Battista Billesimo, sent theirs to the Senate on 16th March, 1769 and 29th January, 1769, respectively. Considering that the previous document had remained "buried in the deepest silence", Foscarini and Pesaro presented a new relation on 15th February, 1771. As we shall see, the lengthy pauses that from the start marked the Senate's intervention were to be repeated in the decades that followed. In their reports, the two patricians also pointed out that a first measure, decided by the Senate in 1754 after attempts at reform were undertaken in Hapsburg Lombardy, was born dead: "a certain slowness produced by diversity of opinion, by the problems and circumstances of the times and by a certain fatality to which the best regulations are often subject, deprived the nation of this advantage", cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 105.

Thus, the numerous festivities had negative consequences not only for spiritual matters, but also and above all for the economy, since the measures taken by the powers in the immediate surroundings meant that the Venetian state would not be able to meet the competition in agriculture or commerce. The Venetian Senate therefore saw the phenomenon of religious holidays (and their growth) from a decidedly negative point of view, considering it responsible for disastrous effects on the economy.

This was certainly not an isolated position: similar measures were about to be taken in several other Italian and European states²². As we have already said, taken together, the nature of these measures and the rhetoric they adopted in describing certain significant aspects of the underlying phenomenon of popular religious sentiment suggest that in the sphere of what we can call *the dominant culture* the cultural codes that had by now emerged were considerably distant from the forms of culture that characterized the lower social orders.

For that matter, the two patricians in their report and the *consultori* in the opinion they had been asked to give had certainly not hesitated to use a heavy hand in dealing with what they felt to be a phenomenon that needed to be limited and corrected. Foscarini and Pesaro reviewed the historical development of the measures prepared by the ecclesiastical authorities regarding a *discipline* that had always seemed “various, uncertain and almost arbitrary”²³. The number of religious holidays, they observed, had undergone such excessive growth in the four preceding centuries that in 1642 Pope Urban VIII had carried out an operation to reduce and unify them. But in the years that followed the holidays had once again increase, thanks partly to arbitrary initiatives of the worshippers and partly to concessions granted by the bishops themselves. Thus, Pope Benedict XIV had indicated the need to face this thorny issue once again.

²² Along with the written reports of the individual *consultori* consulted by the Senate (copies of which are generally included as attachments in the decrees of the magistracy itself), a great deal of additional information on the methods and types of measures adopted in other states are found in A.S.V., *Consultori in iure*, busta 514, together with a miscellanea of documents concerning the decrees pronounced by the Senate in the second half of the 18th century.

²³ Being aware of the difficulties that the project would face in its implementation by the bishops themselves, “not so about the principle as about the ways”, on advising the Senate to apply to the two main ecclesiastical authorities existing in the Dominant and in the dominion of the Terraferma, the two patricians observed that it would be best first to decide the abolition of the festivities of *popular devotion* and then, at a later time, to proceed also to reduce the holy days of obligation. Concerning the former, they observed that “they were introduced either by the caprice of men or their wrongly directed devotion, or by aversion to labor, or by an insubstantial incident of some particular happiness or disaster or, finally, by some blame-worthy indirect aims, which unfortunately we have sad and reprehensible examples of in our century”, cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 105.

The two patricians, while counseling the Senate to depend on the religious authorities to carry out the intended operation successfully, did not hide their pessimism:

The populace, which has to profit from the indult, being uncouth and material by nature, dominated by force of habit and attracted by the temptations of inactivity and pleasures, is forming some internal obstacles and nourishing certain hidden reluctances which external coercive force is not able to destroy, but which can only be overcome by efficacious internal persuasion ably introduced in its spirit. Whatever minimum novelty is in question when dealing with religion, the force used by the secular Prince is suspect, and this suspicion alienates the populace, and once alienated it is almost impossible to lead it back to desirable tranquility and security²⁴.

Similarly, the three *consultori in iure* also stressed the need for the Senate to intervene, while at the same time prudently asking for help from the ecclesiastical authorities. Of the three *consulti*, Natale Dalle Laste's, drawn up on 14th September, 1772, appears to be the best informed and reasoned²⁵.

²⁴ They recommended fixing the criteria on which the reduction of holidays was to be based, and then trusting to the ecclesiastical authorities ("once the norm is established, to divest itself entirely of its execution"), asking the Patriarch of Venice and the Archbishop of Udine to act as spokesmen with the bishops to have them carry out the Senate's deliberations in each diocese. The two patricians also recalled the possible solutions to the problems proposed by Benedict XIV ("the first is to abolish entirely some holidays; the second is to transfer to Sundays the commemoration of some saints; the third is to join in one single holiday more than one of these commemorations; and the fourth is to conserve the current system of the calendar, but in some of the less solemn ones, while keeping alive the precept of hearing mass, allow the populace to do their usual work afterwards"). The last of these suggestions was the one favored by the Pope himself, but, as Foscarini and Pesaro went on to say, "we greatly fear that it is the most useless and more dangerous than the others, for it seems to us that it is difficult to join the precept of hearing mass with caring for work, and foresee that one will probably destroy the other, so that either the populace becomes guilty of transgressing an ecclesiastical precept, or a good part of the fruit of this desired restriction will be lost. Besides which, the precept to hear mass keeps the memory of the holiday alive, and since this memory forms in uncouth spirits the main obstacle to taking advantage of the indult, it is better for it to be cancelled in every way possible"). In the relation that followed on 15th February, 1771 Foscarini and Pesaro summed up what in the meantime was being agreed on between the Hapsburg sovereign and the Pope; cf. for this and all the above quotations A.S.V., *Senato, Delibearazioni, Roma Expulsis papalisticis*, filza 105. There is a vast bibliography on the social climate in this period and on the main political actors. Here I limit myself to mentioning G. Tabacco, *Andrea Tron e la crisi dell'aristocrazia a Venezia*, Udine 1980; M. Berengo, *La società veneta....*, in particular pp. 225 and ff.; F. Venturi, *Settecento riformatore....*, pp. 37-39, 95-129. I also recommend these works for political profiles of Foscarini and Pesaro.

²⁵ Recommending recourse to ecclesiastical power, Triffon Vrachien dealt a real blow to religious holidays: "Each prelate having been informed of the supreme zealous intentions and his conscience aroused to the highest degree by personal judgment if not to prevent totally at

Dalle Laste recalls that, although Urban VIII in 1642 had significantly distinguished the holy days of obligation, “of strict observance”, from those of pure devotion, since then the cult of saints had been intensified with the addition of new holidays. Indeed, many festivities had been introduced “on the approval and establishment of pious customs, and sometimes by the initiative of bishops, synods or popes”²⁶. He suggested the plan of transferring almost all of the days of obligation to Sunday, when possible.

Dalle Laste’s very measured observations clearly aimed at reconciling the traditional Catholic attachment to the cult of saints²⁷ with needs the authorities felt as essential. But to close his report, he did not fail to recall that the large and still very varied spectrum of holy days of obligation did not fully cover the great fresco of popular devotion:

To speak here about the holidays of simple popular devotion is not pertinent to the established plan; but since they could in part stand in the way of its very important aims, besides the duty of the parish priests to purge them of material and superstitious religious practices, it will also be up to public supervision to modernize the practices so that they would not be confused with the holy days of obligation²⁸.

least to rein in and limit in this way the scandalous licentiousness and culpable libertinage of the rabble and the common people, accustomed to celebrate (we mean to say) to profane the holy mysteries and the commemoration of the blessed with debauchery, drunkenness, fighting, dances and brothels, by recalling them from idleness, that is, from the habitual ferment of the most dissolute and depraved passion to farming, and the labor of manufacturing and each to the performance of his own job, lets us presage and also hope for a fervid diligence... in conforming to your pious and serious aims...”, cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalistis*, filza 105.

²⁶ A passage inserted as an attachment to the definitive decree of 7th September, 1787 (cf. *infra*, pp. 215-216), the holy days of obligation or precept were defined as those that “oblige all Christians. To decrease them both pontifical and secular authority are necessary”. On the contrary, popular holidays “oblige only those who have taken the vow or instituted that particular devotion. To reduce them, it is enough to have the bishop’s authority, upheld by the secular authority”, cf., A.S.V., *Senato, Deliberazioni, Roma ordinaria*, filza 255. As we shall see below, there were many descriptions made by parish priests, consulted about the holidays existing within their parish jurisdiction, which differed from this definition of *precepto*, see *infra*, pp. 227-231.

²⁷ Dalle Laste observed that the saints’ cult was completely spontaneous in the “triumphant Church” and that the intention of popes and bishops in enlarging their number “with the universal obligation of the populace as well” was therefore praiseworthy; cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalistis*, filza 105.

²⁸ Thus, Dalle Laste was making a distinction between holidays of observance and purely devotional holidays on the basis of the approval given by ecclesiastical authorities (diocesan synods and papal bulls which had been added, not always uniformly, to the list established in 1642 by Urban VIII), cf. A.S.V., *Senato, Deliberazioni, Roma, Expulsis papalistis*, filza 105. As we shall see, the inquiry ordered by the Venetian Senate discovered that this distinction was

In any case, Dalle Laste's observations were given due consideration and were sent to the papal ambassador to request ecclesiastical support for the proposed reform. Moreover, on that very 17th September, 1772, the Senate ordered some Venetian magistracies and the rectors of the State of the Terraferma to begin the great inquiry which in less than a year was to collect an impressive volume of information from all the parishes of the dominant city and the Terraferma²⁹.

However, several years were to pass before, having finished its examination of the data gathered and heard the opinions of the *consultori*, the Senate would arrive at a new deliberation³⁰. On 26th August, 1775 Venice resolved

not always so easy to make within the vast and varied constellation of religious holidays. It should, however, be noted that, differently from Foscarini and del Pesaro, Natale Dalle Laste did not appreciate the political difficulties of the question of the holidays of obligation. The two patricians, as we have seen, had in fact advised the counsel to start first of all with the abolition of the simple holidays of *devotion*, and only in a second moment to take on the reduction of the days of obligation. It may have been the ambiguities in the 1772 decree itself and the hesitations that followed that motivated the scarcely veiled criticisms of Piero Franceschi concerning this initial phase of the reform (cf. *infra*, pp. 213-214).

²⁹ Cf. *infra*, pp. 217-219.

³⁰ As the great *consultore* Piero Franceschi was to recall many years later, the delays in this phase, as in those that followed, were not casual: "although it has been many years, that is since 1742, with the *brevis* of the Supreme Pontiff Benedict XIV, which offered the first initiatives for the reduction of the holidays, yet the precept was not adopted in the domain of the *Serenissima* until thirty years later with the decree of 17th September, 1772. The difficulties that arose in Rome at the level then proposed for the holidays of ecclesiastical obligation and the planned or accidental delays in the information sent by the Terraferma for the others called popular, votive and of devotion, led this delicate matter to a second delay of three years, as is shown by the decree of 26th August, 1775", cf. A.S.V., *Consultori in iure*, busta 285, consulto del 27 ottobre. It is, however, likely that the *dragging out* (for example, the long pauses between the Senate's decrees and the presentation of the reports requested at various moments from patricians who, based on their experience, were supposed to report on what was about to be deliberated) that can be seen in the way the whole matter proceeded can also be attributed to the conviction, widespread among certain sectors of Venetian patricians, of the risks that were inevitable in so delicate a matter. Along with many of his contemporaries, Franceschi also described the question of popular festivities from an external perspective that saw their negative effects in the religious and economic spheres: "If one looks at the behavior of the populace on the holidays that ban manual work, one will find that the repose granted to adore with less distraction the most important mysteries of religion and the Lord God in his saints, commonly turns into idleness that foments vice and in many habits fertile for crimes and misdeeds, which happen more often on holidays than on workdays. Thus it comes about that the devotion of the faithful, instead of becoming more fervid in the spirit of the Church, is generally converted to carousal, and the holy cult, instead of receiving increase, can be seen in the excessive number of holidays neglected by the cooler Christians or profaned by the more depraved. To this extreme spiritual damage and to that of a baleful idleness and almost universal indolence are joined to the utmost the temporal and the civil, fatally damaging, due to this ruinous suspension, those activities necessary for trade, crafts and farming...; the detriment to the national wealth and prosperity is immense, for it is always

that in the ruling city and the territories and cities of the mainland dominions all mid-week holidays that had not been instituted by ecclesiastical precept, except for one day fixed by each diocese for its patron saint, were to be banned. The holidays not established by ecclesiastical precept were to be moved to Sundays. All bishops were urged to adopt measures to favor understanding and acceptance of the reform³¹.

In his *consulto* of 14th July, 1777, recalling that the bishops had sent out the pastoral letters concerning the holidays “of popular devotion”, Dalle Laste observed that

... the two points of the decree, both the main one regarding the arbitrary and abusive holidays and the secondary one regarding religious observance of the holidays of ecclesiastical obligation, have all been carried out, except for that of the prelate of Crema, which is limited to a brief exhortation about the holidays commanded by the Church and refrains from speaking about the others, saying they are not misused in his diocese ...

made up of individual fortunes, possibly multiplied; nor would it be exaggerated to say that, calculating Sundays, feasts of obligation, those of devotion and the reduction in workdays that follow as a consequence, without counting the frequency of markets, a significant part of the year can be seen to be lost for useful work in town and country, for the exercise of justice and many branches of political government, as well as for the education of the young...”, cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 139, *consulto* of 1st March, 1787, signed with Natale Dalle Laste.

³¹ A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 112. The scholar of the Terraferma, Zuan Battista da Riva, and the consultant Dalle Laste were also asked to examine the pastoral letters emanated by bishops regarding the Venetian decree. As we shall soon see, two years later Dalle Laste commented on the difference in the types of measures taken in the numerous dioceses of the Terraferma. Though not of great interest, Da Riva’s relation, also presented two years later, is worth remembering for the heightened tones with which he sums up what had been deliberated by the Senate in 1775: “...that forever there were to be removed the occasions when, in the guise of piety, various unfortunate situations were born that led men to turn their occupations into the greatest excesses and debauchery. These occasions arose because there were a quantity of days abusively consecrated to arbitrary holidays, the product of agreements among certain guilds, schools and communities in the towns and the countryside, made solemn by the careful attention of priests, and by the weakness of the common people. On these days when all work was banned, a baleful idleness prevailed, which heated up all the passions unfortunately felt by man and which rightful religion, careful upbringing and continual occupation in some task or job always keep away. And so it came to be that work was reduced, the arts did not go forward, the trade that depended on them tended to decline, the idle subject did not increase in wealth and, what is worse, true piety and religion, the fundamental basis of empires and republics, suffered, because under the pretext of honoring God and the saints, and perhaps with the sacrifice of a few minutes to take holy mass, all the rest of the day was passed, not in work, but in idleness and drunkenness”, cf. for the relations of da Riva and Dalle Laste A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 118.

