

3 Institutions

THE PRINCIPAL OFFICES

The senior official of the commune of Siena was the Podestà (Latin *potestas* = power); this had been the case, as in most of the Italian cities, since the early thirteenth century. The matter of his election had to be raised each year before the end of the first week in September, to allow time for the new Podestà to take up his annual office in November. The selection was the responsibility of three electors drawn by lot from the members of the Council, who proceeded to put forward four names; their choice required confirmation by the Council. The electors were not allowed to leave Siena between the presentation of their list and the receipt of an acceptance by one of the candidates proposed. These arrangements, which applied in mid century and in the 1260s, had been modified by the early fourteenth century, when the Sienese governing officials, the Nine,¹ sent an emissary four months before the choice had to be made to places selected by them to seek out 'buoni e sufficienti e convenevoli huomini e amatori de la santissima romana Chiesa e del prosperevole stato della città'. At the next stage the choice was made by the Nine themselves, reinforced by the consuls of the merchant gild, the consuls of the knights and sixty men chosen for the purpose. The individual named (at this period for a six-month tenure) had to be aged at least thirty and to have been knighted by the time of assuming office, if not previously.²

In 1262 the possibility of the choice of a Sienese rather than a 'foreign' (*foretaneus*) Podestà remained, in theory, open, but in practice the position had already become virtually the monopoly of an experienced cadre of men trained in the law, mostly from Lombardy and Emilia. The duties of the Podestà, which varied considerably from time to time, included summoning and presiding over gatherings of the Council, judicial functions and, occasionally, military command. He had to preside, with 'collateral' judges, at the sessions of his own court and was responsible for the promulgation of the decisions of all the commune's courts.³

1 See below, pp. 47–8.

2 'Breve 1250', pp. 9–10; *Const.* 1262, pp. 56–9; *Cost.* 1309, 1, pp. 138–42. On *podesteria*, Bowsky, *Commune*, pp. 24–34. For some elections, CG 14, f. 68v; 16, f. 63; 18, f. 105; 20, ff. 12, 57–8; 21, f. 81v.

3 *Cost.* 1309–10, 2, p. 281.

There was plenty of room for disagreement, in the absence of clear constitutional definition, about the borders between the Podestà's jurisdiction and that of the commune's local officials – the Nine and their predecessors – and the Captain of the Popolo. He had to reside in a different terzo of the city from his predecessor – other measures designed to shield him from involvement in Siena's domestic disputes forbade him to receive gifts from Sienese citizens or even to eat with them – and he was not to move more than one day's journey from the city. Only in the rare circumstances of his being entrusted with personal military command could a longer absence be permitted. Such military duties also entailed a special financial allowance above the agreed rate of pay, which itself differed according to the standing of the individual.⁴ The salary was high, but from it the Podestà had to pay his own body of retainers, his *familia*. Count Guido 'Salvatico', a feudatory of the Tuscan dynasty of Guidi, received a totally exceptional salary of 8,500 l. for a year's service (1282), very nearly double that of the Podestà two years earlier. After Count Guido's final tenure (1288) the rate remained much lower, normally between 3,000 l. and 3,700 l., till it rose again in the 1320s.⁵ Though it was normal for the man selected to serve in person, his place was sometimes taken temporarily by a judge.⁶

The provision that at least four names should be suggested was necessary since the man first invited might not be free or willing to serve. Four was sometimes considered too short a list; in 1271 eight names were proposed.⁷ In the course of the thirteenth century the cities of Lombardy and Emilia lost their commanding position as suppliers of Podestà. Siena then recruited mainly from the the Guidi counts and other prominent Guelf feudatories, thus linking the city to the Guelf military alliance. Thereafter, though many Podestà still came from northern Italy, there was a shift towards the March of Ancona and Umbria as recruiting grounds, and by the 1290s these regions were providing Siena with more Podestà than the north. Favourite places for recruitment in the Marche were Camerino (a tradition founded with the appointment of Giovanni di Accorimbone in 1290), Fermo and S Elpidio, in Umbria Gubbio and Spoleto.⁸

The Podestà was accompanied by an extensive staff of judges and other

4 *Const.* 1262, pp. 68–9, 74, 80–1, 85–7; *Cost.* 1309–10, 1, pp. 174–5; B 92, f. 110.

5 B 78, f. 51v; 82, f. 103v. On pay see also Bowsky, *Commune*, p. 30 and *Finance*, p. 316.

6 *Const.* 1262, pp. 78–9; CG 25, f. 34v and 35, ff. 35v–6v; *Const.* 1309–10, 1, p. 177.

7 CG 14, f. 68v. For letters conveying invitations to act as Podestà, see Concistoro 1773, nn. 20, 50.

8 Lists of Podestà in *Archivio di Stato di Siena. Archivio del Consiglio Generale del comune di Siena: Inventario* (Rome, 1952), pp. 101–7. The shift towards the appointment of central rather than north Italians was characteristic of the Umbrian communes at the same time: see A. I. Galletti, 'Note sulla mobilità d'élite nell'Umbria comunale: le magistrature forestiere' in *Orientamenti di una regione attraverso i secoli: scambi, rapporti, influssi storici nella struttura dell'Umbria* (Perugia, 1978), pp. 567–74.

