

## The *gratia* and the expansion of politics in fourteenth-century Lucca

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The book of *banniti* of 1356 indicates that the criminal judge of the Podestà pronounced 256 bans and condemnations and 69 absolutions in that year.<sup>1</sup> And the notary who held this book cancelled 208 of the 256 bans and condemnations by striking off the names of *banniti et condemnati*, with a line through their names. It was important for those convicted to ensure that their names were removed, because if they were left in the book of the *banniti* this meant that they were excluded from communal law and justice, and therefore anyone could attack them with impunity.<sup>2</sup> The marginal notes made beside each cancellation indicated the reasons for removing the ban. Among the various reasons, such as the payment of whole fines or reduction of fines by making peace with victims, we can see the instructions to rescind or reduce penalties made by the executive council of Anziani. A chapter of the city statute of 1308, in which the ways of cancellation of bans and condemnations – called *rebannimentum* – were prescribed, had already taken into account the cancellations of *bannum* that resulted from the council's decrees, as well as the full payment and the over-ruling of the judgment in appellate court.<sup>3</sup> In fourteenth-century Lucca, while convicts rarely complained to the appellate court in criminal cases, probably because of limitations set by the statutes,<sup>4</sup> they frequently appealed to political authorities for extra-judicial remissions. In this paper, I shall consider the cancellation of bans and condemnations – in essence the cancellation of

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<sup>1</sup> Archivio di Stato di Lucca (hereafter ASL), *Sentenze e bandi*, 17, 18.

<sup>2</sup> For the ban in Italian cities, see G. Milani, 'Prime note su disciplina e pratica del bando a Bologna attorno alla metà del XIII secolo', *Mélanges de l'École française de Rome. Moyen-Âge* 109 (1997): 501–523; P. Pazzagli, *The Criminal Ban of the Siennese Commune 1225–1310* (Milan, 1979).

<sup>3</sup> *Statuto del comune di Lucca dell'anno MCCCVIII*, ed. S. Bongi (Lucca, 1867), III, 76 (De forma inbanniendi et extrahendi de bapno), pp. 184–188, in particular p. 186: 'Et dicti notarii inbannitorum teneantur et debeant inbannitos pro maleficio vel quasi extrahere et cancellare de libris inbannitorum lucani Comunis quotiens solverint in pecunia numerata, vel compensaverint in casu concesso in summam in banno contentam, vel quotiens deberent ipsos extrahere de banno ex fortia alicuius capituli Constituti lucani Comunis vel Populi vel decretorum Consiliorum lucani Comunis vel populi vel stantiamentorum aliquorum habentium autoritatem a lucano Comuni, vel si in appellatione interposita ad iudicem appellationum pro lucano Comuni vel in denuntia coram Sindico facta, in casu et modo premissis, bannita persona obtinuerit vel obtineat.'

<sup>4</sup> For example, the statute of the appellate court excluded the appeals against the condemnation of *maleficio* by the Podestà, except for the objection to the sums of fines that were imposed excessively and contrary to the statute: A. Romiti, 'Lo "statutum curie appellationum" del 1331', *Actum luce* 23 (1994): 111–51, in particular p. 145. In fact, the registers of the appellate court show us that this court dealt almost exclusively with civil trials and administrative litigation (ASL, *Maggior sindaco e giudice degli appelli*).

penalties – due to political and extra-judicial decisions, calling it the *gratia*.<sup>5</sup>

There were two types of the *gratia* in fourteenth-century Lucca. One was amnesty, which allowed all convicts to be freed from penalties, either without payment or on payment of a particular sum known as a tax (*seca*).<sup>6</sup> This practice was known in other Italian cities at least from thirteenth century.<sup>7</sup> In Lucca from 1328 to 1342 this was often granted in the period of domination by foreign masters. For example, on 17 June 1336, the college of Anziani, with the consent of the lord's vicar, promulgated the uniform rules of remission of penalties for those who wanted to receive the *munera gratiarum* from the lord.<sup>8</sup> The sum and the rate of the tax depended on the cause of punishment. For example, the penalty was fixed at a flat 50 *lire* for those convicted of homicide if their victims were citizens, and a flat 25 *lire* if their victims were not citizens. For those guilty of bodily injury, the tax rate was fixed at one twentieth of the fine (12 *denari per lira*); and for those convicted of *maleficio* that did not have a victim, like carrying arms, the rate was one fortieth of the fine (6 *denari per lira*), and so on.

Another type of *gratia* can be termed 'individual *gratia*', which was granted in response to individual petitions. This was regularly offered under the Pisan rule – above all after the 1350s. For example, on 21 January 1353 the Anziani submitted the petition of Coluccino Neri, a contadino, to the Council of Fifty for advice.<sup>9</sup> According to this petition, the Podestà had initially found Coluccino guilty and levied a fine of 75 *lire* for injury. Coluccino humbly requested clemency to have his fine reduced to a quarter of the original, in consideration of the peace he had made with the victim, his poverty, and his desire to stay and work under the commune's honour. A councillor then advised the

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<sup>5</sup> Tanzini classified the cancellations of penal conviction into two types on the basis of Florentine statutes: the cancellation *per iustitiam* meant the revocation of previous sentence by other judges; the cancellation *per gratiam* or *per reformationem* meant the decision of the councils that extra-judicially dispensed the convicts from penalties: L. Tanzini, *Il governo delle leggi. Norme e pratiche delle istituzioni a Firenze dalla fine del Duecento all'inizio del Quattrocento* (Firenze, 2007), pp. 158, 196–97.

<sup>6</sup> The amnesty was often designated as *seca bannitorum* in the records.

<sup>7</sup> G. Milani, 'Legge ed eccezione nei comuni di popolo del XIII secolo (Bologna, Perugia, Pisa)', *Quaderni storici (Sistemi di eccezione)* 44.2 (2009): 377–98; S. R. Blanshei, *Politics and Justice in Late Medieval Bologna* (Leiden and Boston, 2010), p. 460.

<sup>8</sup> ASL, *Anziani Avanti la Libertà* (hereafter, *Anz. Av. Lib.*), 10, fols 22v–24r: 'Nos collegium antianorum Lucani communis . . . presente et consentiente discreto viro domino Zanobio de Cipriariis de Florentia iudice et vicario . . . ut cives et districtuales Lucani videntes et cognoscentes se a dominis nostris liberaliter assequi munera gratiarum ad bene agendum efficaciter animentur . . . stantiamus et providemus quod quelibet singularis persona . . .'

<sup>9</sup> *Anz. Av. Lib.*, 35, fols 6r–8r: 'Congregatis in aula minori palatii ecclesie Sancti Michaelis in Foro civitatis Lucane ad consilium detentum per dominos antianos Lucani communis . . . infrascriptis consiliariis de consilio quod dicitur quinquaginta bonorum virorum civium Lucanorum . . . pro parte ipsorum dominorum antianorum fuit in ipso consilio propositum et narratum quod coram eis exhibite fuerunt quedam petitione super quibus cum per ipsos dominos antianos sine dicti consilii consensu provideri non possit deliberaverunt ipsum consilium detinere et secundum eiusdem consilii deliberationem procedere ad consulta . . .' (fol. 6r). After that the substance of the petition was transcribed in full (fol. 7).

Anziani to grant the *gratia* that reduced the fine to one-third.<sup>10</sup>

Since the term '*gratia*' itself was used as an equivalent term for '*beneficium*' in the text, the *gratia* was defined as an authority's beneficent act in response to a supplication from subjects. Here the *gratia* as remission of penalties owing to political judgments could extend to several other types of *gratia*, such as the granting of citizenship, immunity from taxation, permission for transfer of properties prohibited by law, the obtaining of summary justice in their favour from officials, and so on. Such policies were, in general, considered as measures peculiar to the signorial regimes that spread during the fourteenth century in central and northern Italian cities, in place of communal regimes. As previous studies have illustrated, the *signori* – for example, Taddeo Pepoli of Bologna,<sup>11</sup> the Della Scala of Verona,<sup>12</sup> the Visconti of Milan,<sup>13</sup> and Paolo Guinigi of Lucca<sup>14</sup> – regularly received supplications, and mercifully and arbitrarily granted the *gratia* by means of decrees, so that they formed a direct relationship with their subjects and established authority over their own dominions.<sup>15</sup> But the communal cities, where, in many cases, oligarchy developed during the fourteenth century, also knew this supplication system and the *gratia*: Florence,<sup>16</sup> Bologna,<sup>17</sup> Siena,<sup>18</sup> and Lucca. The fact that republican cities also used the *gratia* means that this policy resulted not only from the lord's caprice peculiar to his personal regime, but must also be interpreted in another context.