All the other prelates had fully carried out the Senate's decree, recommending observance of the holy days established by the Church and condemning "with doctrine and zeal, some at length and others succinctly, the abuse of the arbitrary holidays of the populace".

While some of the bishops announced an imminent public decree, others had already abolished the holidays of simple popular devotion on their own authority.

Dalle Laste noted, however, that the measures taken were not uniform, in that some bishops had limited themselves to stating that in their diocese only the holy days of obligation would be allowed. But, as he had already noted in previous *consulti*, though Urban VIII's decree had clearly determined the list of these days, afterwards some synods and bishop's decrees had introduced additional ones. The discipline was therefore not uniform, and the *consultore* advised the Senate to abolish all holidays of obligation introduced after the Bull of 1642 from the diocesan calendars³².

On 5th September, 1778, after examining da Riva's and Dalle Laste's reports, the Senate ordered all the representatives of the Terraferma, Istria and Dogado to address the bishops of their diocese in order to praise their work and encourage them to promulgate in a solemn mass what had been decided by the Senate with the prior decree of 1775. The Senate also felt it would be profitable

... to accompany the publication with a wise and pious speech to the populace, to teach it the spiritual and temporal benefits contemplated by this wholesome decree; and also to exhort it to the duties of obedience, so that every sign of former overindulgence may be cancelled, with the added declaration that in transferring the popular celebrations to the days of obligation, there are to be no novelties or alterations to the calendar or to the ecclesiastical rite of holidays ...

And so it would seem that the long-planned reform had finally reached its conclusion. However, the unequal reception met by the decree in the various dioceses of the Terraferma, along with problems that arose in its enforcement in the dominant city itself, forced the Senate to intervene with another decree on 24th November, 1779³³. The efforts made by the Venetian Senate

³² This *consuto* is found in A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 118, attached to the Senate's decree of 5th September, 1778.

³³ A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 121. This decree was prompted by the relation presented by the scholar of the Terraferma, Francesco Battaglia, who on the previous 26th August had been ordered to discover how the reform approved with the *parte* of 26th 1775 was proceeding. Battaglia had observed that its enforcement was still *languid*, especially because of the misunderstanding that had arisen among some magistracies of the Dominant. For that reason the Senate ordered that responsibility for enforcing the decree

from 1772 to 1779 had achieved the seemingly less difficult aim of abolishing the holidays of *simple popular devotion*. It had been prudently decided not to take any deliberations regarding a possible reduction of the holidays of obligation, though this had seemed to be the main objective of the 1772 decree³⁴. Some years later, this excessive prudence was indicated as the main cause of the considerable difficulties encountered in the application of this much augured reform³⁵.

should be given to the old *Giustizieri vecchi* and to the *Provveditori sopra la giustizia vecchia*, respectively, according to the guilds under their authority.

That it was not merely institutional misunderstanding, but rather deep-seated inertia and reluctance to solve the problem, also on the part of a fringe of the ecclesiastical world, is attested by Piero Franceschi. Besides mentioning the decree of 1779 concerning the Dominant, some years later he recalled what happened in the Terraferma following the 1778 measure. Franceschi observed that with the decree of 26th August, 1775 “moreover there were established only the means to impede arbitrary celebrations and move them to Sundays; to this end, the cooperation of the bishops was requested, proposing to them the example of a learned and very effective pastoral letter of Monsignor the Archbishop of Udine, Giovan Girolamo Gradenigo, of illustrious memory. But despite the luminous guidance of this example and the urgings of the government, yet another three years passed before the pastoral letters written by the prelates of the Terraferma and Istria were collected. Nor after that interval of time was the collection complete or the public aims totally satisfied, because it was necessary to have the pastoral of Crema reformulated and to wait for the production of those of Ceneda, Feltre and Pola, as the decree itself states. Moreover, even in the following year, and in the Dominant itself, stronger urgings on the part of the secular *podestà* were needed to make the arm of the magistracy enforce the discipline as ordered, which is shown by the other decree of 24th November, 1779”, cf. A.S.V., *Consultori in iure*, busta 285, *consulto* of 27th October 1790.

³⁴ As we have seen, by transferring the mid-week holidays to the following Sunday.

³⁵ It is interesting to follow Franceschi's thoughts, made explicit on 12th January 1787, in the following phase of the reform, when the Senate decided to face the question of the reduction of the days of obligation. Franceschi did not hesitate to blame the frequent indecision of the governing class for the considerable delay in solving this important aspect of the reform. He felt this indecision to be even more reprehensible considering that the Republic had shown clear jurisdictional leanings on other questions, so much so that it was taken as an example for other Italian and European states: “...the very excellent Senate firmly established with the decree of 17th September, 1772 the rule of also reducing in the state of Veneto the holidays of obligation, choosing to that end the plan that seemed most suitable to its circumstances and likely to lead to a certain and complete effect. However, there being four ways to reduce the holidays proposed to the bishops by the Supreme Pontiff Benedict XIV in 1742, the first being to suppress some holidays outright, the second to move them to Sundays, the third to join several together and the fourth to celebrate them only by hearing the mass, the public judgment preferred the second, which seemed the simplest and most opportune, asking the court in Rome for verification. But a certain singularity of combinations, which led governmental prudence to follow in this important matter the example of the same principles that had guided *Vostra Serenità*’ on other matters of ecclesiastical nature, made various unexpected difficulties arise on the part of Clement VII, though another Pope had judged that moving the weekday holidays to Sundays was one of the most fitting ways to be adopted by the bishops... Although the objectives were easily reached, both following the line of reason

The political fragility of the Venetian state probably persuaded its ruling class of the wisdom of proceeding with extreme caution³⁶ in dealing with a phenomenon which, apart from the highly negative aspects that were pointed out, clearly touched on deep-rooted cultural and religious practices, especially among the rural population that had shown its attachment to its tradition on more than one occasion³⁷. It is likely that the initial measure, carried out only for the so-called *festivities of popular devotion*, was justified

and that of fact, nevertheless the execution remained silent for some time; and it may be that to the delayed appearance of the project relative to the reduction of the obligatory holidays we must sadly attribute the reasons why even the following deliberations of *Vostra Serenità*, of 26th August, 1775, which, with the full support of all the bishops of the state, prescribed moving popular holidays, whether votive or of devotion, to Sundays have not so far achieved the necessary full execution, and for that reason from day to day the inconveniences abolished with such solemnity are reborn”, cf. A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 139, consultation of 12th January, 1786 m.v., co-signed by Natale Dalle Laste.

³⁶ I should like to recall here the wonderful first pages of the sixth chapter of *Confessioni di un Italiano* in which Ippolito Nievo, with an acute eye cast beyond the microcosm of Fratta, incisively recalls the condition of inertia in which the Republic had fallen in the last decades of the 18th century. Referring to the prudent words pronounced in 1780 by Doge Paolo Renier on the occasion of the attempt at reform advocated by Carlo Contarini and Giorgio Pisani, Nievo observed: “Speaking in this way, I believe the Doge showed more cynicism than courage; clichés that as the only remedy for such a disaster had nothing other to propose than inertia and silence. This is what he had to this say, “If we move a stone the house will fall down! do not breath, do not cough for fear it will fall on us”, cf. I. Nievo, *Opere*, a cura di S. Romagnoli, Milan-Naples 1952, p. 216.

³⁷ In the course of the 1600s some rural communities in the province of Vicenza asked the Holy See to be liberated from a presumed excommunication or *interdict* which they felt to be the cause of the many natural calamities that had struck them. This is an evident reference to the *Interdict* of 1606-07, many decades later, cf. on these episodes C. Povolo, *Gaetano Cozzi, ieri e oggi*, in “Annali di storia moderna e contemporanea”, 8 (2002), p. 509; Idem, *Un rapporto difficile e controverso: Paolo Sarpi e il diritto veneto*, in *Ripensando Paolo Sarpi*, ed. by C. Pin, Venice 2006, pp. 395-416. Something similar seems to have come up again in the inquiry of 1772-73. At Castelcovati (Brescia) the feast of the blessing of the countryside was celebrated “...on the 13th of May, but which I, against great obstacles, managed to move to the second Sunday in May. It was on the 13th of May because on that day in the last century the inhabitants of this village were absolved by the pontifical delegate of the censure they feared they had incurred; I cannot say the exact time, because the document indicating it, along with others, was presented by me to our most eminent current bishop, when at the beginning of my ecclesiastical duties he wished to have more details regarding the foundation from the parish priests, whence it remained in his hands with all the others that I was not able to recover”. Again, in the province of Brescia, the curate of Offlaga recalls something similar concerning the various holidays celebrated in his parish: “Nor do I discover other foundation for this introduction except that, since this land had for much time been for five or six [sic] constantly assailed, it applied together with the gentlemen to His Holiness in Rome to have his blessing and so also received the grace to observe the holidays mentioned above...”, cf. *Il culto dei santi e le feste popolari nella Terraferma veneta. L'inchiesta del Senato veneziano, 1772-1773*, ed. by S. Marin, Vicenza 2007, p. 136.

by the awareness that it was possible to move more easily outside the sphere of jurisdiction and control exercised by papal authority, which directly concerned the holy days of obligation. What is more, the holidays of obligations represented the co-penetration, or even the symbiosis, between popular piety and the ecclesiastical pastoral activity efficaciously carried out by the parishes³⁸.

In any case, especially since other states had taken measures in that direction, limiting the holidays of obligation became the aim of the Venetian Senate's gradual and prudent reform. In December 1785 and August 1786 it commissioned the *consultori* to provide the usual information on the state of the reduction of holidays of obligation in the Venetian State which, as was rather regretfully observed, "is almost alone among all Catholic dominions still without such a wise and pious regulation"³⁹.

Thus, after some further hesitation and uncertainty and the necessary approval on the part of the Holy See⁴⁰, on 7th September, 1787 the Venetian Republic also achieved the long-desired reduction of the holidays of obliga-

³⁸ For these aspects, cf. *infra*, pp. 231-233. In this light, it is also possible to perceive some special attention given by the Venetian authorities to the local class of notables that identified itself closely with practices of worship centering on the parish church.

³⁹ A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 135, 4 February 1785 *more veneto*. On this occasion the *Revisore dei brevi* was instructed to examine the papal decrees by which the Holy See had granted a reduction of the days of obligation to the Savoy state and to Austrian Lombardy. The two consultants, Giovan Battista Billesimo and Antonio Bricci, in a report written on 22nd January, 1785, once again underscored the ties that in their opinion linked holidays with laziness and immorality: "it suffices to observe the behavior of the populace on holidays that carry a ban on manual work to see that the repose granted with the object of allowing people to adore the chief mysteries of our religion and worship God in his saints with less distraction, is commonly turned into idleness that foments evil-doing and practices that lead to sins and crimes which unfortunately, as the unwelcome consequence shows, happen more often on holidays than on workdays; and though some, out of need or greed, apply themselves to work, on those days the worship of God, far from being in any way increased, is on the contrary greatly reduced because of a thousand sorts of profanation", cf. *Ibidem*.

⁴⁰ On 1st March, 1787 the Senate, observing that "however its paternal solicitude in the article that concerns the holidays of obligation remained suspended", instructed the ambassador to the Holy See to obtain their reduction, as had been decided in the Savoy state in Austria. The *brevis* granted by the Pope was to be sent to the Patriarch of Venice and then, after the necessary decree of approval by the Republic, be sent to all the dioceses of the states of the Terraferma and of Istria. The Senate took this step following the *consulto* that had been written by Franceschi (but also signed by Dalle Laste) on the preceding 12th January. The two *consultori* observed that "once we calculate Sundays, the holidays of obligation and those of devotion and the reduction of work that follows on those days, a considerable part of the year can be seen to be lost to useful labor in the towns and the countryside, to the exercise of justice and many branches of political government and even to the education of the young", cf. for the decree and the *consulto* and other documentation A.S.V., *Senato, Deliberazioni, Roma Expulsis papalisticis*, filza 139.

tion⁴¹. On that date, the Senate deliberated that the papal breve sent to the Patriarch of Venice should be accepted and, upon approval of the Collegio, registered in the *libri commemoriali* of the Republic.

The new regime, which started from the 1st January, 1788, envisioned the abolition of roughly twenty holidays that had up to then be considered of obligation. The reformers at the *Studio of Padoa* were instructed to communicate to all state book-sellers and printers that they were not to put into almanacs or *lunar calendars*⁴²

the slightest indication of holiday, either with red letters or crosses or stars or any other indication or mark of any sort...: wishing equally abolished any indication of all the others still popular or arbitrary which since the year 1778 have already been moved to Sunday by bishops' pastorals.

This was what the *consultori* had recommended should be done to make sure that the decree would really be respected and enforced. Natale Dalle Laste and Piero Franceschi, well aware of the difficulties that would inevitably arise not so much in making the decree as in its being truly and exactly respected, had also added

what is more, another prohibition is also necessary, so that parish priests and other church rectors, preachers and ecclesiastical superiors of every grade will no longer announce to the populace in any way the observance of the suppressed holidays, and also make it common practice that any invitation or sign of solemnity, function or special celebration is forbidden on those days, whether with altar decorations, or sacred relics, or a more than usual number of lamps and lights, or bell ringing, or music or whatsoever sort of public show of a day different from any other workday⁴³.

These were not insignificant matters. After all, it was a question of profoundly interfering with the devotional substratum that animated not only

⁴¹ A.S.V., *Senato, Deliberazioni, Roma ordinaria*, filza 255.

⁴² The holy days of obligation that remained in force were as follows: "The day of Easter and the following day.

The day of Pentecoste and the following day. The Birthday of our Lord. Of His circumcision. Of the Epiphany. Of the ascension. Of Corpus Domini. Of the purification. Of the annunciation. Of the nativity. Of the conception. Of Sts. Peter and Paul. Of all saints. Of St. Stephen proto-martyr. Of St. Mark. Of only one main patron saint for each diocese having a bishop's seat". The Senate instructed the two magistracies of the *Executori contro la bestemmia* and the Superintendents of monasteries (for the Dominant) along with the rectors of the State of the Terraferma to punish all those who suspended work, except on the set holy days of obligation, cf. A.S.V., *Senato, Deliberazioni, Roma ordinaria*, filza 255.