officials who were usually from his home city or a neighbouring one. In 1295 Berardo of Varano brought with him seven judges, three knights (*socii*), two notaries, six squires and sixty police (*berruarii*); all these, except one judge, seem to have been from his own province, the Marche. A decade later the *familia* had grown, and Angelo of Rieti had nine judges, four knights, three notaries, six squires and ninety police, most from Rieti or nearby places in Umbria. Since there was an equivalent body of retainers with the Captain of the Popolo and a certain number of unattached 'foreign' judges and other officials, the total force of non-Sienese officials and armed men recruited as a matter of routine was a considerable one. In 1305 (Angelo of Rieti's year) this numbered fifty-four without counting police, 166 with.⁹ Judges liked to bring their own notaries and servants or squires, which was one reason why this corps of administrators tended to expand. Part of the Podestà's household was recruited locally, among them six more notaries, four messengers and a reserve of sixty *balitori* who had to hold themselves in readiness for any mission for which they might be required (and they were only paid for services actually performed). Twice each month a parade was held to ensure that the city's foreign officials and police were actually present.¹⁰

After completing his term of office the Podestà remained at Siena for at least a week (the period had been prolonged to ten days by the early fourteenth century) while a full investigation (*sindicatio*) of his regime was undertaken, with particular reference to the financial aspects of his tenure. Five men were named for the enquiry and the Podestà had to deposit 500 l. as a surety until cleared by this board.¹¹ The investigation was no mere formality: Giovanni da Camerino had to forfeit 225 l. of his salary in 1291, 200 l. because he had brought a smaller force of police than was due, 25 l. 'on account of damage done by his household in the commune's buildings'. Later the commune claimed 325 l. from him, and the dispute went to the papal court. Cante de Gabriellis, Podestà in 1297, had 500 l. held back from his salary for seven months until he was eventually cleared by the investigating syndics. Quarrels of various sorts about the Podestà's pay were not uncommon. A particularly serious dispute concerned Tommaso de Anzola, who was deprived of office in 1291 after condemning a priest for murder, an infraction of ecclesiastical privilege which caused a quarrel with the bishop of Siena.¹² Tommaso's salary was to have been 6,000 l. for a year's service, but only half of

9 CG 49, ff. 7 and v; 66, ff. 17–23v. On the *familia*, Bowsky, *Commune*, pp. 26–7.

10 *Const.* 1262, pp. 104–5, 113–14; *Cost.* 1309–10, 1, 211, 348–9.

11 *Const.* 1262, pp. 84–5; *Cost.* 1309–10, 1, pp. 137, 225–7; 2, pp. 538–41. On *sindicatio* see V. Crescenzi, 'Il sindacato degli ufficiali nei comuni medievali italiani' in *L'Educazione Giuridica. IV. Il pubblico funzionario: modelli storici e comparativi*. Tomo 1 (Perugia, 1981), especially pp. 433–41.

12 B 104, f. 28; CG 41, ff. 62–3v. See also below, p. 131.

this was paid when his tenure was terminated. Five years later a dispute arose with a man from Rieti whose appointment was revoked on the grounds of his Ghibelline affiliations.¹³

The possibility of disagreements between commune and Podestà is mentioned in the code of 1309–10 and the instances just described must have served as a reminder of the difficulties inherent in this official's status. The ambiguity goes back to the office's origin. Around the beginning of the thirteenth century many of the communes had begun to recruit a sort of 'city manager' who was to govern without involvement in the factionalism characteristic of the period when the commune's leading officers were local men, the 'consuls'. However, the standing of this new official, the Podestà, lacked juridical definition, and the troubles of Siena's Podestà in the 1290s showed how a man who had been hired could also be fired. Later, the Podestà's functions tended to be more limited, with emphasis on his judicial capacity, but that development is not detectable before the fourteenth century. Meanwhile the gild of judges and notaries still thought it a necessary routine that its representatives should lecture each new Podestà on his duties.¹⁴

Such was the authority of the Podestà's position that one is bound to ask whether he was considered to be the superior of all other officials of the commune and Popolo, both local and foreign. In other words, where did sovereignty lie? The ambiguity of the position of the Popolo itself makes the enquiry a difficult one, nevertheless the arrangements laid down in the 1262 code for the settlement of any dispute between Podestà and Captain of the Popolo provide a partial answer. If the priors of the twenty-four and the consuls of the merchant gilds (i.e. the Mercanzia and Pizzicaiuoli) agreed that such a dispute had arisen, the matter had to be settled in a special meeting of the Council of the commune and Popolo at which neither the Podestà nor Captain could be present. Since the Council was also the only body which could grant citizenship, it would seem that it was envisaged as a supreme authority ranking above all the officials.¹⁵

GOVERNORS OF THE POPOLO AND COMMUNE

The doubtful standing of Podestà and Captain of the Popolo was a particular case of a more general constitutional ambiguity. In Siena, as in many other Italian cities, the commune itself had by the middle of the thirteenth century undergone a process of constitutional and institutional change as a result of which its own officials and councils had come to share power with those of a new organization, the Popolo (people). To summarize so complicated and varied a process in a single

13 Bowsky, *Commune*, pp. 31–3.

14 *Cost. 1309–10*, I, pp. 209–10; *Statuti . . . giudici e notai*, p. 55.

15 *Const. 1262*, pp. 72–3; *Cost. 1309–10*, I, p. 166.

sentence is to over-simplify greatly, but the crux of the situation was that elements in the population which had been excluded from the early regime of the consuls elbowed their way to the fore and ensured that they shared in the power of the landholding elements which had formed the dominant class in the original commune.

Thus by the mid century many of Siena's local-born officials were representatives of the 'people', at least notionally, rather than of the Sieneese 'commune' itself. The Popolo as an organization within the Sieneese city-state will be treated later,¹⁶ but it is necessary at this point to say something of those of its officials who served alongside the Podestà as Siena's principal administrators and came to supersede him as the city's supreme authority. The 'foreign' Capitano del Popolo, the 'popular' equivalent of the Podestà, can also be discussed later, partly because his office was an intermittent one, partly because it did not achieve the degree of power enjoyed by the native priors and governors.