Here, an interesting perspective seems to be provided by '*sistemi di eccezione*', a

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<sup>10</sup> *Ibid.*, fol. 7v: 'ser Guido magistri karoli unus ex invitatis dicti consilii consulendo dixit super petitione predicta quod fiat dicto Coluccino gratia quod solvat hinc ad .xv. dies proxime futuros camerario Lucane camere pro communi Lucano recipienti tertiam parte eius quod debet pro dicto banno et facta dicta solutione de dicto banno cassetur in totum'.

<sup>11</sup> M. Vallerani, 'La supplica al signore e il potere della misericordia. Bologna 1337–1347', *Quaderni storici (Sistemi di eccezione)* 44.2 (2009): 411–41.

<sup>12</sup> G. M. Varanini, "'Al magnifico e possente signore". Suppliche ai signori trecenteschi italiani fra cancelleria e corte: l'esempio scaligero', in *Suppliche e 'gravamina'. Politica, amministrazione, giustizia in Europa (secoli XIV–XVIII)*, ed. C. Nubola and A. Würzler (Bologna, 2002), pp. 65–106.

<sup>13</sup> M. Nadia Covini, 'De gratia speciali. Sperimentazioni documentarie e pratiche di potere tra i Visconti e gli Sforza', in *Tecniche di potere nel tardo medioevo. Regimi comunali e signorie in Italia*, ed. M. Vallerani (Rome, 2010), pp. 183–206.

<sup>14</sup> C. Meek, "'Whatever's Best Administered is Best': Paolo Guinigi, signore of Lucca, 1400–1430', in *Communes and Despots in Medieval and Renaissance Italy*, ed. J. E. Law and B. Paton (Farnham, 2010), pp. 131–43.

<sup>15</sup> Claude Gauvard showed that medieval French kings built their political legitimacy by granting the grace: Claude Gauvard, 'De grace especial.' *Crime, état et la société en France à la fin du Moyen Age* (Paris, 2010), and 'Grâce et exécution capitale: les deux visages de la justice royale française à la fin de Moyen Âge', *Bibliothèque de l'École des chartes* 153 (1995): 275–90.

<sup>16</sup> Tanzini, *Il governo delle leggi* 23–30.

<sup>17</sup> Blanshei, *Politics and Justice* 408–497.

<sup>18</sup> W. M. Bowsky, *A Medieval Italian Commune: Siena under the Nine, 1287–1355* (Berkeley, Los Angeles and London, 1981), pp. 85–116, in particular p. 104.

concept proposed by Vallerani.<sup>19</sup> It pays close attention to the functional role of exceptions in various fields in the later medieval and early modern periods. The political and judicial decisions in Italian cities, particularly from the thirteenth century, were usually based on strict ordinary procedures and laws, under the influence of the formalism of the jurists. But at the same time, side by side with these decisions were procedures frequently applied and decisions made *extra et contra legem*, using a clause *lege non obstante*. And after the second half of the thirteenth century, these extraordinary measures pervaded the legal system and gradually became normalized (for example: inquisitorial trials, special laws and *immunità*). The *gratia* as remission of penalties can be included as part of these measures, because it politically and extraordinarily overruled the sentences that judges imposed on the basis of ordinary procedures and laws.

When the ordinary rules were suspended, it was the *arbitrium* that directed the measures. According to Meccarelli, medieval jurists considered the *arbitrium* as a complementary element to the regular judicial system.<sup>20</sup> It was therefore expected to play a systematic and functional role in regulating the system's purpose. In this context, those extraordinary measures governed by *arbitrium* were required to have *iusta causa* or *necessitas*, and should be justified through that. It was not merely the signore's whim but the authority's 'corrective' action that would be the key concept for understanding the justification of the *gratia*, as will be illustrated as follows.

The diffusion of policies based on *arbitrium* and necessity rather than laws and formality during the fourteenth century was both the cause and the consequence of the expansion of signorial power or the power of the executive council. In early fifteenth-century Lucca, Paolo Guinigi, signore of Lucca, regularly received supplications and granted the *gratia* for the remission of penalties. According to the study by Meek, almost 1,100 cases of the *gratia* were recorded in the registers of decrees between January 1401 and October 1429.<sup>21</sup> Paolo certainly established signorial-style domination, abolishing the Anziani and the councils. But Paolo did not invent his policy of the *gratia*. It followed as an extension of many years of diverse experiences of remissions, which had been applied as early as 1308 and had evolved during the fourteenth century.

In this paper I examine the policies of the *gratia* mainly based on the council registers from three periods: the dominion of several foreign lords from 1328, the Pisan rule from

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<sup>19</sup> M. Vallerani, 'Premessa', *Quaderni storici (Sistemi di eccezione)* 44.2 (2009): 299–312.

<sup>20</sup> M. Meccarelli, *Arbitrium. Un aspetto sistematico degli ordinamenti giuridici in età di diritto comune* (Milan, 1998).

<sup>21</sup> Meek, "Whatever's Best Administered is Best" 138.

1342, and the republic from 1370. Through this examination I will make clear the distinguishing features of political power and the changes in the policies towards the *gratia* during these periods. This will allow me to see how the respective governments adopted the use of extraordinary measures and, by using them regularly, accumulated these experiences so that they could expand the sphere in which they could act arbitrarily as justified through necessity.

### **Amnesty under foreign masters**

After the end of the dominion of *Castruccio Castracani* from 1316 to 1328, Lucca experienced a succession of several foreign masters: Ludwig IV the Bavarian (1328–1329), Gerardo Spinola of Genoa (1329–1331), King John of Bohemia (1331–1333), the Rossi of Parma (1333–1335), Mastino della Scala of Verona (1335–1341), and the commune of Florence (1341–42).<sup>22</sup> The form of government under these rulers was, in general, one of collaboration between the vicars of each lord and the college of Anziani.<sup>23</sup> One of the distinctive practices during these periods was amnesty, i.e. the cancellation or reduction of penalties for all convicts. Though there is no evidence of this type of the *gratia* before 1330, probably because of a lack of documentary evidence, we can find seven records of the amnesty from 1331 to 1342: on 27 May 1331 under King John,<sup>24</sup> 6 November 1333 under the Rossi,<sup>25</sup> 17 June 1336,<sup>26</sup> 8 April 1338,<sup>27</sup> 28 April 1339,<sup>28</sup> and 15 April 1341<sup>29</sup> under Mastino della Scala, and 2 July 1342 under the commune of Florence.<sup>30</sup> By considering the governors' motivations for granting this type of *gratia*, and the logic behind its practice, it is possible to identify the political principles introduced in Lucca under the foreign lords.

Why did the lords grant amnesties? The documents do not reveal their intentions. But we can see the motives and circumstances that induced the lords, their vicars, and the Anziani to offer amnesty. First of all, the motive behind granting amnesty under the

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<sup>22</sup> L. Green, *Lucca under Many Masters: A Fourteenth-Century Italian Commune in Crisis (1328–1342)* (Florence, 1995).

<sup>23</sup> For convenience I use the term 'vicar' to refer to those who represented the lords, even though each representative was named differently according to his title: for example, *vicario*, *luogotenente*, *viceagente*, or *capitano*.

<sup>24</sup> This *gratia* can be seen only on the occasion of its later cancellation (*Anz. Av. Lib.*, 5, fol. 2, pp. 3–4).

<sup>25</sup> *Anziani avanti la libertà. Lucca, 1330–1369*, I, ed. S. Nelli and G. Simonetti (Lucca, 2007), pp. 328–29.

<sup>26</sup> *Anz. Av. Lib.*, 10, fols 22v–24r.

<sup>27</sup> *Anz. Av. Lib.*, 13, pp. 44–46 (modern pagination; no foliation).

<sup>28</sup> *Anz. Av. Lib.*, 14, fols 16r–18v.

<sup>29</sup> *Anz. Av. Lib.*, 16, fols 44r–45v.

<sup>30</sup> *Anz. Av. Lib.*, 17, fols 35v–38v.