⁴³ Cf. A.S.V., *Senato, Deliberazioni, Roma ordinaria*, filza 255.

popular piety in a general sense but also religious practices comprising an integral part of parish life. It is highly unlikely that this advice was carried out or respected, at least not to the point of definitively suppressing the re-emergence of the cultural substratum that characterized popular *pietas* and its relation with the supernatural.

What is certain is that as of 1st January, 1788 the world of popular custom, and especially the rural world, was hit with vehemence and unprecedented decision by orders coming from outside, with aims based on a mentality grounded in antithetical cultural and political codes. Thus, over the course of the century the dominant culture seems to have affirmed its new ideological values. Furthermore, at least with the reform that reduced the number of religious holidays, it undoubtedly sanctioned its unmistakable and significant *cultural* detachment from the variegated world of popular culture.

Looking for the origins

As a gloss to the decree emanated on 17th September, 1772, the Senate deliberated to write to all the rectors of the State of the Terraferma and, for the dominant city, to the two magistracies of *Giustizia vecchia* and the *Provveditori alla giustizia vecchia*, to the effect that appropriate information should be collected to show

which and how many days a year, excepting the holidays instituted by ecclesiastical precept, both in the city and in every other place or village normally under your jurisdiction, are observed by the populace with the suspension of daily work, distinguishing the degrees of this customary observance and specifying the origin and institution of each of these holidays⁴⁴.

This marked the start of the great inquiry⁴⁵ which in the following year produced a notable quantity of data regarding the holidays in a consider-

⁴⁴ A.S.V., *Senato, Roma, Expulsis papalisticis*, filza 105. The Senate addressed the representatives of the main towns of the Terraferma, who forwarded the decree to the diocesan administration of their respective dioceses. From there the directives of the Senate were divulged to the vicars forane and to the single parishes.

⁴⁵ The inquiry promoted by the Venetian Senate may in a certain sense constitute an interesting ethnographical variant of the “instruments created to bring nearer phenomena of social life that are unknown or not well-known, so that they become *significant, visible and pregnant* in relation and response to the emergence of pressures for greater knowledge, whose motivations and fields of application change over history in strict relation with the changing of theoretical demands”. This topic has been treated in number 32 of “*La ricerca folklorica*”..., dedicated to *Alle origini della ricerca sul campo. Questionari, guide e istruzioni di viaggio dal XVIII al XX secolo*”. The quote is from the Introduction by S. Puccini (p. 5).

able part of the Venetian state⁴⁶. However, it was certainly not the results of this inquiry that moved the Senate to make the deliberation of 26th August, 1775. As we have already seen, certain problems presented by the Holy See, along with an ingrained reluctance on the part of the Venetian ruling class to intrude in such delicate matters, had convinced the Senate to postpone the reduction of the holy days of obligation, at the same time as it took the drastic measure of abolishing the mid-week holidays of popular devotion. Certainly, the inquiry helped to uncover the vast and variegated constellation of popular piety, still unmistakably vital also thanks to the permissive attitude of the ecclesiastical authorities, who were at the very least reluctant to show determined opposition to religious practices that touched the deepest nerve of the life of the common people, particularly in the countryside⁴⁷. The prudence shown by the Venetian authorities had, therefore, been justified, especially since the data coming from the parishes of the Terraferma revealed not only how widespread and deep-rooted the phenomenon was, but also that its full complexity was difficult to describe in the light of the questions presented in the 1772 decree⁴⁸. Though taken on as a whole the answers given by the parish priests provide a vivid picture of popular piety and information about the great fortune en-

⁴⁶ The surviving data, now housed in the Biblioteca Nazionale Marciana, have been transcribed by Simonetta Marin and published in *Il culto dei santi e le feste popolari...*, with an introductory note which I recommend for further information on the criteria chosen in the transcription and on the characteristics of the documentation, collected in five volumes. Despite the Senate's decree, the information was not gathered in a uniform way, perhaps also due to different attitudes taken by the ecclesiastical authorities. The data of some dioceses can also be found in the archives of local curias. A case in point is Valpolicella, cf. S. Zanolli, *Tradizioni popolari in Valpolicella. Il ciclo dell'anno*, Verona 1990, which contains descriptions of the 1772 inquiry in several parishes of the valley (cf. pp. 39-44).

⁴⁷ In his consultation, drawn up on 14th August, 1773 after examination of "the great volume of documents coming from the Terraferma", Dalle Laste observes that Urbano VIII's Bull of 1642 had been completely ignored: "In vain did Urban VIII in 1642, prompted by the requests of the bishops, the laments of the poor, the scandalous abuses in the cult of saints, with the constitution *Universa* determine the number of holidays of obligation with abstinence from work. In vain did he declare free of the precept of obligation all the others wherever they be observed, and impose on the bishops, in virtue of obedience and under penalty of his indignation, the exact observation of the bull, the uniformity and equality of the holidays and perpetual abstention from decreeing new holidays of obligation because of the insistence of the people and the excessive facility of the bishops themselves. The connivance of diocesan prelates, the industrious insinuation of the guides of souls, the intemperance and material worship of the common people, despite the apostolic provisions, tenaciously kept the observation of old vows and customs and from time to time added new ones", cf. A.S.V., *Consultori in iure*, filza 365.

⁴⁸ Particularly as regards a supposed distinction concerning the "degrees of customary observance", cf. *supra*, pp. 217-218.

joyed by the saints cults in many localities in Friuli and in the Venetian and Lombard Terraferma, they also reveal substantial lack of preparation on the part of their compilers (almost always parish priests or priests who had the care of souls) in grasping the specificity of the phenomenon they being were called on to describe.

For almost all dioceses the data that have come down to us undoubtedly express an effort to grasp the characteristic features and the origins of the holidays in existence at the time. If we exclude some decidedly laconic descriptions, as well as several statements that are frankly implausible, where without hesitation it is reported that there were very few⁴⁹ or even no⁵⁰ holidays other than those of obligation, the declarations of the parish priests sent to Venice by the representatives of the Terraferma clearly show the effort made by their compilers to discover at least the origins of the local holidays⁵¹. There were many parish priests who, in answer to the Senate's request, inspected their registers or searched elsewhere for the origins of the holidays of their parish. Age-old documents, notary deeds, canonic registers, charity registers, diocesan certificates and other material were examined⁵². And when all these were of no help, even transcripts of *vicinie* and other documents conserved in community archives, as well as inscriptions found on altars, gravestones, frescoes and ex-votos were used. This was a search for the *monument* that would attest the beginning of a religious prac-

⁴⁹ The absence of holidays (except for those of obligation) in the town of Bergamo is certainly surprising; cf. *Il culto dei santi e le feste popolari...*, p. 23.

⁵⁰ Statements that often contain observations decidedly hostile to religious practices defined as *festicciolate*, and that on the whole suggest that the writers did not want to grant them any legitimacy whatsoever. For instance, the parish priest of San Daniele (Friuli) specifies that "in this land beside the holidays of obligation common to the whole diocese, we do not observe any day as a day of obligation, either out of age-old custom or public vow or any other universal reason... The old people remember that there were many minor holidays that had to be observed as ones of obligation, and anyone who worked was liable to a certain pecuniary fine, but they were all abolished, without even one remaining", cf. *Il culto dei santi e le feste popolari...*, p. 23. A dubious description which, as in many other cases, deliberately forgets religious practices limited to some neighborhoods of the village centering on small churches or country oratories.

⁵¹ Singular, for example, for abundance of information and learned quotations, is the declaration of the parish priest of Gemona (Friuli), cf. *Il culto dei santi e le feste popolari...*, pp. 322-324.

⁵² See, for example, the report of Nicola Giuseppe Botti, rector of the Church of Allone (Brescia), who also used the church annals to document the origins of some holidays (Saints Gothard and Monica, "instituted in the last century because there were many possessed people"; or else the holiday of the *visitation of the Virgin Mary to Elizabeth*, instituted in the 1600s "for the reason of a half-plague mainly among maidens"), cf. *Il culto dei santi e le feste popolari...*, p. 102.

tice that bound the community (or part of it) to its patron saint. But more often than not, the compiler of the description had to give up and simply resort to the declarations of old people, parish elders who by and large could do no more than reassert the force and legitimacy of the tradition⁵³. As, for instance, the parish priest of Caloneghe (Belluno) observes, after listing the numerous holidays in existence in the parish:

These descriptions could not be found in the tablets where they are registered, and there is no description of the year, or month, or day when they were instituted, but only the reason and cause of their institution can be found, as noted in this one: so that not even the oldest are entirely certain of the time of their institution, but it is reported as always being recalled like this in their memory⁵⁴.

The research is often meticulous, turning, as we shall see, on the definition of the type of holiday (one of simple devotion or of vow). At Siviano d'Iseo, after enumerating the holidays celebrated in his parish, the priest observes with perplexity:

In the four years I have resided here I have always announced them as of pure devotion and no one has contradicted me. Now that on this occasion I have

⁵³ The registration of the community's vow in a notary deed clearly attests a different perception of the custom, a perception that probably derived from a dimension of conflict that could no longer be contained within the confines of the community. The vow was generally accompanied by an obligation, sanctioned by the *convicinia* (that is, by a meeting of the heads of households), for all the member of the community. Any transgression regarding the holiday (considered therefore to all effects a day of obligation) would be punished with a pecuniary fine. There are many examples. For Carrè (Vicenza), where on occasion of the plague of 1630 the community decided to make a vow to the Madonna and to celebrate *in perpetuo* the 21st November with a high mass, cf. M. Scremin, *Peste e devozione a Carrè nel 1630*, in Carrè. *Antologia di scritti e di immagini*, ed. by A. Canale, M. Crosato and M. Dal Santo, Vicenza 1988, pp. 86-88. For Torreselle (Vicenza) cf. C. Povoło, *Valdilonte. La contrada di Geltrude e Matteo*, Vicenza 1996, p. 8 and 40: in 1613 the community, reviving an old custom, decided to celebrate the 25th of every month so that "In His infinite mercy and compassion God may free this village and the property located in it from storms, bad weather and other dangers that can happen every day". Every member of the community was supposed to abstain from work on the 25th of every month and to participate in the customary annual procession of the *rogazioni*. It was also decided to celebrate, by dedicating it to repose, the 6th December every year, the day of St. Nicolas, to whom an altar was dedicated in the parish church. The notary's registration obviously represented a qualitative leap compared to the age-old custom. As attested in the inquiry promoted by the Senate, the vow established by the community in 1613 was still in force in the last decades of the 18th century. The choice of the 25th of every month as a holiday seems to have been a widespread ancient practice, particularly in the area of Vicenza; see for an example, G. Mantese, *San Vito di Leguzzano dalle origini ai nostri giorni*, Vicenza 1959, pp. 130-136, where it is observed that the origin of this holiday dated back to the 15th century.

⁵⁴ Cf. *Il culto dei santi e le feste popolari...*, p. 112.

searched for their foundations, I am told by the elderly that it is very likely that by tradition the feast of St. Rocco is one by vow only for the district of Mazze, which says it was totally free of the plague in the year 1630 (despite the devastation caused in the rest of the town) precisely thanks to the vow made to the saint to celebrate his feast-day every year. However, even after diligent research I have not been able to prove this assertion either in the parish book or in that of the community or in any detail⁵⁵.

Beyond classification

Behind the priests' declarations and their often peremptorily negative judgments it is clearly possible to see not only cultural traits denoting their difficulty in understanding the religious practices described, but also their reluctance to accept forms of piety that were at times characterized by jurisdictional particularities that inevitably came into conflict with the institution of the parish. This is clearly recognizable in the effort made by the priests to define the characteristics of the holidays existing in their parishes. These characteristics could be understood not only through the discovery of a holiday's origins and institution, but also by the degree to which it was observed⁵⁶. Thus, in their descriptions the priests take pains to distinguish between *votive* holidays and those of *semplice devozione*. This is an ambiguous distinction, which the priests tried to clarify both by identifying the precise moment when a collective vow had introduced a holiday⁵⁷ and by attesting its degree of observance by the faithful⁵⁸.

⁵⁵ Cf. *Ibid*, pp. 96-97.

⁵⁶ Questions which, as will be remembered, had been formulated by the Senate when it opened the inquiry in September 1772.

⁵⁷ The parish priest of Branzi (Bergamo) observed: "As regards the origin of these holidays, it is alleged that the Feast of St. Rocco is supposedly votive in every parish, but there is no basis and so it is not possible to say generally speaking whether or not they are all of devotion", cf. *Ibid*, pp. 33-34.

⁵⁸ In his consultation of 14th August, 1773, Dalle Laste, basing himself mainly on the data of the inquiry, tried in vain to define the characteristics of these two types of holiday: "This whole jumble of holidays is divided into 'votive' and 'of simple devotion'. The former have a whole day dedicated to them, the majority of the latter the whole day, and many only half a day. Few are the votive holidays whose foundation can be considered as such, that is, by decisions taken in communities and *vicinie*... More numerous are the votive holidays whose only foundation is time immemorial and popular traditions ... Those called 'of devotion' have only the vague qualification of the age-old custom of ancestors, which is blindly followed, others concern the cult of titular saints, not only of parish churches but also originating in country oratories, others in the patron saints of religious guilds... The votive holidays are commonly celebrated from morning to evening with total abandonment of work, but more rigorously for those decreed by *vicinie*... As for the holidays of devotion, there are many imposed by

The descriptions written by the priests make use of rhetorical features that quite often reveal not only prejudices⁵⁹, omissions⁶⁰, contradictions⁶¹ and hostility⁶², along with in certain cases neutral⁶³ or even benevolent atti-

precept with abstinence from work by decree of bishops or diocese synods... Furthermore, the majority of the holidays of voluntary devotion take up the whole day and suspend work. Nevertheless, in many places people go to work after mass, but not for all ...”, cf. A.S.V., *Consultori in iure*, filza 265.

⁵⁹ At Portobuffolè (Treviso) the priest observed: “On all the above-mentioned days the populace is so easily carried away by its piety, or I should better say ignorance, that however often urged from the altar to go back to their ordinary labors, they abstain more willingly than on holidays of obligation”, cf. *Il culto dei santi e le feste popolari...*, p. 237.