Between the middle of the century and the 1290s the experimentalism characteristic of the Italian city-republics prevailed to such an extent that institutional developments are best set out in the form of a chart. The changes which occurred between the time of the Sieneese Popolo's first officials, the twenty-four *anziani*, and the eventual installation of a more enduring institution, the Nine 'governors and defenders of the people and city', were as follows:

Table 4. *Titles of signorie, 1235–1355*

Dates	Number of officials	Formal title
1236–71	24	antiani populi
1271–79	36	gubernatores et difensores civitatis et communis
1280–87	15	gubernatores et difensores communis et populi
1287–90	9	gubernatores et difensores communis
1290–91	18	domini ad gubernandam civitatem
1291–92	6	gubernatores et difensores communis et populi
1292–1355	9	gubernatores et difensores populi et civitatis ¹⁷

Throughout these permutations the number of office-holders was divisible by three; this is because each terzo of the city had always to have equal representation. The interesting point about the changes in nomenclature is the disappearance of the 'popular' label between 1271–79 and again in 1287–91, these being periods in which emphasis on a Guelf regime led to temporary suppression

16 Below, pp. 101–4.

17 Sources: volumes of CG for the years in question: see also Mondolfo, *Populus* and Bowsky, *Commune*, pp. 34–6, 58–9.

of the Popolo. At other times after 1280 the use of the word is an indication of a claim to inclusiveness rather than of any popular or anti-oligarchic tendency.

In Siena all these organs have in common their topographical basis. The structure of the Popolo's organization in the Italian communes was either corporative (i.e. based on guilds) or else topographical, or occasionally some combination of the two. In many cities representatives of the craft guilds served as the officials of the Popolo, but in Siena the *arti* never achieved this position. The formal nomenclature of the officials is not easy to establish since it was usual to refer to them as 'the Twenty-four', the 'Thirty-six', and so on; the list given above is derived from the occasional use of a fuller title in the proceedings of the Council, the Consiglio Generale. The Twenty-four were chosen to hold office for six months, within which time three of them served as priors for each of the eight *priorie* into which the six-month period was divided.¹⁸ The Thirty-six were elected for three months, and three of them at a time served as priors, each priorate lasting one week.¹⁹ The criterion for choice naturally depended on political circumstances. During the Guelf regime of the 1270s the *gubernatores* had to be merchants (*de numero mercatorum*) zealous for the honour of the city and its Guelf party. Members of the magnate families and knights were ineligible, as were judges, notaries, doctors and, of course, Ghibellines.²⁰

The task of the Nine (as it was defined in the code of 1309–10) was to bring the city, commune and people (popolo) to 'true and right and loyal peace and unity, *communalmente e singularmente*', to maintain them 'in unity and *buono stato pacifico e riposato*', and to stand for 'reason and equality and justice'.²¹ At that time the choice of the Nine was made by a cautious process designed to secure continuity within the controlling oligarchy. The election was carried out in a meeting of the Nine in office, with the consuls of the merchant gild (Mercanzia), the Podestà and the Capitano del Popolo. Ten favourable votes were required (of the fourteen or fifteen present), but close relatives and business partners of the voters themselves were ineligible. There was a period of twenty months before holders of the office themselves became eligible again. It was necessary to be literate and aged at least thirty to qualify. The tenure of various other important offices was also incompatible with membership of the Nine: these were the Provveditori of the Biccherna, the Signori of the gabella (indirect tax) and the Chamberlain of the Consuls of guilds,²² as well as any ambassador.

18 CG 6, ff. 2v, 183; 8, f. 83v; 12, ff. 45, 54. See also Bowsky, *Commune*, p. 54n. Some writers have referred to the 24 and their successors as 'priors', but this is incorrect.

19 CG 15, f. 111v; 16, f. 10v.

20 Statuti 3, f. 45v (quoted by G. Martini, *Siena da Montaperti alla caduta dei Nove* (Siena, 1961), pp. 25–6).

21 *Cost. 1309–10*, 2, p. 498.

22 *Ibid.*, pp. 490–2; Bowsky, *Commune*, pp. 59, 62.

The Nine had to be, in the terms of the statute, *de' mercatanti de la città di Siena o vero de la meza gente* (the middle people). These 'middling sort of people', or those of them interested in sharing in oligarchical authority, were not very numerous, and some families were represented on the Nine many times. Professor Bowsky's analysis (for the period 1287–1355) shows that nearly half of those in this office held it more than once, while one in ten held it three times or more, and there were men who served on the Nine as often as eight times. Although a payment was made, this was compensation for time lost from business rather than a full salary, amounting to a mere 5s. per day.²³ The Nine were appointed for a two-month period, the office of prior or chairman being held by each for a single week. Throughout their service – and this must have precluded conduct of their normal business, hence the payment for 'broken time' – the Nine were insulated from contact with the social life of the outer world. They had to live and feed together, separated from their families.²⁴ Strict conditions were laid down for the granting of leave. The Podestà could grant this for a maximum period of twenty-four hours. The prior could authorize overnight absences for a maximum of two members at one time. Fines for unauthorized absence were high: 5 l. was the minimum, 10 l. the penalty for anyone 'going to his vineyard or land or any other place'.²⁵

The Nine could not issue new ordinances unless these were backed by a two-thirds majority in council and they possessed, on their own, no fiscal powers. They were however empowered to order the Podestà to call a Council meeting and to call one themselves in the event of his refusing. They were the body normally authorizing all expenditure and also the arbitrators in cases of apparent contradiction between statutes. Various officials, such as the *maggior sindaco* and notaries employed for the commune's correspondence, were chosen by them. Each Thursday they had to hold a session 'in a public and open place' in order to hear petitions.²⁶ Much of their work was done in smaller meetings, some of which involved discussions with the Podestà and Captain, other officials or inner councils, but records of these and of their own gatherings have not survived. There were certain officials, styled the *ordini*, whose authorization was necessary for action by the Nine in some matters. These were the four Provveditori, the four Consuls of the Mercanzia and the three Consuls of the Knights (known alternatively as the Captains of the Guelf Party).