Rossi was the maintenance of social order and financial profit. The proposal of the Anziani on 25 October 1333, in response to which the councillors approved the procedures of the *gratia*, arose from an actual circumstance: the public books, particularly the *libri bannitorum*, had been burned during the previous sedition and, therefore, many *banniti* were wandering freely in Lucca and its territory.<sup>31</sup> In the ensuing provision, made on 23 December, the Anziani and the vicar, stating that the disappearance of the books of sentences damaged the commune of Lucca and the lord's treasury and caused the poor condition of the city, declared that the names of *banniti* must be gathered from secondary evidence, such as copies of sentences, so that the crimes would not remain unpunished (*ne maleficia remaneant impunita*).<sup>32</sup>

Another motive was to demonstrate the merciful character of the governors in order to establish their authority. The amnesty of 1338 granted under Mastino della Scala indicated that it was offered so that the *banniti* would return and remain *in fede et devotione prefatorum dominorum nostrum et Lucani communis*.<sup>33</sup> This motivation can be confirmed when we see that the amnesties were granted shortly after the lords established their domination over the city: the amnesty of May 1331 was granted two months after King John had been accepted as ruler; that of November 1333 was declared just one month after the arrival of the Rossi; and that of June 1336 was offered two months after the installation of Spinetta Malaspina, Mastino's vicar. It seems significant, then, that the government under the Rossi revoked the previous regime's *gratia*. On 25 October 1333, at the same council where the amnesty was proposed, the Anziani asked the councillors' advice concerning cancellation of the privileges conceded by King John. And a few months later, on 14 December, the Anziani decided to invalidate the *gratia* offered by King John. It was important for the governors that the *banniti* were encouraged to reintegrate themselves into the commune by favour of the current regime, and not on any other authority.

The *gratia* was an extraordinary measure that cancelled or modified existing decisions made by judges on the basis of ordinary procedures. Let us examine the logic

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<sup>31</sup> *Anziani*, ed. Nelli and Simonetti, I, 321–22: 'hoc presenti anno multi libri et scripture publice et autentice . . . incendio, direptione seu conculcatione perierint propter quod multi imbapniti Lucani Communis confidentes quod eorum banna non reperiantur libere per civitatem et districtum evagantur'.

<sup>32</sup> *Anz. Av. Lib.*, 5, fols 7v–8v: 'expediat circa predicta sallibriter provideri qualiter ipsa banna et banniti . . . reintegrentur in vigore et reperiantur, et ne maleficia remaneant impunita . . . stantiamus . . . quod omnis illi qui reperiuntur imbanniti in libris et filzis et extractis et alfabeto camere . . . possint tamen solvere secam nuper inpositam per modum ordinatum'.

<sup>33</sup> *Anz. Av. Lib.*, 13, p. 44 (modern pagination; no foliation): 'volentes in hiis propterea providere ut ipsi banpniti et condepnati gratiarum munera consequentes ad repatriandum et bene agendum ac perseverandum in fide et devotione prefatorum dominorum nostrorum et Lucani communis, ferventius animentur'.

why such a measure was introduced and realized. First of all, the lords who granted it through the vicar and the Anziani were considered to be those who could carry out whatever measures they liked, in disregard of communal statutes. This definition of the lord's power was shown in the proclamation of 10 July 1336 by Mastino della Scala. On 3 April, three months before the proclamation and on the occasion of the arrival of Spinetta as Mastino's vicar, the college of Anziani, in one of 13 articles, requested him to establish a regime in which the *bonus et expertus iurispertus* was assigned to the Maior Syndicus et iudex appellationum, the ultimate arbiter to whom citizens made appeals against the decisions of all officials and judges, including the lord's officials. Within this framework, lords and their officials would also be reviewed according to the statutes.<sup>34</sup> In contrast, Mastino della Scala made a general proclamation on 10 July concerning the principles of his dominion. The lord's general vicar could summarily hear, without need for solemn proceedings, the complaints from subjects burdened by city officials; his decisions could not be subject to audit.<sup>35</sup> It is certain that lordly dominance introduced to Lucca the new principles of power which allowed extraordinary measures and which, therefore, seemed alien to the traditional communal principals based on the observance of the statute by officials under the control of Maior sindaco.

As the proclamation of Mastino della Scala indicates, this power inherent in the lord was realized specially when the subjects who suffered 'injustice' from officials requested help. We can see a request for the *gratia* from the college of Anziani as representative of the city to a vicar, Spinetta, in the 13 articles of 3 April 1336 (mentioned above). In one article, the Anziani asked for the cancellation of all penalties and impositions by means of *speciali gratia*, stating that many citizens were poor and condemned by the circumstances of war.<sup>36</sup> Consequently, on 17 June, with the consent of Zanobio, a judge delegated by

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<sup>34</sup> *Anz. Av. Lib.*, 11, fols 3r–5v, in particular fol. 4v: 'placeat . . . providere quod luce sit quidam bonus et expertus iurispertus, alterius quam de patria seu gente predicti Rectoris, qui sit maior syndicus et iudex appellationum et querelarum Lucani communis, ad quem possit haberi recursus et appellari de omnibus gravaminibus iniuriis et sententiis dicti Rectoris et sue curie et officialium et omnium aliorum officialium civitate et comitatum Lucani. . . . Et qui rector et eius officialis, famulus et omnes alii stare debeant ad sindicatum, finitis eorum officiis et ante iuxta consuetudinem et statutum lucani communis.'

<sup>35</sup> *Anz. Av. Lib.*, 10, fols 88v–89r; *Bandi lucchesi del secolo decimoquarto*, ed. S. Bongi (Bologna, 1863), pp. 217–18: 'Come li dicti Signori anno facto et costituito in delle loro cictadi, luoghi, terre et territorii et distrecti loro, maggiore Officiale e Vicario generale messer Allexandro da Bologna iudici, a udire sommariamente et di piano, obmesse ogni ordine et solennitate, de' gravamenti et lamentanse de' subiecti gravati, e quelli exgravare da tucte et singule cose, che contra ragione a' dicti subiecti si facesseno, o facte fusseno per li Rectori et officiali delle dicte terre et luoghi' (p. 217); 'Lo quale officiale et vicario non vogliono nè intendono li dicti Signori, che possa o debbia esser sindacato, molestato o inquietato in alcuno tempo, per alcuno modo o cagione' (p. 218).

<sup>36</sup> *Anz. Av. Lib.*, 11, fol. 5r: 'considerato quod multi lucani cives et comitatini pauperes banniti et condemnati sunt pro exercitibus et andatis factis in tempore preterito . . . dignetur ipse dominus Marchus providere quod omnia illa banna, condemnationes, sece, mutua seu imposite tollantur ex toto et pro nichilo habeantur . . . de speciali gratia specialiter cancellentur'.

Spinetta, the Anziani were able to promulgate the rules of remission that we saw at the beginning of this paper. It was not only the request of the college of Anziani, but also the supplication of many citizens to the vicar that motivated and realized the *gratia*. The preamble of the provision of the amnesty on 8 April 1338 mentioned that the *banniti et condemnati* had supplicated the vicar for the cancellation or reduction of penalties, so that they could come back to the city.<sup>37</sup> In their response to the supplications, both the Anziani and Thomasius, an agent of Guglielmo Scannabecchi, vicar of Mastino della Scala, decided to grant the amnesty. Though it is not clear from the text whether or not there were other supplications for remission in other cases, at least these two cases make clear that the amnesty assumed the form of the *gratia* in which citizens asked the lords for help, while the lords, through their representatives, heard their subjects' requests and mercifully responded to them.

In according to the definition of the above-mentioned proclamation of Mastino, it must have been the appeals of citizens burdened by officials that the lords heard from and helped. The figure of the lord, who intervened between citizens and officials as protectors of the people, was particularly notable in the cases related to the *Curia rebellium*. The functions of this office were to confiscate goods and estates from rebels and to control them as communal property: therefore to collect, probably strictly, loans or rents from the rebels' debtors or tenants. On 12 April 1334, the rules of this office were revised because the severity of the *Curia rebellium*'s dunning had caused citizens much trouble and anxiety.<sup>38</sup> The new articles added that complaints had to be submitted only to the vicar, who would instruct the Anziani to take measures. We can see an example of the vicar's intervention in a trial held in the *Curia rebellium*, based on this court's record of 1341–1342 whilst under the commune of Florence.<sup>39</sup> The inquisitorial trial started on 9 December: a citizen, Giovanni Ciomei, was indicted for holding a rebel's goods. Disregarding Giovanni's denial of the charge, officials sequestered his goods. On 3 January 1342 Giovanni presented to this court a letter from Ghiberto, vicar of Florence. The letter that is transcribed in the register shows that Giovanni had appealed to the vicar for help, and then the vicar ordered the court to absolve him. On 5 January, according to this letter, a court official duly did so, and gave him back the sequestered goods.