⁶⁰ The statement of the bishop of Crema is surprising: he reveals that besides the feast of the patron saint of the diocese and of each parish, “there are some others in almost every parish of the diocese that are called ‘of devotion’, in which, however, except for the time of the sung mass and vespers, field work or any other that is necessary is attended to”, cf. *Ibid*, p. 193. The omissions are actually far more frequent, if we consider that many descriptions avoid dwelling on the holidays that were specific to single districts or oratories. An example is the description of Vedelago (Treviso), cf. *Ibid*, p. 254.

⁶¹ For example, the description drawn by the priest of Mariano (Bergamo) is decidedly contradictory; it seems to reflect the impossibility of defining religious practices carried on outside of his control: “Of all these holidays I cannot find any monument at all, when they had their origin, or for what reason they were instituted, or by whom, or with what authority, nor have I been able to discover anything even from the oldest parishioners. They only tell me that they have always seen them done, but have no memory of having ever heard from their ancestors when they began. They are all celebrated with a sung mass and vespers. As for daily work, since I wished to introduce it above all on the days more important for farming, which is the work of all these parishioners, I found vigorous opposition and the more I tried to remove these holidays, the more I earned the reputation of hatefulness. None however is said to have originated in a vow. But these people have no scruples about doing some small, light manual work on these days, nor about travelling here and there to attend to their own affairs, so much so that the church is almost always empty because the majority on these holidays also go to their pastimes”, cf. *Ibid*, pp. 62-63.

⁶² At Pognano (Bergamo) the curate refers to *votive or devotional holidays*, in which his faithful abstain from work “but never being able to find their origins, I tried from the beginning of my residence in this curia to convince them to abandon them, so that these days would instead be free rather than devotional, and also prejudicial to their farm work; which, considering my lack of success, because of their deceit, I stopped several years ago to officiate them”, cf. *Ibid*, p. 62.

⁶³ The priest of Chiare (Brescia) describes the holidays by specifying: “If I have not understood wrongly the command, it seems to me that to carry them out well it is good to divide them into four classes. The first is that whose origins are known...The second should be those whose origins cannot be identified except for pious custom introduced little by little... The holidays of these two classes are generally observed by everyone with abstention from work, with the exception of a few people who work in private. The third class comprises those observed by many, while many others do not observe them... The fourth class is those observed by certain classes of workers, but by no one else...”, cf. *Ibid*, cf. pp. 81-82.

tudes⁶⁴, but also and above all a viewpoint that inevitably fails to appreciate cultural bonds that touched the deepest chords of the world of popular custom, which found one of its most significant moments in the holiday rituals. Religious holidays and the rituals connected to them (processions, wakes, prayer) were an intimate part of a *cultural discourse* whose legal valence as custom was characterized by orality, extreme flexibility and mythological components⁶⁵. This was a genuinely *open* juridical system, whose propositions were eminently social⁶⁶; custom was interpreted by the old people (the

⁶⁴ A good example is offered by the fine description furnished by the priest of Collebeato (Brescia), who dwells analytically on the holidays existing in his parish. Decidedly sympathetic is the record of the miracle that occurred on 30th September, 1618: "It is told that the saint appeared as an old man in the public square to the regents of this population, and under the branches of a wide-spreading elm he questioned the afflicted people questioned about their suffering, and answered them that they should celebrate the feast-day of this saint, and disappeared. They honored the saint by making this feast-day with a public vow and the scourge at once ceased...", cf. *Ibid*, pp. 85-86.

⁶⁵ The customs were essentially perceived in their *ideal* order, often recognizing the exterior and more visible aspects, as in the case of the reforms carried out in the second half of the 18th century. As Rouland has stressed, the *ideal* order in reality hides within it the real-life order. This difference between theory and practice is typical of all juridical systems, but which in the case of customs takes on relevance, if we consider that they very rarely *talk about themselves*, being instead collected and interpreted by exponents of the dominant culture (who have the advantage of writing). And even when the world of custom reflects on itself, everything and every relationship is perceived in the realm of myth. See, for example, the judiciary conflict in which Caterina Corradazzo played a leading part, pp. 15-45. In this context, Rouland has shown that "in general, western jurists define tradition as a prolonged usage that is considered binding, insisting on its flexibility and the facility with which it adapts to the evolution of customs. This means mixing the ideal order with that of real life....; tradition is not at all unchangeable, and ... it evolves according to the needs of the social group that has created it. But, ideally, the people who apply it value its function of repetition of the past, ready, in case of necessity, to adapt it to change. In reality, the prime feature of tradition in the ideal order is that of repetition", cf. N. Rouland, *Antropologia giuridica...*, p. 184.

⁶⁶ This is a fundamental concept, if we compare custom to other legal systems and to the specific form of *legal reasoning* of each of them. The topic has been dealt with by the American sociologist Lawrence Friedman. Legal reasoning is an instrument of *specific legitimacy*. It therefore serves to connect decisions taken by organs or institutions endowed with *derived authority* to organs or institutions invested with *primary authority* (which do not need to justify their propositions). For instance, legal reasoning is typical of judges who must motivate their decisions in respect to higher organs. The logical form of the reasoning may be made up of statements *about law* and of statements *about fact*. Systems envisioning decisions made only on the basis of *legal* premises, in reference to norms that are certain, shared and written down, are defined as *closed systems*. An *open system*, on the contrary, is based on statements of fact, and does not draw distinctions between legal premises and those which are not legal. Moreover, these two broad systems can accept or refuse *innovation*, by allowing new legal propositions to come into being. The statements and propositions of a legal system are therefore of prime importance for defining the characteristics of the legal system which they refer to. Friedman distinguishes four types of systems, which correspond to four types of legal rea-

elders): in recurring to myth, they legitimized the binding function of the past and its repetitive function, even in the face of novelties that inevitably emerged⁶⁷.

In the world of religious holidays, customs eminently marked the relationship between man and the divine. They exercised direct control over time, with the aim of legitimizing every legal act produced in the community⁶⁸. The religious holiday transmitted collective rituals connected to the cult of the deceased and to pacts made by prior generations with the world of the divine to preserve every material aspect of daily life⁶⁹. The inquiry carried out in the years 1772-73 clearly shows the call of the past and the close bond linking the living with their ancestors. The attempts made by the priests to

soning. A system can be *sacred* and refer to a holy text; in this case, it is a closed system that obviously refuses innovation. In a certain sense, classic *common law* also belonged to this type of system. Into the second type fall systems that we may define as *legal science systems*, that is, systems that consider law as a science; evidently they are closed systems, but ones which accept innovation (in as much as law is a science, and like all sciences it evolves). This type has found fortune in the countries of continental Europe, first with common law and then with codes. The third type is represented by systems that are *open*, but refuse innovation, such as those based on custom, in which legal reasoning is constituted by statements of fact. The judges, who are not professional, draw on custom, common sense and morality. Legal norms, in customary systems, are in reality social and political norms. Such *open* systems rely almost exclusively on orality and feel that law is in any case pre-existent and, often, founded by God. The last type, *open* systems that explicitly welcome innovation are, for example, revolutionary legal systems. In closed systems that refuse or consider innovation to be problematic, changes are masked by *legalism* or by *legal fiction*. It has seemed to me important to dwell on this distinction in order to clarify the *cultural* dimensions of custom and, conversely, of the popular piety that is an integral part of it. As we have already said, it should be added that the refusal (as in the case of custom) or the welcoming of innovation belongs to the *ideal order*, because obviously no system can refuse to accept innovation and to be changed in consequence. On these questions, cf. L. Friedman, *Il sistema giuridico nella prospettiva delle scienze sociali*, Bologna 1978 (New York 1975), pp. 389-408.

⁶⁷ Rouland observes: To make the ideal order actual in the present and have it triumph over the untidiness of real life, the institution charged with speaking the law proceeds according to a technique called accumulation of the sources. No new source can replace an old one: it is added to the prior ones, without destroying them”, cf. N. Rouland, *Antropologia giuridica...*, p. 185. Both for Friedman’s and for Rouland’s observations, see the case of Friuli, treated on pp. 15-45

⁶⁸ Cf. N. Rouland, *Antropologia giuridica...*, pp. 186-187.

⁶⁹ “In touch with nature and its manifestations, country people experience in the cycle of the seasons the ongoing struggle between the benevolent forces that give life, or grace, and the malevolent forces that bring death, or adversity; they fear the oppression of misfortune, hunger, and illness. Against misfortune, the plague, famine, flood and drought, they turn for protection to the Madonna and the saints, according to their way of understanding the religious act and worship, very often without any mediation by the Church. This is a piety not without aspects of a kind of magic linked to archaic and above all agricultural rituals of pagan origin”, cf. D. Coltro, *L'altra cultura. Sillabario della tradizione orale veneta*, Verona 1998, p. 143.

define the votive or devotional character of the holiday seems to fade into the background when compared with the cohesive force of myth created by the old miracles, consolidated cults and religious practices that invigorated the most intimate life of the community⁷⁰.

In the district of Mel, where it was the village elders themselves who provided information about which days were devoted to the cult of saints, the holidays were almost exclusively described as *di devozione*. At Col, the sworn witness observed that the holidays “are observed without any sort of obligation, though instituted by our forefathers, and no memory of them still exists”. In the *rule* of Corve “by usage and age-old custom left by its predecessors observes for worship the days of the saints listed below, nor is its origin known”.

But the bond between past and present is above all attested in these villages by the personal nature of the descriptions made by the elders. The miracle and the vow invoked by their ancestors resonate directly on all the members of the community. The dimension of time seems univocal, without any interruptions to break the link to established ancestral pacts:

17th January St. Anthony Abbot, many take a holiday for devotion to this saint, praying the Lord to free us from fires, because once long ago many houses in this village were burnt to ashes...

14th called St. Valentine the Priest, many take a holiday for devotion to this saint, praying the Lord to free us from epilepsy ...

13th June St. Anthony of Padua, many take a holiday for devotion to this saint, praying the Lord to free us from misfortune...⁷¹

Obviously, the picture painted by the inquiry is extremely various and lively. More recently instituted holidays, sometimes taken up again after a long silence, are found alongside age-old ones whose origin seems lost in the shadows of time, as well saints’ cults by now in disuse⁷².

⁷⁰ The declaration of the priest of Madrisio di Varmo (Friuli) is illustrative: “The origin and institution are not found except in popular tradition: the old people say they have heard from their fathers, and others, the institution of observance for misfortunes suffered and favors granted on the days of these saints; for which reason, to have them as protectors against storms and the death and illness of persons and herds, and also favorable advocates for spiritual and temporal needs, they started these holidays, in that manner and even at present are being observed”, cf. *Il culto dei santi e le feste popolari...*, p. 342.

⁷¹ Statement of the sworn witnesses of Villa del Contado di Mel, cf. *Ibid*, p. 245.

⁷² In Pagliaro (Bergamo) some saints were celebrated, “and since with the passing of the years it was not known if this observance was by vow or only of devotion the year 1630, on 16th August so as to be freed from contagion the vow was made to observe them by abstaining again from manual work and finally in the year 1679 on the day of 26th November the vow was renewed, and another vow was added to observe the days of the Presentation of the

Custom and law

Though it is very difficult to draw a coherent picture from the 1772-73 inquiry, based as it was on such different geographical, economic and social realities, what emerges is an overall sensation that in many contexts the background of custom represented by religious holidays and the cult of saints still exercised a highly significant force of cohesion. This sensation is even more relevant if we consider that in the course of the 17th – 18th centuries the dimension of the sacred and of pious rituals had grown enormously, conferring prestige, immunity and jurisdictional privileges on the secular and ecclesiastical authorities who governed them⁷³. The fragmentation of devotional practices over the territory and even in parish buildings, clearly seen in the magnificence of side altars and the presence of ex-votos⁷⁴, could lead us to associate this revival of piety with the fortune enjoyed by the popular religious holidays. In some cases, the Senate's inquiry would seem to confirm this tendency, which in a certain sense contrasted with the effort being made by the ecclesiastical authorities to affirm uniformity in parish religious practices. These were to center on the jurisdictional prerogatives of the parish priest and the preeminence of the parish building, and especially of its high altar⁷⁵. However, devotional practices and rites grew and were fed by a network of conflicts whose protagonists were family groups, secular associations, communities and parishes. As Norbert Rouland has af-

Blessed Virgin and the day of St. Anthony of Padua, not only to be freed from the plague, but also from sudden death, wars, famines, storms, and to have the grace of a Christian life", cf. *Ibid.*, p. 48.

⁷³ As is well attested in the Piedmont dioceses studied by A. Torre in *Il consumo di devozioni. Religione e comunità nelle campagne dell'Ancien Régime*, Venice 1995.

⁷⁴ In the course of the inquiry many parish priests noted the close relationship between side altars and the cult of saints, also mentioning the presence of ex-votos. Noteworthy is the example of Clusone, cf. *Il culto dei santi e le feste popolari*, pp. 46-47. The example pointed out by G. Dellai in the parish church of Schiavon (Vicenza) is curious: here a new side altar was built in honor of St. Liberalis. During the pastoral visit of 1658 the bishop noted that at the base of the painting representing the saint, there was an altar reaching almost the center of the church, "obstructing in its area the regular positioning of pews with consequent problems of space for the church and of *dangerous promiscuity* (as it was defined) between men and women", cf. G. Dellai, *Schiavon e Longa. Storia di due comunità e di un territorio nell'alta pianura vicentina*, Vicenza 1994, p.101.

⁷⁵ As has been noted, by Edward Muir, the bishops were aiming at the elimination of semi-private cults and the exhibition of ex-votos (for this, see cf. *infra*, pp. 218-220) and putting the use of lateral altars under control: "Bishops had to make these groups responsible for maintaining a part of the church without allowing them to destroy the public character of the parish and its forms of worship in what was often a delicate balancing of private and collective interests", cf. E. Muir, *Ritual in early modern Europe*, Cambridge 1997, p. 212.

firmed, this network of conflicts belonged in full to the *live legal order* that characterized the world of custom in its most specific values⁷⁶.

Despite their territorial and devotional fragmentation⁷⁷, as well as the rites they were associated with⁷⁸, the wide range of holidays represented by the 1772-73 inquiry seem to affirm above all a strong mythic tension aimed at control over time and death. In the end, the variegated cult of saints, so often described with negative overtones by the parish priests, goes back to the *ideal order* which in the world of custom is tied to the past, the cult of forebears and the ancestral pacts they established with the divine. This was an order intended to affirm the force of tradition and the appeal of myth, conceived of as aggregating forces that could absorb conflicts and annul centrifugal tendencies.

