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[Review of: T. Graziotti (2015) Giustizia penale a San Gimignano (1300-1350)]

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Publication date

2016

Document Version

Final published version

Published in

The Medieval Review

[Link to publication](#)

Citation for published version (APA):

Geltner, G. (2016). [Review of: T. Graziotti (2015) Giustizia penale a San Gimignano (1300-1350)]. *The Medieval Review*, 2016(3), Article 9.

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16.03.09, Graziotti, Giustizia penale a San Gimignano (1300-1350)

[The Medieval Review](#) 16.03.09

Graziotti, Tamara. *Giustizia penale a San Gimignano (1300-1350)*. *Biblioteca storica della Valdelsa*, 27. Firenze: Leo S. Olschki Editore, 2015. pp. xvi, 180. ISBN: 9788822263278 (hardback).

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Tamara Graziotti's well-curated study, the fruit of her doctoral research, examines the theory, policy, and practice of penal law in the evocative *castello* of San Gimignano in central Tuscany. Focusing on the first half of the fourteenth century, the town's political autumn before submitting to Florentine rule, the book contributes important data and several observations on the confluence of law, politics and urban life. The main problematic it tackles is the proliferation of an evolving inquisitorial procedure, the extent to which it ousted a traditional

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accusatorial one, the forces behind this process, and its consequences for the parties involved. Graziotti is commendably broad in her choice of primary source material, yet opts in some cases to focus on a few documents of practice from the decade 1320-1330 rather than harvest a source type from the entire period. One advantage of this approach is that it allows for a thorough diplomatic analysis (also vis-à-vis legal theory and local statutes), which in turn vividly illustrates the dynamics of such processes from a documentary point of view. It thus spotlights the kind of access defendants and plaintiffs had to the trial materials and the court itself, the relative influence judges and procurators could exercise in that context, and of course what historians can responsibly say about the procedure and outcome of local trials. [1]

The study opens with a historiographical précis and a survey of San Gimignano's main legal executives, the podestà and the capitano del popolo, mainly on the basis of the town's well-preserved medieval statute collections (Part I). It then develops an analysis of the city's documents of court practice, dealing first with its main officers and procedures (Part II) and next with its ostensibly peripheral, but for that matter no less significant activities, including pacification and local mechanisms (curfew, policing, issuing licenses to carry arms) designed to curb violence and bring offenders to trial (Part III). Many of the statistics Graziotti assembled in her meticulous tables (including distribution of offenses, offenders' profiles, seasonality, frequency of witness testimony, penalties, etc.) will be of great interest to legal, social, political and of course criminal historians working in and beyond the peninsula. Without entering into their specifics it would be fair to say that in most respect they illuminate a similar world to that depicted on the basis of other archives by earlier historians such as Peter R. Pazzaglini, Massimo Vallerani, Sarah Blanshei, Trevor Dean, Samuel Cohn, and others: violent and property offenses were common; contumacy was rife, especially among political minorities and foreigners; judicial torture was likely infrequent, although the evidence is ambiguous; monetary penalties were the rule, corporal punishments the exception; and, as expected, accusatorial procedures were rare in both the podestà's and capitano's courts.

Some peculiarities of San Gimignano, however, are worth mentioning. These include a clear division of (real) labor between the courts of the podestà and capitano, with the latter focusing on official misconduct and the former mostly on violent and property offenses. Jurisdictional separation also meant that the podestà's work in the realm of criminal justice was far more beneficial to the city's coffers than the capitano's, amounting in one year to upwards of 25,000 soldi or 1268 lire (98). San Gimignano is also remarkable for its enviable degree of documented trial conclusions, a datum that has frustrated criminal historians elsewhere. Last but not least, the vehemence with which *popolani* regimes used local criminal justice systems to subdue certain elites or *magnati* elsewhere is far less visible for San Gimignano, especially in non-violent cases. Jointly these paint a picture of a rather tranquil and well-ordered town, bereft of the tumult that characterized its larger and more famous neighbors, Siena and Florence, or the more far-flung Bologna, Venice and Perugia. The modest sample size, however, means that future research may alter this image, at least beyond the decade or so at the heart of this study.

As for the inquisitorial procedure's trajectory, Graziotti documents rather clearly how diverse (or, from an idealist legal perspective, deviant) its employment could be. To be sure, the "classic" *ex officio* procedure is certainly attested, but it was

hardly exclusive. In two cases out of three the podestà set investigations in motion on the basis of *fama*, denunciations by an alleged victim or a public official, or an unspecified notice regarding the offense. *Ex officio* procedures are even less common (20%) in the sample drawn from the capitano's registers. One likely explanation for this flexibility, Graziotti argues, is that it allowed magistrates to have greater control over prosecutions and streamlined the entire process as compared with stricter *ex officio* regulations, let alone the accusatorial track, with its complex and by-then arcane requirements. In different late medieval settings, even within central-northern Italy, part of what drove this process more broadly was ecclesiastical legal prominence and the desire effectively to define and root out heresy. In San Gimignano the impetus seems to have been also related to a desire for greater lay-political centralization, further stimulated by the capacity of inquisitorial procedures to intensify the flow of money from fines into the city's coffers.

From a broader perspective, Graziotti defends two recent developments in Italian legal-political historiography. The first is methodological and it concerns an insistence on using—where possible, and that is thankfully often the case in Italy--the available sources inclusively rather than prioritizing theory and/or policy over practice; or--as has sometimes been the case recently--vice versa. The second is to challenge a traditional paradigm, stretching to the Enlightenment and given final form by Max Weber, which saw "private justice" as an unwanted and disruptive relic of an irrational pre-statehood. For, both private pacification and vendetta, in San Gimignano as elsewhere, have long coexisted with and even supported the rise of centralized city-states. [2]

Notes:

1. As the author rightly notes, diplomatic studies of this sort are surprisingly uncommon. See E. Maffei, *Dal reato alla sentenza. Il processo criminale in età comunale* (Rome: Edizioni di storia e letteratura, 2005). For a southern French parallel, see Daniel Lord Smail, "Aspects of Procedural Documentation in Marseille (14th-15th Centuries)," in *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter*, ed. Susanne Lepsius and Thomas Wetzstein (Frankfurt: Vittorio Klostermann, 2008), 139-169.

2. See Andrea Zorzi (ed.), *Conflitti, paci e vendette nell'Italia comunale* (Florence: Firenze University Press, 2009); Katherine L. Jansen, "'Pro bono pacis': Crime, Conflict, and Dispute Resolution. The Evidence of Notarial Peace Contracts in Late Medieval Florence," *Speculum* 88 (2013), 427-456.

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