This form of the lord intervening between subjects and officials seems to be

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<sup>37</sup> *Anz. Av. Lib.*, 13, p. 44 (modern pagination; no foliation): 'Cum fuerit pluries supplicatus eidem domino Capitaneo pro parte bapnitorum et condemnatorum Lucani communis quod eis seca imponatur et fiat, ut redire possint ad mandata dominorum nostrorum et Lucani communis'.

<sup>38</sup> *Anz. Av. Lib.*, 7, fol. 2v: 'cognito quod civibus et comitatibus lucanis, plus anxietatis et tedii materia geminatur ex aspera exactione officii Rebellium Lucani communis . . . ex inde magis gravatos et oppressos se sentiunt, hiis gravedinibus et oppressionibus obviare volentes'.

<sup>39</sup> ASL, *Curia dei Ribelli e Banditi*, 7 (unnumbered folios). The trial began on 9 December 1341.



applicable to the *gratia*. The *gratia* also assumed the form of a ‘corrective’ measure that reasonably, rather than capriciously, corrected the ‘unjust’ decisions of officials and helped the citizens. The documents do not reveal the lords’ understanding of this aspect of the *gratia*. But the above-mentioned circumstances behind the amnesties – the loss of *libri bannitorum*, which caused social and financial confusion, the return of the *banniti* who were convicted under previous regimes, but who now wanted to pledge their allegiance to the lords, the poor conditions and harsh sentences passed during wartime, and the supplications from subjects – represented the reasonable motives that would induce the lords to accept that the penalties imposed by officials strictly based on laws were too severe, and therefore unjust – not in the sense of formal and legal justice, but in terms of social and political justice. But that is not all. It was highly probable that these motives also became opportunities with which the lords legitimately took the extraordinary measures that, in a sense, would delegitimize the judicial system based on communal traditions.

However, a condition was imposed on such an extraordinary measure: the *gratia* should not cause damage to other citizens. The remissions of the penalties theoretically drained the treasury (*Camera*) of a revenue source, thereby impacting mainly on the commune and the lord, even though taxes could still contribute a certain amount to their income. But, conversely, granting the *gratia* risked failing to consider the victims of *maleficio* because, for example, applying it could cancel the penalty for homicide with the payment of a certain amount of money. To avoid this, the provisions of the amnesty always prescribed – as for *maleficio*, by which someone had suffered injury – the obligation to make peace with the victim. This condition was imposed in order not only to encourage the establishment of peace between parties, thereby maintaining social order, but also to preserve the victim’s rights, because the need for peace meant reserving the victim’s right to finally decide whether the offender could receive the *gratia* or not.<sup>40</sup> These restrictions show us that a governor’s major policy focus in this period was the protection of civic rights or, rather, the concern not to damage them. This awareness is illustrated well by the fact that political interventions were limited to penal cases. Civil cases were entrusted exclusively to ordinary judges and jurists, and therefore they constituted an inviolable field protected against extraordinary political interventions.

### **Individual *gratia* under Pisan rule**

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<sup>40</sup> This concept also conditioned the *gratia* of the prince. Nadia Covini, ‘*De gratia speciali*’ 204–06.

In July 1342, Pisa obtained control over Lucca after a battle with Florence. Pisa ruled Lucca as the latter's defender and, from 1355, as an imperial vicariate. The dominion was relatively stable and long-term, and lasted until 1368, when Charles IV came to central Italy. During Pisan rule, general amnesty was granted twice, on 22 July 1348<sup>41</sup> and 29 October 1362,<sup>42</sup> as far as we know from council books. Independently, individual *gratia* was regularly offered in response to each supplication. This type of *gratia* had certainly also been seen during the previous period, but the grants under Pisa, particularly from the 1350s, became much more systematic. For example, we can find 14 cases in 1352, 22 cases in 1353, 27 cases in 1354, 20 cases in 1358, 34 cases in 1361, 30 cases in 1362, and 17 cases in 1363, an average of 23 cases a year.<sup>43</sup>

First of all, let us consider the procedures for granting the *gratia*. According to the petitions transcribed in council records, convicted men addressed petitions either to the college of Anziani or the Anziani and the Council of Fifty.<sup>44</sup> This was unlike the situation under the previous lords, in which the lord or his vicar was often addressed along with the Anziani. Under Pisan rule, certainly, Pisan authorities occasionally ordered the commune of Lucca to remit the bans.<sup>45</sup> And Lucchese Anziani sometimes asked the Pisan Anziani for the *balia* of amnesty.<sup>46</sup> But the fact that the city institutions, naturally composed of Lucca's citizens, regularly received petitions from Lucchese seems to be significant, because the people as subjects in the petition *humiliter* and *reverenter* implored city councils to reduce their penalties. As the logic of the auto-degradation of supplicant and the authorization of addressee were features of the supplication system from the beginning, it is possible that, through the practice of the *gratia*, the people gained a profound awareness that it was not the lord or his vicar but the city councils which were the venerable authority, even under Pisan rule.

The Council of Fifty, which some petitions designated as addressee along with the Anziani, deliberated on individual petitions and, in fact, voted on whether the *gratia* should be offered or not. Once the Anziani received a petition, they convened this

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<sup>41</sup> *Anz. Av. Lib.*, 28, fol. 32.

<sup>42</sup> *Anz. Av. Lib.*, 42, fols 73v–74v.

<sup>43</sup> *Anz. Av. Lib.*, 34 (1352); 35 (1353); 37 (1354); 39 (1358); 41 (1361); 42 (1362, 1363).

<sup>44</sup> For example, *Anz. Av. Lib.*, 35, 'Coram vobis dominis Antianis Lucani communis' (fol. 8r) and 'Coram vobis dominis Antianis Lucani communis et consilio quinquaginta bonorum virorum Lucane civitate et cetera' (fol. 7r).

<sup>45</sup> For example the Pisan doge Giovanni dell'Agnello ordered Lucchese Anziani in a letter to free a convict from ban, *Anz. Av. Lib.*, 53, pp. 135–36 (an original letter on 24 October 1364). Giovanni also intervened in the trials, calling a halt to proceedings: T. Dean, *Crime and Justice in Late Medieval Italy* (Cambridge, 2007), p. 45.

<sup>46</sup> C. Meek, *The commune of Lucca under Pisan rule, 1342–1369* (Cambridge, 1980), p. 36. For example, the *balia* was given to Lucchese Anziani on 27 October 1362, and thereafter they pronounced the amnesty on 29 October 1362: *Anz. Av. Lib.*, 42, fol. 73.

council and proposed the petition there, whereupon the councillors gave their opinions on it.<sup>47</sup> In the voting process, the Anziani probably decided which opinion must be voted upon.<sup>48</sup> The Anziani, composed of ten members, and the councillors of the Council of Fifty each put his own pellet into a white ballot box (*pyxis*) if he agreed with the opinion or, if he disagreed, into a green box. It was possible that a recommendation would not get the required number of favorable votes, so that the petition was not approved, as the *Minute* after the 1370 council reported.<sup>49</sup> If the recommendation was accepted in the vote, the Anziani, in order to execute the remission, informed the notary who controlled the books of *banniti* about the decision.

The decision-making on individual *gratia*, therefore, was exclusively left to Lucca's citizens; even though the Pisan rector attended the Council of Fifty in the early years of Pisan rule, he did not always do so in later years, for example in 1363. When we consider the members of this council, it is clear that the councillors whose advice was ultimately accepted through a vote were few in number. Of the 164 cases of the *gratia* recorded in registers from 1352 to 1363, 121 of them were based on the advice of 16 councillors, and the top seven councillors' opinions resulted in 88 cases of *gratia*, which is more than half of the total. The fact that in practice, it was the advice of certain councillors that was adopted as *gratia* brings to mind the oligarchic tendency of city institutions. It was the Anziani who elected the members of this council and selected the councillors' opinion that had to be voted on. During the Pisan rule, as Meek revealed, Pisan Anziani seemed involved in the election process of Lucchese Anziani.<sup>50</sup> This involvement limited the numbers of the Anziani candidates and therefore led to the acceleration in the development of an oligarchy. The policy of the individual *gratia* could be applied on the basis of this oligarchy and, moreover, the repetitive practices of the *gratia* led to the concentration of power in the hands of a small group of citizens.