Work and prayer

On holidays, religious practices and rites could envision the partial or total suspension of work, as well as moments of games involving the community⁷⁹.

There was a combination of factors potentially disruptive in respect to the symbolic meanings underlying the holidays, which were explicitly linked to the dimension of time and myth⁸⁰. In fact, by directly involving the dimen-

⁷⁶ “Giving value to harmony and balance takes on meaning only if seen in relation to the tensions and conflicts of the real world: traditional societies are not exempt from them, even if they try to prevent or regulate them in a way that makes them less traumatic for the society. In a similar fashion, social groups, which also need to be complementary, are the bearers of specific values, which may be contradictory. Generally one value predominates but others persist, emphasized only by certain groups or expressed in veiled forms. The social control exercised by law in the real life order has the aim of managing conflicts that may arise from this state of fact, either by restoring the initial order or by creating a new one, as far as possible while respecting the ideal order”, cf. N. Rouland, *Antropologia giuridica...*, p. 186.

⁷⁷ In the sense that many holidays were characteristic of some districts or confraternities.

⁷⁸ In a large number of holidays, however, the parish priests noted the absence of specific religious rites.

⁷⁹ Regularly described, often without the least spirit of indulgence, by many priests in the inquiry of 1772-73, cf. *infra*, pp. 232-233. On these aspects, see J. L. Flandrin, *Amori contadini*, Milan 1980 (Paris 1975), pp. 89-92. Flandrin observes: “To pass from association with members of one’s own group, male or female, to a personal relationship with an individual of the opposite sex, it was necessary to have time, the example and support of peers and the help of rituals”, (p. 90).

⁸⁰ Legal ethnology and anthropology represent two of the most suitable instruments for investigating historical events in which conflicts are born or catalyzed on holidays or during the rites connected with them. A trial that started in 1769 on authorization of the Council of

sion of time, the holidays also answered a deep-felt need of the populace. As has been noted by Edward Muir, “The rhythms of work themselves created a sense of periodicity that demanded a respite from labor, restrictive rules, and habitual antagonisms.”⁸¹. Thus, both the mythic dimension and the duties and troubles of daily life seem contradictorily linked to the celebration of holidays⁸².

Upon opening the great inquiry of 1772, the Venetian Senate had explicitly stressed that it was to be informed of how many and which days were celebrated in each parish, “with the suspension of daily labors”⁸³. This request responded to the fundamental need felt by the Republic, like other governments, to institute a reform that would lead to the suppression of many holidays that had been celebrated until then. The parish priests’ replies, though varied and not without prejudices⁸⁴, present an extremely interesting cross-

Ten for some *disturbances* that took place in the community of Zugliano in the province of Vicenza is telling in this context. The parish chaplain, supported by others who were contrary to the appointment of the new vicar steward (who was sent to assist the sick, elderly priest), set himself against the *novelties* introduced by the vicar regarding parish processions. In fact, the new vicar had decided that the old custom of having the women walk before the men in the processions leaving the church should be abolished. “The novelty of the abrogation, though good in itself, did not satisfy the majority of the villagers and so provided the occasion for the priest under investigation, who was not well-disposed in spirit towards Giordani [the new vicar steward], as is reasonably deduced by his motivated exclusion, to foment the populace with open declamations to go against it, so as to revive the old custom, cf. A.S.V., *Consiglio dei dieci, Processi criminali, Vicenza*, busta 19, cc. 55-58.

⁸¹ E. Muir, *Ritual...*, p. 76.

⁸² John Bossy has noted that in the 17th century the parish community’s very sense of time still represented - “an exceptional, temporary and precarious sentiment, possibly connected to rare and very definite moments of ritual petition or festivity, which constituted a parenthesis in the prose of daily life, and perhaps helped to cope with a life made up of otherwise unbearable tensions”, cf. J. Bossy, *Dalla comunità all’individuo. Per una storia sociale dei sacramenti nell’Europa moderna*, Turin 1998, p. 58. These tensions are made very clear, for example, in the deliberation taken by the community of Malo (Vicenza) in 1575. Complaining how few people, “nay, a tiny number”, participated in the annual rite of rogations in the month of May, the community council intervened against those who worked during the holiday “manually, nay with their animals, carrying their field things and possessions, a truly opprobrious thing against the will and institution of the Holy Church, and that are very harmful for the fruits that in the country are found, for the storms and floods of water that happen. And all these things for the sins committed by the men of the world, seeing that the holidays have been instituted by the holy Church”, cf. Vicenza, Biblioteca civica Bertoliana, *Archivio Torre*, busta 806, c. 611. As can be seen, what was stigmatized was work performed outside the domestic sphere. For many 18th century examples, see *Ibid*, busta 239.

⁸³ Cf. *supra*, p. 217.

⁸⁴ Cf. *infra*, pp. 230-231. In more than one case it is the very vagueness of the description that suggests the prejudice it stems from. At Corteno (Brescia), the priest writes: “If God willed that at least they observed the other holidays [of obligation], solemnities and Sundays,

section. Taken together, these descriptions attest that in many parishes observation of religious holidays regarded both the celebration of fundamental religious rites and abstention from work. In many descriptions, the latter aspect is seen from an *external* perspective, which openly aimed at stressing the supposed extraneousness of the holiday ritual from the reality of the parish. In this light, the declaration of the archpriest of Cocaglio nel Bresciano is emblematic:

Nor do we learn from anyone why they do it, but they do it because it is the custom to sing mass and vespers on these holidays. But it seems to me that they will be forgotten if on those days mass and vespers are no longer sung. In fact, on these three holidays, after the holy offices everyone works without any qualms, because every year the populace is reminded by the parish priest that they can work. On the 22nd of November there is a holiday in honor of Sts. Maurice and Hyacinth, patrons of this parish, which has the whole body of both of them, and every year their feast-day is celebrated with an office and a double mass and with music and great pomp, and the populace would let itself be disemboweled rather than work on that day, so great is the piety of this village for these patron saints and so miraculous towards Cocaglio⁸⁵.

The impression we get from the inquiry is that the various types of description are marked more by a widespread hostility towards the population's suspension of work than by local differences. Like his colleague from the province of Brescia, the curate of Ciserano in the province of Bergamo also makes his hostility to popular holidays explicit, but his testimony cannot hide, despite everything, the inclination of the country people to suspend work in the fields:

It is a doubtless thing that on those days the sacraments are not attended, or the Church visited, and very few are those who participate in the public functions. These holidays are rather considered by the majority as the freest possible days and good for taking trips, amusements in the piazzas and what is worse passing them in taverns. Among the populace it is not even universal to suspend work in the fields, some abstain from it while others on the contrary busy themselves in it and not rarely joining in together; this happens more easily on Fridays in May, since in that season the jobs to be done are many and more pressing⁸⁶.

which are profaned by manual or even lower sorts of work, despite the sermons and Christian doctrines against such abuses", cf. *Il culto dei santi e le feste popolari...*, p.77. Or, as in Lavone (Brescia), where of certain holidays it is said "the mass is sung, and whoever wants to work works", cf. *Ibid*, p. 133.

⁸⁵ Cf. *Ibid*, p. 95.

⁸⁶ Cf. *Ibid*, p. 64.

In fact, work and religious practices seem to alternate, though their intensity varied from one diocese to another and from one place to another. On the whole, the descriptions suggest that popular piety was in harmony with local customs and that the family and community dimensions of a holiday meant that it could not easily be grasped by external cultural values aiming to describe its essential features.

The notion of *obligation* is reinterpreted in the countryside by a particular vision of the divine and in the light of specific material needs⁸⁷. This emerges even more clearly when a priest's description seems to adhere very closely to local customary values. In the fine description written by the curate of Comune Novo (Bergamo), the five community holidays are recounted with a degree of participation that suggests a perception very *near* to the cultural values of his flock

it is a holiday customary for these people from far-off times, but since for some years it had fallen into disuse and was not celebrated, by unanimous consent of the populace it has newly come into use in the last few years as a holiday of devotion and not of vow. On this day the people commonly abstain from mechanical work but everyone who wants to work is free to do so. On this day the mass and vespers are sung with the participation of the populace. The origin of this feast-day is piety towards the saint, so that he will defend the community from epidemics, both for the bodies of humans and of the animals. Since in the years when the saint's day was not celebrated they took ill and died, with grave damage to their owners, so the populace once again restored it to use, and in the first year it was celebrated with some show of majesty, but now a sense of quietness without ostentation of solemnity is taking place⁸⁸.

Many of the descriptions from the state of Terraferma indicate that abstinence from work on holidays was very common, but this was mainly applied to the more demanding work. It is certain that both men and women⁸⁹ worked inside the home, but without performing heavy jobs, and this explains how the priests, based on their prejudices or on the suspicion aroused by their

⁸⁷ This aspect is even more meaningful if we consider that the reform instituted of 1772 aimed at combating both widespread superstitious practices and ingrained idleness, harmful to agriculture and to trade; cf. on this *supra*, pp. 205-207.

⁸⁸ Cf. *Ibid.*, pp. 55-56.

⁸⁹ There are also many indications concerning the work of women. At Pozzuolo (Friuli), the populace would hear mass and take part in other religious rites "and in the day to abstain from some of the heavier manual jobs, such as among peasants lifting, digging ditches, trees, and employing it mainly in other works, as they say, less fatiguing, less heavy and important. This as concerns the men. As for the women, they abstain from spinning, but they do needlework from morning to eve, and do many other things less tiring for them, and in their opinion compatible with the observance of the holidays they call of devotion", cf. *Ibid.*, p. 278.

jurisdictional prerogatives, can contradictorily highlight both the lack of respect for the precept (not to work) and the popular penchant towards idleness and amusement.

Some of the most interesting descriptions come from Friuli. In this region, many priests testify to the specificity of the rural holiday as concerns work⁹⁰. With diverse nuances and tones, the priests of Chiopris, Tarcento and Cussignacco attest the specific dimension of the rural *precept*:

... Almost everyone on those days does some light manual work, and when asked why they observe the holidays some say for devotion, others for vow. They themselves are in doubt as to whether it is a sin not to observe them ...[Chiopris]

... in my opinion, however, I call them only *divozione*, since apart from the patron saints of each village, on all the others light work is done, or chopping wood or others similar to this ...[Tarcento]

...with participating on these days, at least most of the inhabitants, in the holy mass and with the suspension of work, but only within the confines of their land, it being held permissible to work with animals anywhere outside this... [Cussignacco]⁹¹

The more precise and detailed descriptions given in Friuli illustrate a dimension of the rural holiday that was also present in the other dioceses of the Terraferma, though with various differences and nuances.

Interpreters of cultures

Rites of devotion and absorption in domestic work suggest the special significance of the popular rural holiday in the second half of the 18th century. It is above all in this period that the world of custom characterized by religious holidays is invested from above or, better, from outside, with cultural and political instances that carry new meanings. As we have already noted, the parish priests, whose pastoral activity made them an integral part of

⁹⁰ The consultant Natale Dalle Laste, commenting on the data of the inquiry, summed up the specificity of Friuli as follows: "What is more, most of the holidays of voluntary devotion take up the whole day and suspend work. Nevertheless, in many places people go from mass to work; but not in all, in this it is the reputation of the saints that decides and on some work is admissible and on others no: this subtle distinction is current in Friuli, where the men can cut grass and make hay, but not plow or dig, and women can sew but not spin", cf. A.S.V., *Consultori in iure*, filza 265, consulto del 14 agosto 1773.

⁹¹ Cf. *Il culto dei santi e le feste popolari...*, pp. 270, 271, 281.

this world of custom, show a critical and mistrustful, if not actually hostile, attitude. In more than one case they seem to take on the role of veritable spokesmen for the instances coming from outside⁹². The data collected in the 1772-73 inquiry offer very eloquent testimony in this regard. There are many descriptions which do not even try to sound prudent or to veil their opposition. They convey in no uncertain terms open criticism of popular piety, which is viewed essentially as the fruit of ignorance and superstition that can lead only to disturbances.

Though it may be true, as we have already observed, that the diffidence and hostility to the religious rituals connected to popular holidays might have originated in the parish priests' concern to reaffirm their own jurisdictional authority, it is also true that the inquiry of 1772-73 allows a more widespread cultural and religious phenomenon to surface, of which many of the priests were an expression. This entailed not only determined opposition to the traditional manifestations of jubilation for the cult of saints, but also the intent to reform their most detrimental aspects by imposing forms of piety decidedly constrained within the channel of the parish.

⁹² As we have already observed, the inquiry was part of the climate of reform motivated by new interest in the economy and in trade (cf. G. Tabacco, *Andrea Tron...*, pp. 177 and ff.), but it also reflected new concerns of a religious and devotional nature. As has been observed by Mario Rosa, in the course of the 18th century there was a growing tendency to spiritualize religion, "both aimed at the formation of a new type of priest, especially the parish priest, through improvement of his material conditions and of his studies in the seminaries that were increased and improved, and by tending to spread in the wake of Muratori's '*regolata devozione*', but with typical enlightenment features, an 'enlightened' piety among the people". The real problem in the countryside was the reform of popular piety, in which "the clash seems stronger, both because of age-old historical sedimentation and the state of neglect that the work of the reformers encountered, and because of what might be called the 'competition' of a parallel effort on the part of religious Orders and congregations, often created with the chief aim of re-conquering or even conquering local populations", cf. M. Rosa, *Politica e religione nel '700 europeo*, Florence 1974, pp. 27-28. Jansenism and 'parishionism' was a cultural and religious phenomenon that took on considerable importance for the efforts made by political and ecclesiastical authorities to reform certain aspects of popular devotion. As Marino Berengo observed, among the Veneto lower clergy there circulated a spirit explicitly influenced by Jansenist beliefs. This was an inclination more than a really declared belief. Jansenist doctrine "which had attenuated and fought the power of the Pope over the bishops and of the latter over parish priests, which had remembered and loved the old evangelical union between the faithful and their pastor, which was incompatible with hierarchies and degrees, cleansed of the theological content that the controversialists of Pavia were infused with, had a profound echo among the lower clergy. And the rigor that opposed the love of luxury and of pleasure that corrupted the towns, the instinctive aversion to an overly facile faith in salvation, the constant reminder of the poverty and the fragility of man, was in accordance with and at times even one with, the impatience many 18th -century clergymen felt with the proud and static immobility of the absolute governments", cf. M. Berengo, *La società veneta...*, pp. 229-231.