23 *Cost. 1309–10*, 2, pp. 492, 498; Bowsky, *Commune*, p. 73.

24 *Ibid.*, p. 58. A proposal for the reclusion of the Nine was considered, but eventually rejected, in 1291 (CG 41, ff. 17 and v).

25 *Cost. 1309–10*, 2, pp. 495–7.

26 *Ibid.*, Dist. VI.

COUNCILS

The Podestà and the Sienese officials operated to a large extent through and in conjunction with the commune's General Council, the Consiglio della Campana ('of the Bell'). This was basically composed of 300 citizens, 100 from each terzo, to whom were added the consuls of the merchant gild and the cloth gild. Members were chosen for one year. In 1262 the electors were the Podestà, the Twenty-four (or perhaps their priors only), the Chamberlain and four Provveditori and the judges. Some slight alterations had been made by 1309–10, when the electors, for a six-month period, were the four *ordini*, which meant the inclusion of the consuls of knights or Captains of the Guelf Party, at the expense of the Podestà and judges.²⁷

The councillors had to be the 'best, most useful and most discreet' and the wisest that could be found. In 1262 at least half had to be members of the Popolo. To be eligible it was necessary to be a tax-paying citizen resident in the city for at least ten years, and the minimum age was twenty-five. Office-holders could not be councillors, nor could two brothers at the same time; heretics and suspected heretics were naturally banned. Those elected had to accept membership and swear an oath on doing so.²⁸ As circumstances inevitably arose in which men elected proved ineligible or had good reason for absence, the number present at meetings often fell well below 300 – about 150 seems to have been a normal attendance in the 1250s,²⁹ but later, when nominal membership neared 400, the numbers often rose above 250 and even as high as 350. Even then there were occasions when they were much lower. In 1285 the Council had 390 nominal members, yet at a meeting on 5 March of that year only 146 turned up.³⁰ Absence might be sanctioned on as many as three occasions in any month, but the fines for unauthorized absence (commonly 5s.) could be as high as 10s., and they were levied frequently.³¹ Excuses for absence were manifold: 'he was away', 'he had been excused attendance', 'he did not hear the bell', 'he was hunting', 'they had gone to the woods'. These were among the explanations offered when forty-four councillors on one occasion, and thirty-seven on another, were fined for non-attendance (September 1270). In September 1275 a scandalous number of absences resulted in 256 (considerably over half) of the councillors being fined 20s. each.³² This was a very exceptional occasion, a more normal number of fines

27 *Const.* 1262, pp. 145–7; Bowsky, *Commune*, pp. 85–7.

28 B 71, ff. 2v, 104 (fines for failure to take the oath).

29 E.g. CG 4, ff. 6 and v.

30 CG 29, ff. 3–10. See also *Archivio del Consiglio Generale . . . Inventario* (above, n. 8) p. 2.

31 B 71, f. 5.

32 CG 14, ff. 3–4; 20, ff. 137–9v.

for absence being about 24, while often a mere handful of councillors paid what for them amounted to a very low fine indeed, the equivalent to a contemporary parking fine. The member of the Gallerani family who made a payment for two absences had presumably chosen what for him was a routine option hardly amounting to a status symbol.³³ Late arrival and premature departure also occasioned fines.³⁴

It was normal for the Podestà to summon meetings of the Council though, as already mentioned, the Nine and certain other officials could do so in an emergency.³⁵ The business of the Council meeting came to it from the main *signoria* (i.e. after 1292, the Nine) or from the other leading officers, the *ordini*, or else by way of the very numerous petitions brought to it by individuals or, more rarely, corporations. A request to the Council was the routine procedure for seeking any exemption or privilege, including requests for reduction or cancellation of fines or other judicial punishments, as well as for applying for citizenship. The annual review of the commune's constitution by the thirteen *emendatori* also culminated in consideration of their recommendations by the Council.³⁶ It was not very common for the Nine (or their predecessors) to pronounce a formal corporate opinion to a council meeting, but this could happen. In March 1275, for instance, Ugo Matteo proposed on behalf of the Thirty-six (*pro parte xxxvi consuluit dicens*) that the military crisis should be dealt with by ordering 200 citizens to provide cavalry service and by recruiting 100 mercenaries.³⁷ Traffic in the other direction, that is reference from the Council to the signoria or other office, was the normal route, as will be seen.