Let us consider closely how the Council of Fifty actually deliberated on and judged whether the *gratia* should be granted or not. First of all, the council, unlike the judicial courts, was generally not a place that pursued the revelation of truth. Petitioners did not adduce any evidence, such as testimonies or documents, which could prove the substance of their appeals, even in cases in which they pleaded their innocence.<sup>51</sup> Certainly the

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<sup>47</sup> See note 9.

<sup>48</sup> In the council records of the previous period, we can find the *mandatum* of the Anziani and the vicars that made the councillors vote on a certain recommendation: *Anziani*, ed. Nelli and Simonetti, I, 326–27.

<sup>49</sup> For example, the petition of Michele ser Federico was not approved until 4 February 1388. ASL, *Anziani al Tempo della Libertà*, 4, p. 18 (modern pagination; no foliation).

<sup>50</sup> Meek, *The commune of Lucca* 25–28.

<sup>51</sup> This does not seem to have depended on the secretary's omission in writing, because we have an exceptional case in which an *instrumentum* presented by a petitioner was transcribed (*Anz. Av. Lib.*, 42, fols 52r–53r).

Anziani, in a few cases, entrusted the examination of petitions to an outsider. For example, one jurist, Bartholomeo Maurini, heard details about the circumstances of a theft from the person involved, and reported that the petition was truthful.<sup>52</sup> But in many cases, the councillors did not have the intention to intensively investigate the facts related in the petition. In a noteworthy case, a man convicted of smuggling wine pleaded his innocence, stating that the charge was not true because it would have been impossible for him to transport the wine via the route that the charge indicated.<sup>53</sup> He also stated that he was ready to prove his allegations in court. But the council's decision was to offer him the remission of his fines from 1000 *lire* to 100 florins (about 425 *lire*). In other cases in which petitioners claimed to be guiltless, the councillors also, often with a desire to compromise, decided to reduce the fines, rather than examine the facts and definitely judge whether the petitioners were innocent or not.

I will turn to the criteria on which the councillors based their recommendations and votes. We do not have any materials that directly reveal the councillors' way of thinking, because of scant descriptions of the proceedings in the council records, in which only the summaries of the accepted advice were written down, as follows: one councillor said that, considering the petition, the *gratia* should be granted to the petitioner so that he could be free from condemnation,<sup>54</sup> another councillor said that if the petitioner paid one-third of the fine within 15 days, he would be released from condemnation,<sup>55</sup> and so on. On the other hand, it is certain that the councillors considered each petition, and the petitioner's individual circumstances, closely. This is shown by the fact that the rates of remission were not uniform, but varied depending on the nature of the petition. Since it is probable that the petitioners who made the case why the *gratia* should be offered empirically perceived the motivations that the councillors held in high regard, we can presume on the basis of the petitions the norms that the city council must have relied on.

The law was certainly the basis of the petitions. Referring to the statutory provisions, petitioners tried to refute the judgment of ordinary officials. Massario Coluccini, a citizen, who was convicted by an official called the Bargello<sup>56</sup> for injuring and killing another person's domestic animals, insisted on the legitimacy of his action by stating that he had harmed them because they had entered in his land, alleging a clause of the statutes, *libro quinto capitulo xxvii posito sub rubric de dannis datis cum bestiis macellatoriis et*

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<sup>52</sup> *Anz. Av. Lib.*, 37, fols 74r–75v.

<sup>53</sup> *Anz. Av. Lib.*, 35, fols 35v–36v.

<sup>54</sup> *Anz. Av. Lib.*, 41, fols 130v–31r: 'Stefanus in capestra civis Lucanus unus ex consiliariis dicti consilii surrexit et consulendo dixit quod fiat dicto Ranuccio gratia consideratis predictis quod liberetur et cassetur in totum de condemnatione predicta contrarietate aliqua non obstante.'

<sup>55</sup> See note 10.

<sup>56</sup> As for the criminal cases handled by the Bargello, see Dean, *Crime and Justice*, pp. 45–47.

*cetera*. After fact-finding by two trustworthy citizens, he was accordingly released from penalty.<sup>57</sup> In another case, Antonio Baldi, who was condemned by the Bargello with a fine of 100 *lire*, stated that he had escaped the grasp of the Bargello's servant, but the Bargello summarily, and regardless of statute, convicted him.<sup>58</sup> Antonio received the *gratia*, which reduced the fine from 100 *lire* to 25 *lire*, from the Council of Fifty. These attempts to invoke the statutes ended successfully. But we know the regulations of the Bargello's office: he was assigned to catch the *banniti* in Lucca's territory and bring them to the Podestà; moreover, he could torture criminals and punish them with fines of up to 10 *lire*.<sup>59</sup> The councillors' advice to reduce the fine to 25 *lire*, therefore, was not rigidly based on the law. In another case, a citizen who had been penalized by the Podestà to the tune of 300 *lire* for injury by stone-throwing, pointed out that the fines, in accordance with the statute, should not be over 100 *lire*.<sup>60</sup> The Council subsequently decided not to reduce the fine to 100 *lire*, but to free him completely from penalty. The councillors recognized the importance of legal norms, but did not exclusively follow them. They also relied on their conscience, which was itself contingent on individual circumstances of which the law constituted a part.

How was the councillors' collective conscience influenced?<sup>61</sup> Considering the motives behind the petitions for getting the *gratia*, we can see that petitioners commonly tried to stir the conscience of all of the councillors, to make them see that the authorities should correct the unjust decisions made by officials, so helping subjects to escape 'injustice'. This was similar to the approach based on conscience which the governments of previous periods probably would have taken to the policy of the amnesty. The above-mentioned petitions that requested correction of the excessive fines by reference to the law can also be understood in this sense. Let us also consider other motives – flaws, torture, self-defence, and poverty – that stimulated the councillors to promote an idealized image of their authority.

Flaws, particularly jurisdictional flaws, were often alleged to deny the legitimacy of a judgment. Petitioners often objected to the double punishment for the same crime imposed by the Podestà and the Bargello, whose jurisdictions could overlap. The flaws in jurisdiction can also be observed in a petition in which a countryman of Lucca stated

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<sup>57</sup> *Anz. Av. Lib.*, 42, fol. 20.

<sup>58</sup> *Anz. Av. Lib.*, 41, fols 122v–23r: 'ex arrupto et de facto nullo iuris ordine servato nec aliquibus statutis Lucani communis'.

<sup>59</sup> *Anz. Av. Lib.*, 34, fols 63v–65v, in particular fol. 64v.

<sup>60</sup> *Anz. Av. Lib.*, 35, fol. 22: 'quia secundum formam statuti Lucani communis dictus Talentus non debebat banniri nisi in libris .C.'

<sup>61</sup> As for the *coscientia* that the judges relied on, see A. Padoa Schioppa, *Italia ed Europa nella storia del diritto* (Bologna, 2003), pp. 251–92 ('La coscienza del giudice').

that he was punished in the rector's court, which had jurisdiction only over foreigners.<sup>62</sup> The Council gave remission to each petitioner in these cases. The councillors must have been convinced that these flaws were a fundamental reason to make an extraordinary judgment and legitimately correct the officials' verdicts.

Petitioners claimed that their innocence had not been proved, and indeed that the truth had been distorted in previous trials because of the fear of torture at the hands of officials. For example, a citizen who was convicted in his absence of indirect tax fraud by Maior Sindaco pleaded his innocence, stating that he had not appeared in court because of the fear of torture, and also that his colleague who had been tortured was not found to be culpable.<sup>63</sup> In another case, a man convicted of sheltering a *bannitus* alleged that he had only confessed his guilt on pain of torture (*tormentorum pena*) by the Bargello.<sup>64</sup> These petitioners accordingly succeeded in getting the *gratia*. The Anziani and the Council of Fifty must have considered the fear of torture as an acceptable reason to intervene in order to attain the truth distorted by officials, and to help subjects with remission of penalty.