In this sense, then, the cultural and political climate surrounding the reform of religious holidays was substantially homogeneous in its hostility to the world of custom, while, especially in the countryside, this world showed stubborn resistance to being reformed or renewed according to external cultural and ideological codes. It is in these terms that the scathing judgments made by many priests in their descriptions of a religious phenomenon shown to be widespread all over the state of Terraferma are clearly understandable.

Giacomo Antonio Rodari, parish priest of Paspardo in the area of Brescia, showed little mercy towards the attitude of his parishioners towards the religious holidays they observed:

in my parish, besides the holidays of ecclesiastical Roman precept, the following are also observed, or better mangled, with suspension of daily labors, in this way: the community sings the first mass quite early, after which so as not to leave souls without bread on a holiday I have introduced at least half an hour of catechism, in general the men and women after this celebrate the mass of the reverend chaplains, and in the evening vespers is celebrated without song and a *terzetto* of rosary. The rest of the day is spent by some in amusements, by others in taverns, by others in lovemaking, and by others who travel here and there for family affairs, and there are many who come to visit the church⁹³.

The evident mixture of the sacred and the profane that aroused this priest's indignation was shown by the inquiry to be a very widespread attitude⁹⁴.

⁹³ Cf. *Il culto dei santi e le feste popolari...*, p. 81.

⁹⁴ Martine Segalen observes that it seems undeniable "that the holidays present a mixture of elements and that in them the sacred and sacralizing aspect is always associated with that of amusement. In reality, ritual and festivity merge, without however being completely identical: they are fields that intersect, characterized by a spatio-temporal definition". Moreover, Segalen reports the definition of holiday given by François-André Isambert. This complex definition evidences the symbolic nature of the holiday and explains to a certain degree the difficulty involved in any attempt to describe an event that holds apparently contradictory aspects: "The holiday is first of all and indisputably a collective act, a feature that must be emphasized. It is surrounded by representations of material or mental images which have the function of accompanying its active component. The same can be said for the various material objects, holy vestments and tabernacles that create the scene of the holiday. Secondly, the holiday is if not a total at least a complex activity, in that it sets in motion various registers of social life. From this point of view, the idea of holiday goes beyond that of rite and even that of ceremony, a sequence of rites. Finally, the ritual action is symbolical, in the sense that it evokes a being, an event, a collectivity ... The specific property of the holiday is symbolization. Its symbolic nature implies another characteristic, which is, however, only one aspect of the symbol: for a symbol to be recognizable, it must be relatively fixed. The holiday assumes obligatory ritual forms, though the rite does not necessarily take on a religious valence or the

The irruption of private life

Superstition and profanation are two terms that seem contradictorily linked in some descriptions to give a negative connotation to popular piety⁹⁵. Actually, the popular rural festivities clearly represented for young people not only and not so much the opportunity to give off steam⁹⁶ as the concrete possibility to apply the forms of derision and control that comprised some of the most important features of the life of country people. Social practices associated with both single and married people were part of the life of the community and its religious holidays, and so were inextricably linked to devotional rites⁹⁷.

binding character of a moral value”, cf. M. Segalen, *Riti e rituali contemporanei*, Bologna 2002 (Paris 1998), p. 84.

⁹⁵ There are many examples. In Venzone (Friuli) the parish priest dwelt on the feast of the patron saint of the church which had, by request of the community, been turned into a holiday of obligation, despite his opposition. It was a holiday that “has produced nothing except a hundred and a thousand troubles and can be said to be an anniversary of more and more sins”. And in the wake of his indignation, he did not hesitate to describe the popular holidays observed in his parish. In San Odorico (Friuli), the suspension of heavy jobs on festivities (*festucce*) was the fruit of “peasant and perhaps superstitious thinking”. At Zugliano, again in Friuli, the young people were negatively judged by the priest. Some holidays “can be said to be more the festivity of sweethearts, and little does it avail the priest to make an effort to discourage these circumstances in certain people”, cf. respectively in *Il culto dei santi e le feste popolari...*, pp. 285, 328, 237.

⁹⁶ Interesting is the episode reported by G. Dellai in his study on the communities of the Vicenza area. In 1750 it was the community of Schiavon itself that requested the parish priest to prevent certain ‘scandalous’ behaviors that went on during the holiday processions, in the shadow of the village campanile: “To take away the serious scandal that leads to the necessary encounter of men with women in the route our processions take in our street outside the parish church”, the men of the community entreat the priest to “allow the route of these processions on the land called the Castellaro, which is part of the *benefizio* of the church...on the other hand obliging the encounter of those governors to ensure the two parts of the town hall the path of these processions on the said Castellaro with gates and grates for necessary regard and right reservation”, cf. G. Dellai, *Schiavon e Longa...*, p. 127.

⁹⁷ A sort of mingling often reported by the priests is the presence of peasants in taverns and pubs (see for example *supra*, p. 229). The priests found loyal allies among the local notables in this criticism. An interesting example was reported in 1764 in the small Vicentine community of Torreselle. The local ‘governors’ had received the news that “some outsiders are about to come and live in this village, with the deliberate intention to set up a tavern here. The which tavern is considered not only superfluous in this village, since there are no main roads that create a need for passing travelers, but for this reason it would become an imminent occasion for innumerable iniquities and bad deeds and the refuge of unwholesome people, with the clear danger that besides infinite wickedness there would also occur more than one murder, as we have unfortunately had the example of in former times, when there was a tavern”. The heads of family thus deliberated to oppose themselves to this initiative; see on this episode C. Povolo, *Valdilonte...*, p. 8.

*Rites of disclosure, rites of mockery, vigils*⁹⁸, opposition to outside intrusion: these are all social practices intimately tied to the religious holidays. In the second half of the 18th century they encounter strong opposition on the part of both ecclesiastical and secular authorities⁹⁹. The latter, while not intervening directly against the *charivari*¹⁰⁰ or other practices of mockery and control, over the course of the 18th century had established a dimension of criminal justice that was more severe in both procedures and punishments¹⁰¹. The intervention of this new *punitive* justice allowed rites of mockery, which very often (when there was more intolerance) led to violence, to emerge and reveal their full ethnographic significance to the historian¹⁰². But the rites associated with the world of youth encountered strong oppo-

⁹⁸ On vigils (or *filò*) and the sphere of youth, see the essay by Hans Medick, *Village Spinning Bees: Sexual Culture and Free Time among Rural Youth in Early Modern Germany*, in *Interest and Emotion. Essays on the Study of Family and Kinship*, Cambridge 1984, pp. 317-339. Medick notes in his conclusion that work, free time and socializing were closely connected, with the economy in the 18th century, as were culture and morality. It is difficult to separate each aspect from the others, and it is equally advisable not to idealize this world: "Instead of a romanticization and idealization of the past, one should pause to consider that sensuality boisterousness, and serenity in popular cultural life always went together with a rigorous and violent social-moral control and – what is perhaps more important – with permanent insecurity of life and with want", (p. 336). On vigils, see also J. L. Flandrin, *Amori contadini...*, pp. 97-100. With the advent of folklore the peasant world is idealized and mythicized. But in a certain sense, the reform of 1772-1787 itself, by negatively indicating both the playful and the superstitious moments of religious holidays, performed a first (instrumental) de-contextualization of rural society in respect to its culture and its ties to the economy.

⁹⁹ And as we shall see, also on the part of a certain sector of the local notables, see *infra*, pp. 239-244.

¹⁰⁰ *Charivari* or mornings, by which groups of young people used shouting and mockery against marriages between widowed persons or situations morally condemned by the community. There is a very large bibliography on the subject; here I limit myself to refer to N. Schindler, *I tutori del disordine: rituali della cultura giovanile agli inizi dell'età moderna*, in *Storia dei giovani dall'antichità all'età moderna*, ed. by G. Levi, J. Schmitt, Bari 1994, pp. 316-317.

¹⁰¹ Cf. for some observations on the relationship between public justice and the sacrificial rites held in church, Bossy, *Dalla comunità...*, p. 177.

¹⁰² As regards the Venetian Republic, see *L'amministrazione della giustizia penale nella Repubblica di Venezia*, vol. 2, ed. by G. Chioldi and C. Povolo, Verona 2004; C. Povolo, *Dall'ordine della pace all'ordine pubblico. Uno sguardo da Venezia e il suo stato territoriale (secoli XVI-XVIII)*, in *Processo e difesa penale in età moderna. Venezia e il suo stato territoriale*, ed. by C. Povolo, Bologna 2007, pp. 15-107. From the end of the 17th century, for example, all crimes of murder and injury were put under the direct control of the central authorities. More in general on the new dimension of punitive justice, see M. Foucault, *Sorvegliare e punire*, Turin 1976 (Paris 1975). For an ethnographic description of the conflicts of the young, see C. Povolo, *Confini violati. Rappresentazioni processuali dei conflitti giovanili nel mondo rurale veneto dell'Ottocento*, in *La vite e il vino Storia e diritto*, ed. by M. Da Passano, A. Mattone, F. Mele, P. F. Simbula, Rome 2000, vol. II, pp. 1071-1111.

sition, thanks above all to the emergence of the dimension of the *private*, identified by Daniel Fabre as the main antagonist of custom. Claiming “an absence of transparency in private life”, the propertied middle class was now inclined to report to public authorities any threat, even if only ritual, to its family or personal sphere¹⁰³. However, in the second half of the 18th century the most determined adversary of the bands of youths and the excesses of their rituals was the curate himself, who in defense of public and family peace pointed a negative finger at the disturbances they caused¹⁰⁴. There are many examples that can be found in 18th century society of the conflicts created by tensions involving *culture*, even more than religion or public order. What is certain is that it is in the legal sphere the question of holidays took on explosive, conflictual valences. Criminal proceedings reveal that the heated confrontation between parish priest and groups of youths could go well beyond the confines of the parish to involve Venice’s highest magistracy. In the parish of Rovetta, situated in Val Seriana (Bergamo), towards the end of the century the local provost, don Alessandro Ferrari, presented a detailed denunciation against a young smith of the village, Giuseppe Pedrocchi. The man is accused in no uncertain terms of being

disturber of the peace of the inhabitants of Rovetta, because a seducer of innocent honesty, an adulterer, a deflowerer and guilty of attempted violent abortion, abuser of arms and false slanderer, irreligious, disturber of holy offices and spreader of sayings contrary to public morality.

This was enough to convince the Council of Ten to order a trial, delegating it to the court of Bergamo with authority to proceed with its own inquisitorial rite. The abundant testimony given by witnesses in the course of the inquest made to validate the heavy accusations made against the young man by the village provost soon showed themselves to be contradictory. If anything, it reveals a certain hostility towards the rebellious and intolerant attitude of the new dimension of private life that seemed to be increasingly prevalent. This attitude was especially manifest in certain religious rituals, in which by then a different perception of the relationship between the public sphere and individual behavior felt any intromission of exuberant or goliardic behavior to be intolerable.

Giuseppe Pedrocchi had repeatedly shown that he did not want to obey the new state of things. But some of the accusations against him are extremely

¹⁰³ D. Fabre, *Famiglie. Il privato contro la consuetudine*, in *La vita privata dal Rinascimento all’Illuminismo*, ed. by P. Ariès and G. Duby, Roma-Bari 1987 (Paris 1986), pp. 447-451.

¹⁰⁴ Cf. D. Fabre, *Famiglie....*, pp. 452-455.

interesting to connote indirectly the nature of the conflict that had developed between the youth groups and the village curate:

whenever this man came to the church was of scandal and distraction for the inhabitants, since he was always paying attention to the women and... leader of some other young fellows, against the synod, against a relative bishops' decree made public in Rovetta for some years, and against the express feelings of the provost, taking advantage of his absence, he tried to introduce himself into the procession itself, extravagantly dressed and in the figure of a rascal, holding a pole with a lantern on top¹⁰⁵.

The youth bands of Rovetta had evidently tried to revive an age-old custom whereby armed men in costume (*manigoldi*) broke into the Good Friday procession. This was not appreciated by the village provost, and he sought the paths of justice to get rid of this overly exuberant personage who did not accept the new rules.

Fed by the new dimension of criminal justice that had been affirmed by the end of the 18th century, the reaction of the provost of Rovetta was a quite common one. But on further consideration we can see that the exuberant behavior of Giuseppe Pedrocchi, *the man who looked at women*, testifies to the vitality of some of the traditional rituals associated with holidays and to the role of groups of youths.

In the new dimension of criminal justice

The great inquiry of 1772-73 is therefore situated in a cultural and political context that shows strong opposition to custom and to the rites traditionally celebrated to define values and symbolic dimension. The priests' criticisms of the popular religious holidays on the whole reflect a perception that can be seen as being more sensitive to the private and individual dimension of both the religious and the family spheres. This dimension very probably took shape and became prevalent at the same time as the phenomenon discussed above: that is, the affirmation of a criminal justice system with a clearly punitive character, no longer aimed at establishing the *peace* so much as imposing a new concept of *social order*¹⁰⁶.

¹⁰⁵ The trial is in A.S.V., *Consiglio dei dieci, Processi criminali, Bergamo*, b. 55, year 1794. Pedrocchi was arrested, but in the end the court decided not to proceed against him.

¹⁰⁶ As has been noted by Bruce Lenman and Geoffry Parker, who many years back traced the fundamental lines of the passage from a form of community law to one defined as state law, "by the middle of the eighteenth century...the theory and practice of criminal law in western Europe were very different from the situation three centuries before. Above all, there

Indeed, in places like the territory of Carnia, the written documentation comes out of the deepest layer of custom and gives a more detailed picture of certain aspects of community and parish life. In this sphere where, as we have seen, the cult of saints and the religious holidays was still deeply rooted, we can perceive that by then a different perception of order and deviance was taking hold.