One important factor in determining conciliar business was the list of subjects discussion of which at regular intervals was compulsory under the terms of the constitution, varying from the broadest economic and military concerns to very specific considerations. Many were intended as a sort of strategic *aide-memoire*, for instance the question 'concerning the construction of a castle on the hill at Monte Corio'.³⁸ The list was a lengthy one, but the routine way in which the institution functioned must have blunted its impact; frequently the decision was 'no action this year'. The topics thus given a compulsory airing were too varied and numerous to be summarized. They included many aspects of rule in the contado (the building of new fortresses and defences, taxation, markets, the assertion of

33 CG 46, f. 9; 71, f. 5; 83, f. 13v; 95, f. 9v; 114, f. 43 (Gallerani).

34 CG 27, ff. 10 and v; B 53, f. 1.

35 Above, p. 48. *Cost. 1309–10*, 2, pp. 505–6. On the summons and chairmanship, Bowsky, *Commune*, p. 87.

36 These topics are very well treated in Bowsky, *Commune*, pp. 89, 92.

37 CG 20, ff. 33v–4v.

38 CG 1, f. 20 (1249); *Const. 1262*, p. 373, for this as a compulsory agenda item.

existing rights and acquisition of new ones, and so on), also domestic questions (food and water supply, the watch, sumptuary legislation, citizenship, the *palazzo del comune*).³⁹

The rules of debate restricted the number of speakers on any topic to five (at times, four) and forbade councillors – ineffectively – to say exactly the same as a previous speaker.⁴⁰ Fines were specified for speeches which were irrelevant, for rudeness to other councillors (speaking *villaniam* or *verba iniuriosa*), for failing to listen diligently, and for speaking after the Podestà had ordered silence.⁴¹ These were not mere threats; early in 1277 fines were levied on nine councillors for speaking ‘against the orders of the Podestà’ (*quia fecit locutionem contra mandatum potestatis*).⁴² One very specific (and admirable) rule was that any councillor speaking in favour of military action was obliged to serve in the campaign himself.⁴³ Consideration of any proposal which contravened an existing statute required a previous vote that discussion of the proposal was necessary and useful. A special and rather strange role was played in the Council’s sessions by the *maggior sindaco*, a non-Sienese official chosen by the Nine whose duties required him to express opposition to any constitutional innovation proposed. The practical effect of this automatic and compulsory disagreement with any change to the statutes was small. As with the list of the compulsory topics, this was a weapon blunted by the automatic way in which it functioned, hence it tended to be discounted, rather as though it had been a perpetually red traffic light, and failed to fulfil its purpose. However the *maggior sindaco* had a miscellany of other duties, among them those of reviewing the statutes of the guilds and of contado communities, enquiring into accusations against judges and notaries, and checking the presence of the Podestà’s retinue.⁴⁴

The constitution of 1309–10 provided that any measure to which the *maggior sindaco* had stated his opposition required a three-quarters majority and the presence of 200 councillors. A similar majority, on three separate occasions, was also required for a decision to go to war; normally these three meetings were to be held on different days (so that the clause implied a two-day delay before launching a campaign), though there was provision for special exemption from this rule.⁴⁵ Certain types of conciliar decision required a two-thirds majority, including election of the Podestà, any reversal of a previous vote and the grant of

39 CG.

40 *Cost. 1309–10*, 1, p. 199; Bowsky, *Commune*, pp. 89–90.

41 CG 27, ff. 10 and v (1283).

42 B 67, ff. 3v–4 (for fines for speaking *contra bannum*, B 53, f. 1 (1273)).

43 *Cost. 1309–10*, 1, p. 172.

44 *Ibid.*, pp. 93–4, 348–9; 2, pp. 424–5, 541–7; Bowsky, *Commune*, pp. 42–5, 90, 96 (and his article in *SS*, 80 (1968)).

45 *Const. 1262*, p. 88.

authority by the Nine to ordain a measure contrary to the current constitution.⁴⁶ This left only comparatively routine or minor matters for decision by a straight majority. Provision existed, in principle, for taking an open vote, but a clause in the 1309–10 statutes treats the secret vote as compulsory and it seems that in practice voting was always carried out by placing a ball in either the white (favourable) or the black box.⁴⁷

A special notary had the task of compiling the official record of the Council's debates and decisions (*reformagioni*). Arrangements about the performance of this very responsible duty varied. One clause in the 1262 statutes implies that a Sienese notary was elected to this post, another that there were two notaries *pro consiliis scribendis*. By 1309–10 there was a single notary and later the post was always held by a non-Sienese, usually a Tuscan who was in office for many years consecutively. The notary's record had to be agreed by the Council before the conclusion of the meeting, obviously a necessary precaution against subsequent controversy, and he was forbidden to consult speakers about the terms in which their contributions to debate were recorded.⁴⁸

A summary of the discussions in some Council meetings may give more illumination than prolonged generalizations. I have selected more or less at random meetings separated from each other by a decade. The first period is from 19–26 August 1275. During that week five meetings were held of which the record has survived.⁴⁹ None was a full gathering of the 'Council of the Bell', all were meetings, called by the Podestà, of the Thirty-six and other officials and selected 'wise men' (*savi*) and took place in the Podestà's residence in the Tolomei palazzo. On 19 August there were present the Thirty-six, the Podestà, the captains of the Guelf party with that party's councillors, the Chamberlain and the four Provveditori of the Biccherna, and certain other *savi*. Four topics were on the agenda: a petition from a cardinal's servant who had been the victim of a robbery in or near Sienese territory; another robbery, at Giuncarico in the southern contado (concerning which there was a letter from the Count of Elci); trouble about a reluctant garrison at Accesa ('Castello del Vescovo'), in the same area; and, most seriously, the excommunication by the bishop of Siena of some officials of the commune. There was one speaker only, and it was agreed, on his proposal, that twelve emissaries should be sent to reason with the bishop, and if he refused to withdraw the excommunication the matter was to be reconsidered by the Council. A small commission of enquiry was to be sent out about the Giuncarico robbery and further

46 *Ibid.*, pp. 57–8; *Cost. 1309–10*, 1, p. 206; 2, p. 487. The role of the *maggior sindaco* should have made a 3/4 majority requisite in such instances.

47 *Cost. 1309–10*, 1, pp. 206–7. On voting, Bowsky, *Commune*, pp. 93–4.