We can also see petitions that alleged legitimate self-defence. For example, a man given the death penalty for homicide asked for reduction of his punishment, claiming that he had killed an opponent because this opponent had first injured him, and had threatened to kill him.<sup>65</sup> In another case, a countryman excused himself for injuring a woman, saying that he hit her in order to stop her from abusing him.<sup>66</sup> Consequently, the Council offered them remission. The judicial court might not have borne in mind these appeals to self-defence, whereas the political authorities were expected to consider closely not only the law but also the individual circumstances that had forced convicts to commit crimes, and then to correct the decision: from a punishable crime to a pardonable crime.

Poverty was the most frequently cited mitigation. This was intended not to deny the charge, but to play a rhetorical role in evoking the councillors' compassion. Some petitioners stated that they have no choice but to become beggars because of penalties imposed.<sup>67</sup> There were also many prisoners among the petitioners who claimed poverty.

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<sup>62</sup> *Anz. Av. Lib.*, 35, fol. 8.

<sup>63</sup> *Anz. Av. Lib.*, 37, fols 65r–66r: 'Petrus cum comparavisset fuit per dictum iudicem positus ad tormenta et acriter tortus pluribus vicibus, demum carceratus unde ipse Biancuccius monitus torturis'.

<sup>64</sup> *Anz. Av. Lib.*, 39, fols 63v–64r: 'ser Johanes . . . ipsum acriter tormentavit a deo quod tormentorum pena confessus fuit vera esse et inquisitione contenta et de quibus contra eum inquirebatur'.

<sup>65</sup> *Anz. Av. Lib.*, 37, fols 66r–67r: 'Et predicta comiserit ipse Tomasius propter multas sceleratas iniurias receptas per eum a dicto Nino, et primo sicut clare scire potestis et notorium est omnibus civibus lucanis ipse Ninus . . . vulneravit ipsum Tomasium cum quadam guerretta ex qua percussione ipse Tomasius fuit in periculo mortis. Et postea ipse Ninus pluries et pluries minatus fuit eundem Tomasium occidere. Et finaliter ipsa die qua ipse Tomasius ipsum Ninum occidit, dictus Ninus occidere voluit ipsum Tomasium.'

<sup>66</sup> *Anz. Av. Lib.*, 42, fol. 50: 'percutere ipsam dominam Mattheldam ut cessaret ab hiis qui dicebat et faciebat contra dictum Pierum'.

<sup>67</sup> *Anz. Av. Lib.*, 37, fol. 9: 'propter eorum paupertatem ad quam deducti sunt propter eorum bannimenta

These prisoners had been convicted and caught, but could not pay fines or find a surety. The councillors usually offered the *gratia* that reduced the fines or released them from prison at certain feasts as oblation. Poverty must have awakened the councillors' conscience, drawing upon the authorities' roles in reducing the relative severity of the penalties for the poor and mercifully helping powerless and helpless subjects.

These motives commonly presented by petitioners tried to evoke in the councillors a self-image as authorities who helped subjects who had suffered 'injustice' from city officials. The city councillors, probably mindful of such an idealized image, deliberated on individual circumstances and were stimulated by both the rational and emotional arguments that had been overlooked by officials, and then arbitrarily took 'corrective' measures. Therefore, the individual petitions and *gratia* contributed to maturing the leading citizens' conscientiousness in governing their city and dispensing justice, even before independence. On the other hand, it is also certain that the widespread use of this practice accelerated the fundamental change of communal government during the fourteenth-century: the establishment of the superiority of politics over the judiciary through normalization of extraordinary means.

### **The prohibition of the *gratia* in the republican period**

When Lucca finally recovered its independence and the Lucchese Anziani became imperial vicars over Lucca in 1370, how did the leading citizens govern the new republican state? In this period, though the republican government continued to offer the amnesty and the individual *gratia*, it began to arbitrarily govern through a new policy which prohibited the *gratia* for those convicted of five grave crimes: rebellion, robbery, falsehood, arson, and homicide without peaceful resolution. Certainly such prohibitions can be seen to have pertained in the previous period. The amnesty under the Mastino della Scala in 1336 had made an exception for the convicts of the five crimes, preventing them from becoming beneficiaries of *gratia*.<sup>68</sup> At the same time, the Anziani and the lord's vicar, despite this prohibition, accepted petitions for remission of penalties for convicts of unpardonable crimes in special cases.<sup>69</sup> At the dawn of independence,

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predicta eorum vitam sustentare non valent sed mendicare coguntur'.

<sup>68</sup> *Anz. Av. Lib.*, 10, fol. 24r. These five crimes were already considered as distinctive, grave crimes, at least by the statute of 1308. *Statuto del comune di Lucca dell'anno MCCCVIII*, ed. Bongi, III, 2 (*De maleficiis inquirendis, et modo procedendi super eis*), pp. 132–35.

<sup>69</sup> For example, the *gratia* was granted for a man convicted of homicide, even though he did not make peace with his victim, because in this case the family of the victim stayed in the territory of an enemy. *AAL*, 12, fol. 13.

however, the policy of the prohibition of the *gratia* entered a new phase. The government started to strictly forbid it, formally prescribing the provision that the proposal itself be prohibited and, thereafter, enacting this provision in the statute. Moreover, the government might also arbitrarily suspend this provision. First of all, let us consider how the provision was formally made.

In a meeting of the General Council on 10 May 1370, the following proposal was presented: the *banniti* convicted for homicide and rebellion from 26 March 1370 onwards could not be allowed to attain remissions. Moreover, those who recommended granting the *gratia* for such *banniti* would be punished with a fine of 500 *lire*, so that the *banniti*'s prospect of having the *gratia* would be impossible, and Lucca could eradicate crimes within its territory.<sup>70</sup> On 23 May, the Anziani and six other elected members, including three jurists and two notaries, unanimously decreed that those sentenced with the death penalty for any of the five grave crimes could not, from 26 March onwards, be remitted, and such condemnations had to be carried out without any suspension. Also, those who proposed and advised the councils in contradiction of this prohibition would be punished by the Podestà with a fine of 500 *lire*.<sup>71</sup> The proposal of 10 May 1370 and the decree of 23 May were transcribed in full as additional provisions to the statute of 1342.<sup>72</sup> Thereafter, the city statute that was revised in November 1370 and finally published in July 1372 in article form prohibited, probably on the basis of these provisions, the granting of remission for the convicts of the five grave crimes, and even disallowed proposals for granting the *gratia* to them.<sup>73</sup>

Close consideration of this new policy concerning the prohibition of the remission reveals to us that the leading citizens tried to defend the republic in two different senses. One was the defence of the republican state from the attacks of inner and external enemies by strictly controlling remission. Another was the defence of republican governmental style, following in form the laws and procedural formalities, as opposed to the signorial discretionary domination.

The first aspect can be assessed by considering the political circumstances and motives under which the provision of prohibition was made and/or suspended. The introduction of this provision seemed to be motivated by the dangerous movements of Alderigo Antelminelli and other Antelminelli family members during this period. This influential aristocratic family in Lucca had at that time succeeded in invading the

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<sup>70</sup> *Riformazioni della Repubblica di Lucca (1369–1400)*, I, ed. A. Romiti, (Rome, 1980), 306–07.

<sup>71</sup> *Riformazioni*, ed. Romiti, I, pp. 320–21.

<sup>72</sup> ASL, *Statuti del Comune di Lucca*, 5, fols 183r–85r.

<sup>73</sup> ASL, *Statuti del Comune di Lucca*, 6, II, 130, fol. 43r: 'De eo quod inbannitus in casibus infrascriptis posit rebanniri'.