At Sutrio and Paluzza, small but lively villages in the Carnia territory, where the parish priests indicate the presence of many religious holidays¹⁰⁷, the measures taken by the two communities (and certified by a notary) suggest that by the first half of the 18th century a social climate was already developing that aimed to restrain or even repress any individual or collective behavior felt as dangerous or hostile. While in 1735 and again in 1748 it was the fear of possible fires that convinced the community of Sutrio to take action against the groups of village youths who wanted to celebrate carnival with “public festivities”¹⁰⁸, in 1761 the community representatives instead focused their attention on

the insolence of certain youths who think it permissible to stay in the sacristy of the venerable Church of San Odorico of Sutrio at the same time as the reverend priests have to make preparations for the holy offices, so that they are seriously disturbed. Thus, to remedy this problem, the *meriga* [sort of village mayor, *n.d.t.*] and sworn witnesses here present, by order of the public *vicinia* [village council *n.d.t.*], by unanimous vote, let it be known and understood by one and all, whether under age or of age, that every time they enter the sacristy without any reason, to stay there for a considerable and prejudicial time, they will immediately incur the penalty of one *oglio* to be applied to the same venerable church, with the charge

had been a decisive shift from the private to the public domain”, cf. B. Lenman – G. Parker, *The State, the Community and the Criminal Law in Early Modern Europe*, in *Crime and the Law. The Social History of Crime in Western Europe since 1500*, ed. by V.A.C. Gatrell, B. Lenman and G. Parker, London 1980, p. 42.

¹⁰⁷ Cf. *Il culto dei santi e le feste popolari...*, pp. 297, 300

¹⁰⁸ Udine State Archives (=A.S.U.D.), *Archivio Gortani, documenti*, busta 19. On 30th January, 1735 it was deliberated that “since the youths of this village have decided about the carnival resolving to have public festivities, mindful still of the disgrace received two and a half years ago of the fire that happened to this village, and this in contrast with the most reverend curate and the honorable township, therefore there was convoked *vicinia de more* and it was unanimously passed that this be absolutely forbidden, and this resolution having been taken, all the men of the town must join in all events and all act so as to prevent this and not only this time, but even more in the future both on the occasion of fairs and of carnivals. And so also street fights and every other sort of disturbance are forbidden”. On 28th February, 1748 a punishment was inflicted on the firemen who did not intervene to prevent ‘a little party’ organized, against town regulations, “with lights and lanterns”.

given to the *meriga* to be irremissibly collected by him... even with the rigor of justice...¹⁰⁹

Such episodes, doubtlessly situated within the new social climate characterized by a stricter way of perceiving certain individual and collective behaviors¹¹⁰, reveal the predictable tensions existing between the groups of unmarried youths and the village elders. At Avosacco, for example, in 1731 a young woman from another village of the Carnia created concern among the community representative: her 'scandalous' behavior was pointed to as

¹⁰⁹ A.S.UD, *Archivio Gortani, documenti*, busta 19, 2 aprile 1761.

¹¹⁰ This new state of things is also perceptible in the emergence of a social practice that develops over the course of the 18th century in many localities of the Terraferma: i.e., the tendency of persons involved in various ways in matters subject to judiciary investigation to have recourse to a notary to dictate a statement which becomes in effect preventive testimony to clear up their position respect to criminal proceedings started, or about to be started, by a competent court. An interesting example is registered in Arta, a locality in the Carnia territory: "There appeared before me, notary, and the aforesaid witnesses messer Nicolò Capellano, a man of this village of Arta, who heard D. Giovan Pietro of the deceased Zuanne Molinari with the honorable D. Giorgio Rumpil shouting with noisy words in a loud voice, and among other things said that Molinari was born in the village of Arta and not the honorable Rumpil and not otherwise... So similarly the same Capellano, along with messer Nicolò Lena, another man from this place, and Antonio Mecchin di Clauzeit, who now lives here in Arta, all three say and declare that they have similarly heard the aforesaid D. Giovan Pietro Molinari shout against the aforesaid honorable Rumpil and Zuane Molinari nephew of the aforesaid Giovan Pietro, that Zuane has said that if his uncle Giovan Pietro passes by here this evening through the courtyard on his way home, that he Zuane wants to drag him. So they similarly say that they have heard the honorable Rumpil profess that he wants to go to Tolmezo whenever he pleases and not when Molinari orders... Similarly, there appear before me, notary, and witnesses the aforesaid D. Lucia daughter of messer Nicolò Capellano the aforesaid party, who says and declares that D. Maria, mother of the aforesaid D. Zuane, told the aforesaid party that she should get the aforesaid D. Giovan Pietro to distance himself from the aforesaid D. Zuane son of the aforesaid D. Maria, saying that her son Zuane has a pistol under his clothing; and she also says that she has heard that the honorable Rumpil has said that Giovan Pietro, before he has payment from Zuane the aforesaid nephew, will first go to the cemetery of the venerable church of Arta. And so she says and declares to have similarly seen the honorable Rumpil, that the same honorable has something under his clothing and that he with the aforesaid Zuane, speaking loudly, both harassed the aforesaid Giovan Pietro with threats outside the tavern in the street...", cf. A.S.UD., *Archivio notarile*, busta 76, 4 maggio 1719. For many other examples concerning the province of Vicenza, see M. S. Grandi Varsori, *L'esercizio della professione notarile a Lisiera tra '600 e '700*, in *Lisiera. Immagini, documenti e problemi per la storia e cultura di una comunità veneta*, ed. by C. Povolo, Vicenza 1981, pp. 698-700. As Lenman and Parker have noted, "steadily...popular demand and government response led to changes in the practice of criminal justice. As it did so, and as the vigour of the law was experienced by an increasing number of people, a greater degree of prudence in personal behaviour became advisable...", cf. Lenman-Parker, *The state...*, p. 40.

dangerous and a bad example, and strict measures were taken against anyone who gave her hospitality¹¹¹.

This attitude of intolerance for anyone who might disturb the community's tranquility was associated with fear of possible incidents and disturbances. Undoubtedly, this was a new social climate, which in the second half of the 18th century was to see local notables and the authorities of the Republic united in taking measures against the so-called *malviventi* [loose-livers, *n.d.t.*], for the most part idlers who were disrespectful of the *peace and quiet* of the community¹¹².

At Paluzza in the 1770s numerous measures were taken by the community against some youths who showed impatient and rebellious attitudes towards the authority of their families, thereby representing a threat to the community's tranquility. In July of 1772, the community had requested the Sindaci Inquisitori in the Terraferma to proceed against Nicolò Englaro, identified as a dangerous *malvivente*. The youth had managed to avoid arrest by escaping to Germany. But on 31st May, 1773 the men of the community reported with annoyance that the young man, who had returned to Paluzza, had not left off his dangerous tendencies:

¹¹¹ A.S.UD, *Archivio Gortani, documenti*, busta 3, 27 marzo 1731: the woman, a certain Giacomina, native of Forni, went around begging in the village and had been the guest of more than one man in his home. "Become well-known and almost public the wicked and scandalous behavior of this woman, the men of the honorable municipality have ... deliberated to protect it from the troubles that the aforesaid woman with her behavior and bad example could cause". The community council thus decided to inflict a pecuniary penalty on anyone who gave her hospitality. And the decision was to be communicated by the community notary to all the families of Avosacco.

¹¹² At Sutrio in 1772 explicit mention is made of the *sovereign orders* given to the towns to denounce *malviventi*. The community reported to the competent court of "the depraved habits and bad living" of Pietro Dorotea, "but without seeing any effect of justice". Since the young man had arrived "yesterday in the village itself frankly and having expressed [his intention] to burn down the village if the municipality did not give him a certain sum of money, he was at one taken into custody as a precaution against the serious crime threatened". The council, "upon examination of the delicacy of this present matter, besides the other crimes committed" decided to inform the court of Tolmezzo again, but if this organ failed to intervene, it authorized the *meriga* "to implore the arm of His Highness Sir Lieutenant", cf. A.S.UD, *Archivio Gortani, documenti*, busta 19, 26 febbraio 1772. As Lenman and Parker have observed, starting from the 18th century this phenomenon can be found all over Europe: "Nevertheless the underlying trend towards punishing criminals in court is clear: there was less reluctance to prosecute. Prosecution was encouraged not merely by the growing polarization of society into a rich minority who controlled the courts and a poor proletariat who came before them. There were other groups besides landowners who demanded a more punitive system... Another powerful group which repeatedly called for more deterrents against crime were the commercial classes: merchants, shopkeepers and industrialists...", cf. Lenman-Parker, *The state...*, pp. 37-38.

when he came back he continued his terrible system of living, with bad example and universal scandal, inveighing now against one and now against another, he does not respect his father, he does not honor his duties as a husband, he feels no love for his family, he shouts, threatens and beats with a stick, considering that his extreme temerity has become intolerable because directed at preventing the peace and tranquility of his co-habitants, who live in fear for their lives day and night. And so it was decided unanimously to appeal to the authority of His Excellence the Deputy, avenger of violence and bullying, so that in accord with his venerated proclamations of peaceful and quiet living, he deign to pass to those punishments that according to his justice are reputed suitable against this Englaro and restore the town to its longed-for tranquility¹¹³.

In 1775 it is the turn of another youth, Pietro Englaro, to worry the community. The events he was the main actor in show that there was a close connection between the new conception of *social order* and the different perception, in the same years, of religious holidays. Pietro Englaro had been repeatedly urged by the community notables to change his way of living, to no avail:

After the year 1754 when there was a murder on the day of the Feast of St. James during a public party, the town government documented that since this feast, with the death of one and wounding of others, no example can be found that the town has permitted anyone to give public parties in their homes on days of festivities and markets. The first and last that allowed himself to change this rightful practice was in fact the aforesaid Englaro, who in 1770, on the day of the fair held in the piazza, took the liberty to give a public party in his home, and when the *meriga* and jury arrived to punish him he had the courage to insult them with words, as can be seen in his *constituto* on 11th September of the same year. But that is not all, because again this year, on the Feast of St. James, without heeding the prohibition of the town, he gave an open party and since the *meriga* and jury arrived to punish him, besides insulting them with words, he attacked them and they had to leave so as to avoid unfortunate consequences. Finally, on the third of this month, during the feast in the piazza, having given another public party, a crime came very close to being the consequence, which put ... the entire populace in consternation, and to this the reverend priest testifies¹¹⁴.

¹¹³ A.S.UD, *Archivio Gortani, documenti*, busta 12, alla data. Once again at Paluzza, on 19th November, 1773 the community took action against Zuanne Englaro for his “extreme temerity ... aimed at taking away peace and quiet from his co-inhabitants, who fear for their lives by day and by night”, cf. *Ibid*, alla data.

¹¹⁴ A.S.UD, *Archivio Gortani, documenti*, busta 12, 9 settembre 1775. The community’s deliberation highlighted the fact that Englaro’s initiatives during the religious holidays were consistent with his overall delinquent personality: “For these disturbances and also because he continues arrogantly... to get into fights and represent a universal scandal for his libertine and immoral behavior, also continuing to receive in his home idle and vagabond persons,

In the following two years the same community of Paluzza deliberated that “according to the prerogative of this province [Carnia], every foreigner who came to live in the village would have to leave a specific *fideiussione* (guarantee) of good living¹¹⁵.”

These initiatives denote that a new *private* sphere was emerging, in harmony with a public dimension of criminal justice that had sensibly weakened the traditional concept of justice, based prevalently on pacts and acts of peace agreed on within sphere of the community. The range of this new punitive justice and the diverse conception of *public order* are also documented by the frequent initiatives taken by communities in the course of the 18th century to limit the heavy legal expenses they might have to meet as a consequence of the occurrence of crimes or disturbances.

At Sutrio in February, 1763 the village council heatedly discussed whether it should communicate to the competent court of Tolmezzo the sudden death of an inhabitant of the village. This deliberation is extremely interesting, since it significantly reflects how the new punitive justice was perceived at the local level:

Finally, the honorable municipality having knowledge that in case that it was the law to have to report like cases, to avoid the honorable municipality any expenses that might occur for failing to report, it was decided that the *meriga* and jury members should proceed to have Signor Giovan Battista Vazanino, surgeon, examine the corpse and then immediately notify the office of Tolmezo of this sudden death, so that the honorable municipality, considering that the law is as said above, not be condemned by the office¹¹⁶.

who go around armed day and night, and about which persons there are reasonable doubts that they may be the ones who commit the thefts which are unfortunately taking place in this village, we beseech His Excellency the Deputy, as head of the Province, to pass in the case of the aforesaid Englaro to the corrections that are believed opportune by Your justice, as an example to others and for the tranquility of this populace”. Many of these *malviventi*, as we see, were young and married but by their behavior they seemed to want to put themselves in a marginal zone outside the group of married people. The harsh reaction towards them is probably dictated by their refusal of a life-style fitting for married men. By contrast, it was far more complicated to oppose the bands of youths, who, as we have noted, often showed attitudes and behaviors felt by a certain sector of the community to be potentially dangerous and hostile (cf. the case of Sutrio, reported here above).

¹¹⁵ A.S.UD, *Archivio Gortani, documenti*, busta 12, 9 settembre 1775.

¹¹⁶ A.S.UD, *Archivio Gortani, documenti*, busta 19, 4 febbraio 1763. In 1766, after the *meriga* had reported to the court of Tolmezzo “the stones thrown into the windows and bars of the house inhabited by Domenico Chitassi”, he deliberated as regards the imminent *cavalcade* of the judge sent by this court: “after reflecting and voting *de more*, it was decided not to oppose the cavalcade, so that the facts be examined. With payment to be covered by the township”. In fact, the community was obliged to meet the expenses of judiciary proceedings, though it had the right to ask for reimbursement from the person identified as guilty of the

While, as we have seen, the new dimension of criminal law found significant confirmation within social contexts which, like the communities of Carnia, can be considered peripheral, it was clearly also contradictorily reflected in the dynamics that characterized individual and community relations. In 1771 the community of Sutrio was quick to take action against two village women who might have created quite a few problems in the face of the inevitable intervention of justice from the outside:

it is unanimously approved to make and present a protest to Cattarina widow of the deceased Francesco Vezanino and daughter, that if the above are responsible for anything unfortunate or criminal occurring, they will have to reimburse the municipality for all damages and expenses.

Two potential infanticides could obviously represent a threat for the community, but the traditional conception of justice also seems to be questioned from inside the community, by those little inclined to accept possible mediation or negotiation. Once again at Sutrio, on 12th January, 1769 the notary public recorded:

There appeared before this *vicinia* the Rev. Sig. don Osvaldo Selenato, who insisted that the honorable municipality denounce, within three days, the thefts made in his stall of a goat and a wether, so that the facts be examined, otherwise if the municipality does not make this denunciation, he will take it on himself to do so. That voted *de more* was unanimously approved to make a denunciation and that at the expense of the municipality¹¹⁷.