48 *Const. 1262*, pp. 104–5, 147, 149–50; *Cost. 1309–10*, 1, p. 205; Bowsky, *Commune*, pp. 95–6.

49 CG 20, ff. 94–99v.

action taken if it was concluded that a family of feudatories, the Pannocchieschi, were involved. The recalcitrant garrison was to be replaced, and the matter of the cardinal's servant was referred to the consuls of the merchant gild.

On the 21st the same body met again, this time to consider a request from Charles of Anjou's treasurer that Siena should contribute its share towards the financial and military resources of the Guelf alliance, together with a proposal for terms of alliance from Pisa's Guelf exiles. There was also news of more trouble in the southern contado, and it was decided to send for representatives of Porrona, the place involved, to come to Siena 'to promise obedience'. There were three speakers at this meeting, but decisions were deferred on the main diplomatic topics.

At the meeting of the same body on 22 August there were eight speakers. The topics this time were various problems in the contado, in particular trouble with the important town of Massa (Marittima), which was to be ordered to send emissaries to promise obedience. Fifty French mercenaries were to be recruited, and a new garrison hastened to Accesa. There was still no decision about the Pisan Guelfs. Later on the same day a second meeting was held at which two councillors spoke. Massa was discussed again and a yet more important subject, the line to be taken by Siena at the forthcoming meeting (parliament) of the Tuscan Guelfs. It was decided that Siena's representatives should encourage a pacific policy and in particular oppose the notion of a campaign against Volterra. The last meeting of this series, on 26 August, was a larger occasion with sixty *savi* co-opted to those who were present *ex officio*. Five topics were discussed, only one of them totally new – a letter from the Podestà of Città di Castello (in Umbria) giving political news from northern Italy – the other subjects being the Guelf alliance (on which views had been expressed by a recently arrived embassy from Florence) and the various troubles of the southern contado. Two councillors spoke: the news from Lombardy was to be discussed later, and the main conclusion was to reaffirm the recommendation to recruit fifty mercenaries.

It should be evident from the preceding paragraph that Sieneese councillors received a versatile political education through the variety of problems with which they were faced and which they discussed or (if of passive temperament) heard discussed. The range of their concerns brought a wide acquaintance with the affairs of their city's sphere of influence and its involvement in the diplomatic interplay of the entire Italian peninsula. Far from the Council's concerns being local or municipal, curiously little of what would now be thought of as local government matters came under discussion at these meetings of 1275.

A dip into the *riformagioni* of 1285, this time for meetings of the 'Council of the Bell', provides a partial corrective to that impression.⁵⁰ The Council met on

50 CG 29, ff. 34–5.

Saturday, 25 January of that year, with four items on the agenda. One, a matter for routine repetition, was the requirement to consider before the end of January any money payments owing to Sieneze citizens from inhabitants of the diocese of Volterra and of the seigneurial estates of the Aldobrandeschi and Pannocchieschi lords. The second (again a topic dictated by the constitution) was the need to fix salaries for those wishing to come to Siena to teach 'in any subject, science or art' (*facultate, scientia vel arte*) or to practise medicine. The controllers of the city's prisons could not raise the normal 10,000 l. caution-money asked of them, and they petitioned to offer a smaller amount. Finally, there was a proposal that for convenience the butchers of Siena should be required to so arrange their locations that there should be no more than three butchers' shops in any contrada. There were four speakers, and it was agreed that the first routine proposal be referred to the Podestà and the consuls of the merchant guild; the teachers' salaries were referred to the Chamberlain and Provveditori; the gaol managers' surety was referred to the Podestà and his court (judges). The radical suggestion about the siting of butchers' shops was to be re-considered in mid February when the Council would hold an *ad hoc* meeting, and for the present the butchers might stay where they were. The tendency of this meeting to 'pass the buck' or at least to postpone decisions is very obvious.

A sample from the minutes a decade later still widens the conspectus of subjects coming before the Council. The general Council met four times between 10 December 1294 and 22 January 1295.⁵¹ On two occasions there was only one speaker, once there were two and once three. At the first meeting the topics were the city's walls, the election of a rector for Chiusdino in the contado, and the iniquities of the city's butchers. The second discussed street paving, the provision of guards for the city, the supply of fish for purchase in the city, and the levying of a new direct tax. The third considered the fabric of the cathedral (a routine topic), the new religious order of the 'Fрати Gaudenti' (this was left to the Nine), the obligations of cavalry service (another compulsory topic), and the need to encourage people to settle at Monteriggioni, a strategic castle-site, rather than desert it in favour of the plain. The last Council meeting discussed two subjects only, a dispute with Bologna over commercial reprisals, and a petition concerned with the danger of fire in bakers' shops. A proposal had been made that bakers should not be permitted to keep in store more than one *salma* of firewood. The bakers counter-petitioned that a stock of at least three *salme* was a necessity, and this obtained the necessary two-thirds majority. After the discussion at this meeting two clauses from the constitution received formal readings; they related to compensation owed in certain circumstances by the commune, and to the ineligibility of magnates to plead in the commune's courts.

51 CG 47, ff. 27–43v.

With many of the topics of 1294–95 one is back in the realm of civic domestic affairs, but here too there are ‘imperial’ preoccupations with Monteriggioni and Chiusdino, both important Sieneſe poſſeſſions. Concern with the domestic market in fiſh involved the wider world, for moſt of Siena’s fiſh came from Lake Trasimene, outside the city’s territory; the matter of the religious order and the diſpute with Bologna imply yet wider horizons.