Garfagnana area with the help of Visconti.<sup>74</sup> In a meeting of the General Council on 10 May 1370, in which the prohibition was proposed, the Anziani indicated, as part of another proposal for food reserves, the spread of a rumor that the military forces of Bernabò Visconti had come to Tuscany and Lucca, and that the Antelminelli family, particularly Alderigo, Giovanni and Rolando, had tried to bring the disorder of war.<sup>75</sup> On 12 May, the Anziani declared that the Antelminelli family and its followers who committed crimes would be condemned to exile if they appeared before the college of Anziani; if they did not, they would be convicted as rebels.<sup>76</sup> On 30 May the Anziani promised a bounty of 500 to 3000 florins for those who could catch or kill Alderigo, Giovanni and Rolando.<sup>77</sup> On 1 June, in accord with the original sentence, these three suspects were condemned to the death penalty in their absence by the Podestà and Capitano.<sup>78</sup> In a deliberation on 16 July, it was indicated that they had been condemned for *crimine lese maiestatis* against the Imperial Majesty, and against those who were administering imperial offices (which probably referred to Lucchese Anziani as imperial vicars).<sup>79</sup> Therefore, it was possible that the provision to prohibit the remission of penalties for grave crimes was introduced as part of attempts to take a hard-line attitude against the Antelminelli family as an enemy of the independent republican state.

If the prohibition against the *gratia* for serious criminals was politically motivated, the suspension of the prohibition itself can also be considered in a political context. The first suspension of this prohibition occurred on the occasion of the peace established with the communes of the Garfagnana that had acted in league with the Antelminelli.<sup>80</sup> On 13 November 1370, the Gonfaloniere di Giustizia, the head of the college of Anziani, presented a proposal to the General Council that the provision of the prohibition against granting the *gratia* should be suspended, because the agreement with the communes that had been made on 1 August contained the remission of penalties for serious criminals.<sup>81</sup> In response to the proposal, one councillor stated that the provision should be suspended on that day and, therefore, the Anziani could propose what they wanted with impunity.

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<sup>74</sup> G. Tommasi, 'Sommaro della storia di Lucca dall'anno MIV all'anno MDCC', *Archivio storico italiano* 10 (1847): 242–43.

<sup>75</sup> *Riformagioni*, I, 306.

<sup>76</sup> *Ibid.*, I, 312.

<sup>77</sup> *Ibid.*, I, 326–27.

<sup>78</sup> ASL, *Sentenze e bandi*, 42 (unnumbered folios).

<sup>79</sup> *Ibid.*, I, 364–65. This *crimine lese maiestatis* was also applied to Paolo Guinigi, who had usurped the *dominium* of Lucca as an imperial city in the *concilium* of the jurist Sozzini at the end of the fifteenth century. See O. Cavallar, 'Laesa maiestas in Renaissance Lucca', in *The Politics of Law in Late Medieval and Renaissance Italy: Essays in Honour of Lauro Martines*, ed. L. Armstrong and J. Kirshner (Toronto, 2011), pp. 161–83.

<sup>80</sup> M. E. Bratchel, *Medieval Lucca and the evolution of the Renaissance state* (Oxford, 2008), p. 122.

<sup>81</sup> *Riformagioni della Repubblica di Lucca (1369–1400)*, II, ed. G. Tori (Rome 1985), 94–95.

That was accepted, and the Anziani immediately proposed the remissions to the rebels that had been promised in the agreement, the General Council again approving.

Side by side with the agreement made with the communes of the Garfagnana, on 23 November the republican government, after an attack on the territory dominated by the Antelminelli, started to negotiate a peace agreement with the clan. The negotiations were lengthy, but on 10 March 1371 an agreement was finally concluded in Castiglione di Garfagnana.<sup>82</sup> Here, the provision of 23 May 1370 that prohibited pardoning grave crimes became an obstacle to the establishment of peace with the enemy, and therefore to the peace of the republican state. On 16 March 1371 the Anziani, alluding to the conclusion of the agreement with the Antelminelli, proposed the suspension of this provision.<sup>83</sup> After the suspension, the Anziani asked the General Council to approve an article of the agreement which promised the cancellation of all judgments and trials against the people of Alderigo, including some nobles, and the return of confiscated properties. The General Council again approved it. The marginal notes of the original sentence confirm that on 11 April 1371 Alderigo, Giovanni and Roland degli Antelminelli were liberated from bans due to an order from the Anziani and Gonfaloniere di Giustizia.<sup>84</sup>

Therefore, a key to understanding this policy of the *gratia* was the political motive of leading citizens to defend republican liberty from its enemies. The government, holding this political necessity in highest regard, established a rule that threatened its enemies and restrained their movements against republican order, but arbitrarily suspended it when it became an obstacle. This way of using the provision continued afterwards. When the supporters of Corrado Wettingher invaded Lucca's territory and menaced the state's liberty in 1374, the Anziani suspended the statute's provision and other prescriptions that prohibited the remission of the penalties handed out to the *banniti* for the five grave crimes.<sup>85</sup> Afterwards, the Anziani once more granted the remission and ordered the *banniti* to re-enter the Commune of Lucca, considering that the existence of a great number of exiled *banniti* could endanger the peace of Lucca in the period of incursion of armed bands and that these *banniti* had fought on Lucca's side against Corrado and his men in December and January, which deserved praise and proved their intention to obey the commune of Lucca.<sup>86</sup>

The suspension of the provision that prohibited pardoning those convicted of the

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<sup>82</sup> Tommasi, 'Sommario della storia di Lucca' 248.

<sup>83</sup> *Riformagioni*, II, 179–181.

<sup>84</sup> ASL, *Sentenze e bandi*, 42 (unnumbered folios).

<sup>85</sup> *Riformagioni della Repubblica di Lucca (1369–1400)*, IV, ed. G. Tori (Rome 1998), 364–69.

<sup>86</sup> From the list of *banniti* who were permitted reentry, there are 49 men who came from various provinces, like Camaiore, Pietrasanta, and so on.

five crimes or granting them the *gratia* continued to be applied for some time afterwards, with various motives.<sup>87</sup> This means that this provision, even if it could be suspended, remained valid. Now a simple question occurs. Why did the leading citizens not abrogate the provision of prohibition but maintained it, using roundabout suspension procedures? One reason why they had to follow the procedures concerned the general principles of medieval law, in which laws inherently assumed proper value so that nobody could cancel them, but only suspend or *deroga* them, as Tanzini explains.<sup>88</sup> In the case of Lucca, there is another possible reason why the leading citizens neither cancelled the provision nor added to it any supplementary clause that would allow the Anziani, in conformity with its actual application, freely to propose remission and grant the *gratia* with the authorization of the General Council. It was because of the respect for the republican institutional structure and its governmental styles, based on broad political participation and observance of the statutes, meaning that leading citizens could not be called tyrannical because of a discretionary form of dispensing justice. This was a second characteristic of the government of Lucca in this period. The search for republican form, even in the face of opposing realities, can also be seen in two similar cases from the same period. By considering these cases, we can understand the behaviour of the government as reflected in the policies of the *gratia*.

The first case concerns the establishment of the regime ‘a popolo’ in July 1370. After a few months of independence, many citizens complained against the appropriation of the government by leading families. Then, on 4 July 1370, in response to this complaint, the General Council gave a *balia* to the members elected from the *maiores, mediocre et minores* to resolve various questions.<sup>89</sup> And on 31 July, in the General Council it was declared that the Anziani and Gonfaloniere di Giustizia would govern *ad populum et sub vocabulo populi*, and that the nobles should be excluded from the Anzianate and the principal posts of the republic.<sup>90</sup> However, as Meek’s examination of the Anziani and the councils has revealed, despite formally founding its identity ‘a popolo’ and with broad participation, the regime was actually not democratic, even by the standards of other contemporary cities, but remained mainly directed by oligarchic families composed of merchants and bankers.<sup>91</sup>

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<sup>87</sup> For example on 28 June 1386 (ASL, Consiglio Generale, Riformagioni Pubbliche (hereafter, *Rif.*), 10, p. 80), on 26 November 1387 (pp. 357–58), on 11 September 1388 (pp. 546–547), on 10 June 1390 (*Rif.*, 11, pp. 279–80), on 19 June 1397 (*Rif.*, 13, pp. 143–44).

<sup>88</sup> Tanzini, *Il governo delle leggi* 66–67.

<sup>89</sup> *Riformagioni*, I, 349–53.

<sup>90</sup> *Ibid.* 380–85.

<sup>91</sup> C. Meek, *Lucca 1369–1400. Politics and Society in an Early Renaissance City–State* (Oxford, 1978), pp. 179–193.