In the last decades of the 18th century every occasion that could create possible problems of *public order* was seen within the rural community as potentially dangerous, above all by a certain sector of local notables by then scarcely inclined to accept the presence of deviant elements that did not harmonize with the new idea of the private sphere. Thus, the reform of the

deed. The court of Tolmezzo had penal jurisdiction over almost the whole territory of Carnia. The Venetian representative, sent to Udine with the qualification of *Deputy*, could interfere using various judiciary instruments (including appeals) in the many jurisdictions of the *Patria del Friuli*. Moreover, if provided with authority delegated by the Council of Ten, he judged every criminal case addressed to him by the supreme Venetian court with his own court. For Friuli and the Carnia, see the numerous studies of Furio Bianco, in particular *Comunità di Carnia*, Udine 1995 and *Contadini e popolo tra conservazione e rivolta. Ai confini orientali della Repubblica di Venezia tra '400 e '800. Saggi di storia sociale*, Udine 2002. Also, again for the Carnia, F. Bianco, *Una doppia identità: cramars e contadini nella montagna carnica (secoli XVI-XVIII)*, in *Cramars. L'emigrazione dalla montagna carnica in età moderna. Secoli XVI-XVIII*, ed. by F. Bianco and D. Molfetta, Udine 1992.

¹¹⁷ Cf., for both these cases, A.S.UD, *Archivio Gortani, documenti*, busta 19, 3 dicembre 1771 and 12 gennaio 1768.

religious holidays begun by the Senate found fertile ground within these rural communities, above all among the propertied and trading classes, which were no longer willing to accept a traditional community culture based on negotiation and compromise¹¹⁸.

The cult of saints and miracles

Another relevant aspect that the 1772-73 inquiry brings to light is the very widespread and often colorful cult of saints found in all the dioceses contacted by the Venetian authorities. This significant set of cases has much to offer the historian interested in investigating the highly personal popular liturgical calendar.

The data produced by the inquiry were immediately highlighted by the *consultore* Natale Dalle Laste. They confirmed that the popular holidays covered a very broad spectrum, ranging from the cult of saints close to ecclesiastical orthodoxy (holidays often indicated as *of obligation*) to the much more distant cults originating in the popular imagination¹¹⁹. Ranging from St. Anthony Abbot, St. Rocco and the cult of the Virgin, to arrive at the mythical St. Defendente, to mention only a few of the most common, this vast anthology of saints, characterized by pious rituals, processions, veneration and relics, is connected to the theme of miracle and *grace*. This highly interesting theme has attracted the attention of historians and anthropologies, who here as in other cultural phenomena characterizing the 18th century have registered a significant difference in perspective between the dominant culture and the subordinate one.

As Lorraine Daston has shown, starting from the 17th century a new conception of miracle develops, aimed essentially at finding a criterion that can distinguish a real miracle from a false one. It was felt that the false ones could arise out of superstition or an overly feverish imagination. In either case, however, it was feared that this phenomenon might have important political and religious implications for the constituted social order. No longer con-

¹¹⁸ The law passed by the Venetian Senate on 13th March, 1782 against so-called *malviventi* who “depraved in their habits and given over to vice, can hardly put up with earning their daily living by their own industry”, was therefore the extreme consequence of this new social climate. With only two witnesses and the testimony of the parish priest, they could be sent off at once to do forced labor in the Levant, cf. on this law and the phenomenon of *malviventi* F. Meneghetti Casarin, *Il vagabondaggio nel Dominio veneto alla fine del diciottesimo secolo*, Milan 1985.

¹¹⁹ Though he interspersed his personal convictions, Dalle Laste summarized quite well some results of the inquiry. I refer to him as regards the specific question of the spread of the cult of saints in the various dioceses, cf. A.S.V., *Consultori in iure*, filza 265, 14 agosto 1773.

sidered to have inner or, as it were, immanent proof, miracles also followed the more general cultural process that influenced the relation between facts and proofs. Just as facts began to be seen in the light of theories that also defined the concept of proof, so miracles could also be accepted only after the scrutiny of doctrine. To determine the validity of a miracle (as fact) it had to be unintentional, because otherwise it might result from deception or invention. The inquiries conducted by bishops (and already established with the Council of Trent) on presumed miracles were evidently meant to curb popular superstitions¹²⁰.

Obviously the theories of Catholic theologians were bound to come into conflict with the tenacity of the world of custom and the pressures of popular piety¹²¹ which, as has already been said, gave a central place to the cult of saints and their role as mediators between divinity and material life¹²².

¹²⁰ Cf. for all this. L. Daston, *Marvelous Facts and Miraculous Evidence in Early Modern Europe*, in *Questions of Evidence. Proof, Practice and Persuasion across the Disciplines*, Chicago 1994, pp. 243-274.

¹²¹ In his pastoral visit in 1687, the Episcopal vicar from Vicenza was perplexed about the cult dedicated by the populace of the hillside community of Ignago to St. Leonard, to whom the high altar of the parish church was dedicated: "The chaplain of this church gives out iron wires to the sick, who take them out of piety, and it is said that once they have recovered their health, as receipt they give the wire back to the saint". When questioned, the chaplain answered: "They come with great infirmities to this church to venerate St. Leonard, and where they have the infirmity they tie a wire, and the wire is blessed by me", cf. L. A. Berlaffa, *Itinerario di una comunità. Terra, uomini, istituzioni nella storia di Castelnovo e Ignago*, Marano Vicentino 1998, p. 234.

¹²² This is an extremely broad question and, in my opinion, it constitutes the cultural and symbolic background within which the 1772-73 inquiry is set. We give only some suggestions here. The pressures that came from below when there was a presumed miracle met with the ideologies and objectives of the ecclesiastic hierarchies, and were constantly reformulated in the light of the social and political context in which the event took place. Many examples are found in P. Vismara Chiappa, *Miracoli settecenteschi in Lombardia tra istituzione ecclesiastica e religione popolare*, Milan 1988. For the area that was the object of the inquiry, see *Lo straordinario e il quotidiano. Ex voto, santuario, religione popolare nel Bresciano*, Brescia 1980. Obviously, the bibliography on this theme is very extensive. We refer to the thematic issue of *La ricerca folklorica*, 29 (1994), dedicated to *Miracoli e miracolati*, ed. by Maria Pia Di Bella, with a series of contributions on the cultural dimension of miracle; cf also *Le feste, le terre, i giorni*, ed. by A. Falassi, Milan 1988. The bibliography on sanctuaries is also vast. Here we mention the work of G. Maccagnan, *La Madonna dello spasimo di Cologna Veneta*, Cologna veneta 1995, which includes the canonic trial instituted in 1596 after a 'prodigious' event that took place in 1595 and the following miracles attributed to the Virgin.

Honor and grace

The 1772-73 inquiry also directly leads to the important theme of *grace* and to the concept of honor connected to it. In a paradigmatic essay dedicated some years ago to the concept of honor in Sicily, Maria Pia Di Bella stressed the very close relations existing among grace, honor and miracles. Collective grace, like collective honor, belonged to the family and was handed down from generation to generation. The intercession of a miracle, accompanied by promises and vows, created a special relationship with the patron saint. If the miracle was granted, the person or persons who had prayed for it won prestige and honor. The many sanctuaries dotting the landscape (with ex-votos to attest to miracles) bore witness to the beneficial virtues of the patron saint. Pious rituals, adoration of relics, pilgrimages and processions in honor of the patron or benefactor saint were all manifestations of the faith that the family and the community had in him or her, but they also constituted the sign of his or her benevolence and generosity towards the community in granting the miracles requested¹²³.

The cult of saints bound the material world to the spiritual, and *grace* represented the visible sign of a pact made and kept in virtue of the vows agreed on. This was a pact that evidently could be broken by both parties if a grace was not granted or a vow not honored¹²⁴.

The cult of determined saints was associated with the collective memory. As we have seen, this memory was almost always vague and based on the testimony of elders; but in virtue of the miracles obtained, it was constantly re-evoked, thereby increasing the prestige of the venerated saint. Thus, the concept of grace refers to the past, and as such is founded on customary law. Though accompanied by jurisdictional tensions, conflicts with the young and rites of disclosure, through the dimension of grace and the cult of saints

¹²³ As has been observed by John Bossy, the cult of saints was aimed more at prevention than cure, and the help granted was more like a friend's than a powerful person's (in this sense, the data of the inquiry are instructive); but "As well as to individuals, such protection was naturally owed by saints to the collectivities of which they were patrons, but we should avoid treating them as simple prisoners of their clientele. The saint would protect his parish or fraternity or country if duly honoured by it, and due honour meant it should show itself a genuine Christian community; hence the patronal feast-day entailed, besides its formal observances, an effort on the part of the community to surpass itself in penitence and charity", cf. J. Bossy, *Christianity in the West 1400-1700*, Oxford 1987, p. 73.

¹²⁴ Cf. M. P. Di Bella, *Name, blood and miracles: the claims to renown in traditional Sicily*, in *Honor and Grace in Anthropology*, ed. by J. G. Peristianya and J. Pitt-Rivers, Cambridge 1992, pp. 151-165. It is the *reciprocity* established between the saint and the faithful that on the whole explains the resistance and even the opposition of the popular world to any attempt to abrogate or modify the rituals associated with holidays.

religious holidays re-proposed the ideal values that sanctioned the force and legitimacy of custom.

After the reform...

On the 1st January, 1788 religious holidays were considerably reduced in number and were regulated. This constituted a sort of *standardization of customs* which, as we have already said, had the principle aim of carrying out a substantial form of control of a legal system whose original nature was flexible and open¹²⁵.

In the end, the often-postponed reform of religious holidays was carried out. And afterwards – how successful was its reception? To what degree did the world of custom, which the laws of the Senate wanted to make stricter (evidently due to the pressure of precise social forces), accommodate itself to these regulations coming from outside?

At the end of their *consulto* of 12th January, 1787, when the final phases of the reform of holidays of obligation were almost concluded, the two *consultori*, Natale Dalle Laste and Piero Franceschi, reported to the Senate that the previous reform of popular holidays may have been disregarded, at least in certain not insignificant aspects:

we are forced to add that, although the religious holidays have been regulated by Your Serene Highness and by the bishops in past years, they are still marked in the almanacs and lunar calendars as before; which could lead untaught people to think that the order has not been issued, or that it has been revoked and can be transgressed with impunity. These, which in the past were usually thirty-four in number, nowadays are marked as before in almost all the state editions; nay, in one lunar calendar bearing the indication of Padua and Bassano, the number of forty-eight can be seen for the year 1787¹²⁶.

This behind-the-scenes situation is surprising, and leads one to wonder about the outcomes of the reform of the holidays of obligation that was to come into force the following year¹²⁷. It is likely that the world of custom

¹²⁵ Cf. R. C. Van Caenegem, *Introduzione storica al diritto privato*, Bologna 1995 (Cambridge 1992), pp. 60-61. John Bossy recalls that “in France, the reducing of custom to print by sixteenth-century legal scholarship also entailed the printing of the multitude of local variations of the marriage rite. This helped to ensure their survival in face of Roman uniformity, but probably prevented any further incorporation of live social mores”, cf. J. Bossy, *Christianity...*, p. 103.

¹²⁶ Cf. A.S.V., *Senato, Deliberazioni, Roma, Expulsis papalistis*, filza 139.

¹²⁷ In his important essay on the religion of magic and its decline in England, Keith Thomas

substantially maintained its underlying flexibility, cancelling or reducing the impact made by the Venetian Senate's reform¹²⁸. Nonetheless, it is certain that this reform did have a very significant outcome: it brought about the great inquiry of 1772-73, whose results, despite the contradictions and reluctance implicit in the parish priests' reports, were of greatest importance in shedding light on the vast and hitherto sea of custom.

noted that the Puritans were on the whole successful in their attempt to replace the traditional holiday-studded annual religious calendar "A regular routine of six days work followed by a sabbath rest "This objective was in certain ways similar to the one sought by the Catholic states in the second half of the 18th century. However, this could happen only under determined circumstances. Indeed, "these beliefs about the unevenness of time were the natural product of a society which was fundamentally agrarian in character, and relatively primitive in its technology. They reflected the uneven value which time inevitably possessed for those engaged in agriculture or simple manufacturing operations in which the weather was a crucial factor. The sundry doctrines about unlucky days, saints' days, climacteric years, leap years, etc., were all more easily acceptable in a society dependent upon the seasons for its basic living pattern. The old Church calendar was based on the needs of a people living close to the soil, whereas the Puritan demand for a weekly rhythm in place of a seasonal one emanated from the towns, not the countryside" see K. Thomas, *Religion and the decline of magic: studies in popular beliefs in sixteenth and seventeenth century England*, London 1971, pp. 621-623. In the last decades of the 18th century, when the reform of the religious holidays was carried out, as we have seen similar issues involve certain sectors of the rural world, even if the force of custom very likely was successful in contrasting them or at least limiting their effect.

¹²⁸ Piero Brunello has rightly noted that the measures and dispositions of the ecclesiastical authorities undertaken in the course of the 19th century still had to face a variegated world of beliefs and ideologies widespread in the Veneto countryside: "Besides the requests of the bishop or the political power, the parish priest had to take into consideration the expectations of the faithful. The 19th-century clergy continued to complain about the persistence of superstitions that were difficult to uproot – for example, regarding the existence of evil spirits or the facility with which old women and widows were considered witches who caused the death of children. In this manner, conflicts arose whose outcomes depended on a play of agreements, compromises, attempts at control and defense of spaces of autonomy". Obviously, the parish priests were more flexible, since they had to be in close contact with the world of custom. Brunello recalls the fortune enjoyed by the shrine in Clauzetto (Friuli), "where every year people obsessed and possessed by the devil, above all women, were liberated by exorcists not authorized by the Church." He also points to the dispositions of the Bishop of Padua, who in a pastoral letter of 1825 intervened against the widespread practice of putting out relics and ringing bells for storms: "The bishop knew that the priests accommodated these practices not for reasons of religion, but to satisfy the requests of the faithful. And indeed in the same circular he invited the parish priest not to tolerate the 'ignorance' and "credulity" of parishioners", cf. P. Brunello, *Acquasanta e verderame. Parroci agronomi in Veneto e in Friuli nel periodo austriaco (1814-1866)*, Verona 1996, pp. 39-44.

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