The council-meetings deſcribed above, particularly thoſe of 1275, are characteristic in that a queſtion was rarely debated and ſettled in a ſingle ſeſſion, and it was normal to refer matters either to another council or office or to an *ad hoc* committee (*balia*), or a combination of theſe. Common techniques were reference to the Nine (or whatever the current *signoria* was ſtyled) or to the conſuls of the merchant gild or to a *balia* of twelve. An initial reference to the Nine was quite often followed by them in turn handing on the matter to a *balia*. Often the proceſs is difficult to trace becauſe minutes of the *balie* have ſurvived in the archive much leſs well than thoſe of the main Council.

It would be ſuperfluous to pile up examples illuſtrating the endlessly varied formulae of Sieneſe conciliarism. The uſual title for a gathering comprising numbers much ſmaller than the main Council was ‘ſecret’. Any project entailing innovation in the contado had to be diſcuſſed by the Nine with a ‘ſecret council of a hundred’ before it could go to the Council of the Bell.⁵² ‘Secret’ councils could eaſily imply numbers of this ſort, though on other occasions there might be as few as a dozen members.⁵³ If a ſmall council was reinforced by *ad hoc* members, as often happened, it might grow until it approached the General Council in ſize. Theſe gatherings often went under very generic titles, ſuch as the ‘ſecret council with the addition of certain *sapientes de casatis* (wiſe men from magnate families) and others’.⁵⁴ When the main Council itſelf was reinforced, a common occurrence, membership became very numerous. A routine body of added names, the *radota*, was often added to the General Council’s baſic ſtrength of 300. The number of the *radota*, which had earlier been ſixty and then 120, achieved 150 (fifty per terzo) in 1290, and the prohibition againſt brothers ſerving together did not apply to its membership, ſo it could magnify the authority of leading families.⁵⁵

The inſiſtence that a controversial matter ſhould be diſcuſſed openly and on more than one occasion is ſymptomatic of an important facet of the commune’s philoſophy. This explains the references to deciſions reached after diſcuſſions ‘by the Fifteen and a council of the conſuls of the knights, with the addition of many

52 *Cost.* 1309–10, 2, p. 503.

53 E.g. CG 13, ff. 5v. 34v, 52v.

54 CG 16, f. 75 (analogies in CG 17, ff. 5–6v).

55 On the *radota* ſee Bowsky, *Commune*, pp. 86–7.

nobles and magnates of the city of Siena', which might in turn require confirmation 'by the General Council of the Bell with the addition of the following men of the city, in great number and quantity . . . the consuls of the knights and their council, the consuls of the merchant gild and their council, the consuls of the cloth gild and their council, the lords of the gilds of the city and forty good men from each *terzo*'.⁵⁶ After all that it would be difficult indeed to raise the complaint that 'we were never consulted'.

A distinction which was partly but not entirely a matter of nomenclature was that between councils 'of the commune', 'of the Popolo' and 'of the commune and Popolo'. There were occasional periods of conflict when the Popolo sought to assert itself as an organization of equal strength with the commune, and at such times the Popolo tended to reach its decisions through its own council.⁵⁷ Yet in as far as the Popolo gained success its institutions merged with those of the commune itself and indeed reshaped them. When half the commune's councillors had to be *popolani*⁵⁸ there was less need for the Popolo to have a separate council. But there were times in the 1250s – and occasionally later – when the Popolo was challenging for authority and its councils came to share *de facto* in the commune's decision-making. Thus in a period of struggle (1256–57), one outcome of the Popolo's pressure was the consideration of a proposal for direct taxation by a joint meeting of the commune's Council (of the Bell) and the council of the Popolo.⁵⁹ When the Popolo was not combining with, or being devoured by, the commune, its council was of a considerable size. In 1258 its members numbered 150 (fifty per *terzo*), while in 1265 a few meetings of the Popolo alone – joint councils were the rule at this time – comprised 'the general council of the Popolo of the city of Siena with the addition of the lords of the gilds and companies (*societates*) and five hundred men per *terzo*'.⁶⁰ These were perhaps the largest conciliar meetings ever to be held in the city.

COMMITTEES AND THE 'ORDINI'

Examples serve better than lists of councils and officials to convey the way things were done. The *balia*, the *ad hoc* committee, is the most characteristic governmental institution of the Italian communes. In some ways it was also the most influential, since the long-lasting offices had themselves originated as *balie*. In any military or financial predicament – the second following the first 'as night the day' – the reaction of the Sienese was to appoint an advisory *balia*. In 1251 a Florentine

56 CG 31, ff. 35–6 (1286).

57 For the Popolo, see below pp. 101–4.

58 Above, p. 49.

59 CG 6 (for the joint meeting, f. 92).

60 CG 8, ff. 2 and v; 12, ff. 21, 23. For the *societates* see below, p. 102.

campaign threatened Montalcino; the Council's decision was to instruct the Podestà to act, 'and let him have four good men (*bonos homines*) known to him, those whom he considers most useful, from each *terzo*'.⁶¹ In 1268 the bad news from the same direction was the Guelf capture of Montepulciano. On that occasion the advisers to the Council and Captain of the Popolo were the Twenty-four 'and twelve good men placed over the matters of the commune (*positorum super factis communis*) with the addition of eight wise good men from each *terzo*'.⁶² The tendency was to accrete more 'wise' and 'good' men as the crisis developed. In 1270 Siena faced the consequences of the collapse of the Ghibelline cause in Tuscany. The Podestà consulted a 'secret' council of twelve throughout that summer which at times was reinforced by the rectors of the gilds. By October the twelve were meeting with 'other wise men' and in early December the arrangement was formalized as a gathering of the twelve and thirty others, ten per *terzo*. This element was expanded yet again on 16 December to twelve per *terzo*.⁶³