The second case involved a scandal originating from the pronouncement of the regime ‘a popolo’. Giovanni degli Obizi, a leading noble of Lucca who had been excluded from the college of Anziani, formulated a plot against the new regime along with his followers, but it was detected, and they were caught by the Podestà.<sup>92</sup> At the General Council on 9 November 1370, Federico Trenta, a Gonfaloniere di Giustizia, presented a problem: the Podestà had stopped proceedings against them on the charge of great disruption to the city because it was said that the *maius Regimen*, who had jurisdiction over riots and incendiaryism according to the city statute Book I Chapter 17,<sup>93</sup> were the venerable Anziani and Gonfaloniere di Giustizia; but it was unseemly that citizens should have jurisdiction over other citizens.<sup>94</sup> This uncertainty was bewildering, particularly during a constitutionally unstable period in which the new statute had not yet been revised, as it would be after independence. In addition, in pronouncing the regime ‘a popolo’, the Anziani and Gonfaloniere di Giustizia had sworn to bring to justice those who took hostile actions against the regime.<sup>95</sup> In response to the query, one councillor, Jacopo Rapondi, gave an interpretation which would be approved: that *maius Regimen* should refer to the Podestà in present and future cases, and that the Podestà had jurisdiction and authority to proceed and punish such crimes. This reminds us of the traditional communal system of the thirteenth century that entrusted the protection of the city to a foreign official, the Podestà. But here Jacopo made an exception, stating that, out of respect for his contribution to the commune of Lucca, Giovanni degli Obizi should not be punished for such crimes, but rather be exiled by the Anziani to a distant place at least 50 miles from Lucca.

These two cases reveal a behaviour model on the part of leading citizens similar to that shown in our case study concerning the provision of prohibition of the *gratia*. The model is that the leading citizens sought to show themselves to be governing, at least in principle, according to republican forms, and sought to hide their actual oligarchic arbitrariness under this republican mask in order to legitimize their measures. This seems to have resulted from the ideological, anti-signorial consciousness and the contemporary fear of being seen as tyrannical because of arbitrary and extraordinary policies in the use of the *gratia* by the oligarchic regime in the period when Coluccio Salutati worked as Chancellor of the Lucchese Anziani.<sup>96</sup>

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<sup>92</sup> *Ibid.* 183–85; *Riformagioni*, I, 380–84.

<sup>93</sup> ASL, *Statuti del Comune di Lucca*, 5, I, 17, c. 11r, ‘De pena illius qui commiserit culpam unde ea die vel nocte sturmus vel aerta vel incedium fieret, et de pena mittentis ignem in sturmo vel extra sturmu’.

<sup>94</sup> *Riformagioni*, II, 87–91.

<sup>95</sup> *Riformagioni*, I, 385.

<sup>96</sup> Zorzi tells of an interesting case in which a witness in a trial against the brother of Avogari in Treviso referred to the brother’s arbitrary absolutions and condemnations intended to expose the tyrannical

## Conclusion

In the fourteenth century, the involvement of politics in criminal justice became intensive and systematic. The judgments pronounced by ordinary judges such as the Podestà on the basis of statutes were extraordinarily and arbitrarily modified by the lord's vicar, the Anziani and the councils. This involvement developed against the background of certain events in Lucca. The foreign lords' domination was accompanied by the amnesty as an extraordinary measure, motivated by the unforeseen situation and by the supplications of the subjects who invoked the exceptional power inherent in the lords. Under Pisan rule, the light intervention of Pisa in the internal affairs of Lucca left space for Lucca's leading citizens as governors to hear subjects' appeals individually and to dispense justice with the *gratia*. These *gratia* always took the form of 'corrective', therefore legitimate, measures. Unexpected situations or the citizens' petitions offered reasonable motives to induce the lords or city councils to overrule 'unjust' judicial decisions and help citizens. But these motives, at the same time, must have permitted the political authorities justifiably to delegitimize, in a sense, the judicial powers, and expand the political sphere in communal government. When Lucca regained its independence, the citizens became bearers of the republican liberty that they had defended so desperately. This conditioned the policy of the *gratia*, and particularly the remission of penalties for those guilty of serious offences. While the identity of the republic forced the government to restrain themselves from granting the *gratia* at its discretion, the practical necessity of defending the republican state from enemies induced leading citizens first to introduce the provision that prohibited remission of penalties for serious crimes, and then arbitrarily to suspend the provision itself.

On the other hand, this evolution of arbitrary political involvement cannot be explained only in the context of Lucca, because Lucca's situation conformed to that of other contemporary cities. In particular, the synchronicity with the Florentine case is remarkable. In Florence, the individual petitions of the *banniti* for remission also rapidly increased in the 1350s,<sup>97</sup> and the procedure of the suspension of laws started to be applied in the 1380s.<sup>98</sup> Tanzini, examining the language of the provisions' preambles in

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character of the accused: A. Zorzi, *Le signorie cittadine in Italia (secoli XIII–XV)* (Milano, 2010), pp. 148–51. As for the possibility of the college being called a tyranny, see, for example, Bindo Binichi, a Siense poet, who raised an alarm about the tyrannical character of *i Nove* (p. 146).

<sup>97</sup> Tanzini, *Il governo delle leggi* 25–27.

<sup>98</sup> *Ibid.* 83–87.

Florence, Siena, and Lucca, valuably points out not only the shared notarial-chancery culture, but also the emergent situation commonly caused by military and financial difficulty, above all after the 1370s, which induced the leading citizens to break down the restraints of traditional communal systems and freely act in response to contingent necessities.<sup>99</sup> There seems to be room for further study, with Tanzini's observation as the starting point, of this contemporaneous political development that was reflected in the policy of the *gratia*.

In Lucca in 1400, Paolo Guinigi was first installed as *Capitano e difensore del Popolo*, and thereafter established his position as *signore* of Lucca. Until 1430, in his dominion, Paolo granted amnesties and showed clemency to individual supplications. His implementation of the *gratia* obviously inherited from the experience of previous periods. He followed the general principle, for example, of acknowledging respect for the rights of others reflected in the need for perpetrators to make peace with victims in order to receive the *gratia*.<sup>100</sup> But we can also see the differences between the *gratia* as it was employed in the republic and the *gratia* granted by the *signore*. Regarding the procedures for granting the *gratia*, there is no doubt that Paolo Guinigi simply and summarily proclaimed whatever he wanted, freeing the decree from complicated procedures such as consultation, voting and any rule that would limit his powers to dispense arbitrary judgment, even though he continued to follow the process of fact-finding about each petition through entrusted officials like Exactor.<sup>101</sup> This clearly shows what was different in his way of laying the foundations for the legality of the *gratia*.

On the other hand, Paolo was explicit in his insistence that the aim of the *gratia* was to manifest his generosity: *ut a pluribus eius munificentia cognoscatur*.<sup>102</sup> This motivation resulted in the increasing emphasis on poverty or fidelity to the lord as supporting testimony in making a petition for obtaining the *gratia*. These emotive supplications readily worked on Paolo's sensibilities, as he tried to make manifest his merciful character. In contrast, the sorts of rational supplications made on the basis of statutes and logic that petitioners had once presented to the councils, especially when pleading innocence, lost their position in the supplication to Paolo. In assessing this change, we do not have to see it as simply the irrational and autocratic character of the *signore*, alien to legal nature. As Nadia Covini, examining the *gratia* of the Visconti, has indicated, the *gratia* of the *princeps* was not only merciful but also legal and corrective, because the

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<sup>99</sup> L. Tanzini, 'Emergenza, eccezione, deroga: tecniche e retoriche del potere nei comuni toscani del XIV secolo', in *Tecniche di potere*, ed. Vallerani, pp. 149–81.

<sup>100</sup> Meek, "'Whatever's Best Administered is Best'" 138–40.

<sup>101</sup> In the back of the supplication letters, for example, the Exactor noted that 'Exactor se informat et maxime si contentus in petitione sunt vera et referat' (ASL, *Governo di Paolo Guinigi*, 33, fol. 72.)

<sup>102</sup> ASL, *Governo di Paolo Guinigi*, 1, fol. 25r.

*princeps*, drawing on the foundation of natural over positive law, restored the original legality and equality in a crisis by granting the *gratia*.<sup>103</sup> Therefore, the fact that the ways of justifying the *gratia* in the petitions changed from the republican regime to the signorial regime must be considered as consequence of the change of the connotation of ‘corrective’ in the *gratia* and of the change of approach by respective regimes and citizen groups to the concept of justice.

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<sup>103</sup> Nadia Covini, ‘*De gratia speciali*’ 200–01.