The major offices which ranked with the signoria of the Nine (and their predecessors) to comprise the commune's 'orders' (*ordines*) were the four Provveditori of the Biccherna, the four consuls of the Merchant Gild (Mercanzia) and the three consuls of the knights (*milites*). The last of these presents problems of nomenclature in that it possessed an alternative title, the captains of the Guelf Party; even the statute collection of 1309–10 refers to 'the *capitani di parte* or *consoli dei cavalieri*'.⁶⁴ The principal *raison d'être* of this office was, or became, the management of the confiscated property of political exiles. In the 1270s this meant management by the Guelf party of Ghibelline property, hence from 1271 until 1279 or later the name of 'captains of the Guelf Party'. The change may well be connected with the terms of the abortive pacification of 1280 which decreed the abolition of the two parties. There may have been a period during which the office was in suspension; if so, it had reappeared by 1284 as *consules militum*, and it normally continued to be known as such thereafter.⁶⁵ The usual conciliar function of the *ordini* was to reinforce the permanent councils as representatives of financial interests and expertise. A characteristic role for the council of *ordini* (1279) was to meet at the request of the Podestà, with an additional twelve 'good men' per *terzo*, and the new body would decide, for example, 'concerning the matter of Torrita and about having a larger corps of soldiers (*masnata*) in the city of Siena'.⁶⁶

61 CG 3, f. 65.

62 CG 12, f. 72.

63 CG 13, ff. 5v–77v.

64 *Cost. 1309–10*, 2, p. 524.

65 Bowsky, *Commune*, pp. 171–2; CG 14, ff. 11v ff. (1271); 23, f. 28 (1279); 29, f. 1 (1284). For the 1280 pacification, below, pp. 120–2.

66 CG 23, f. 28.

OFFICE-HOLDERS

If the number of citizens involved in such councils is impressive, so is the number who actually held office. A volume of Biccherna expenditure for the first half of 1282 lists together conveniently the salaries paid to officials of the commune for that period.⁶⁷ 'Officials' in this context omits Siena's major office-holders (e.g. the Podestà) and all other external appointments such as judges. Omitted also are soldiers and the night watchmen. These middle ranks of the paid – mainly for tasks which were compatible with other employment – were engaged in a wide variety of duties. Some seventy of them had functions connected with the citizens' obligation to perform military service, the recruitment of mercenaries and other military matters. Rather over twenty had fiscal duties, in the widest sense, including concern with judicial fines and the laws against exporting foodstuffs, and several others performed secretarial or clerical functions. The duties of the remainder defy categorization: five men, at 5s. each for six months, were appointed 'to seek means by which the expenses of the commune may be diminished'; nine, at 10s., were to choose the syndics of the various *contrade*; three, at 5s., were charged with 'making ordinances against the butchers'. Others had to distribute office (*signoria*) in the contado, to make ordinances concerning the guarding of the city, to approve guarantors in the criminal courts. One recipient of a fee (perhaps he should not rank as an official) was paid 20s. because 'he showed an error of 400 l. concerning a condemnation which was to be cancelled, and this sum had been omitted; he wished his name not to be revealed'. In all 235 men were paid salaries (the 20s. reward has been excluded) and between them they received about 400 l. In the following six-month period 229 salaries were paid, or 246 if some border-line payments are included.⁶⁸

The fact that over 200 men were thus involved by employment in middle-ranking jobs is an important feature of the commune. Undoubtedly this helped to tie them in to the system; they were part of the set-up. Yet the duties which appear in these lists are far from exhausting the full role of officials. Many very significant functions that are not included in this salary list were performed by Sienese, including the thirteen 'amenders' of the statutes and those all-purpose denouncers already mentioned who played such a characteristic role in delating on their fellow-citizens.⁶⁹ Two men were paid 25s. for six months service in investigating 'thieves and thefts, the cleaning of paved roads, and women spinning in the streets, girls wearing dresses with long trains, people throwing water and filth from balconies into the street, people mourning with loud

67 B 82, ff. 145–50v.

68 B 83, ff. 124–9v.

69 Above, p. 12.

lamentations and rending their clothing after funerals', and many other such tasks.⁷⁰ By 1302 no fewer than sixty men were receiving a retaining fee of 5s. as 'secret accusers of people who throw filth in public places and those who wear pearls and superfluous ornaments'.⁷¹

Valuers for purposes of direct taxation (*allibratores*) naturally required proper recompense both as a reward for expertise and as a precaution against corruption. Sixty *allibratores* for a *dazio* in 1282 received an interim payment of 225 l. for 2,350 days already worked, at 2s. a day each; further payments were made to them later and to their clerks and assistants (*famuli*).⁷² Others had to place a valuation – in case payment of compensation became due – on cavalry horses and those used by the commune for other purposes.⁷³ The list of men on the commune's pay-roll could be greatly extended if it were to include the ambassadors (discussed later), and hordes of messengers, bailiffs, minor judicial officials, custodians of fountains, night watchmen, bell-ringers, and so on.

FINANCE

To the middle-ranking officials discussed above must be added those involved in the commune's financial and chancery business. The existence of a separate financial office, the *Biccherna*, has already been indicated, and its methods of work will be discussed later,⁷⁴ but its bureaucratic importance needs to be noted here. The principal officers of the *Biccherna*, the Chamberlain (*camerlengo*) and four *Provveditori* (provisors) were appointed for six-month periods. Under the 1262 statutes the Council appointed the *Provveditori* but by the early fourteenth century the choice was made by the Nine: all three *terzi* had to be represented contemporaneously, the fourth post rotating among them. The Chamberlain was chosen by the *Provveditori* and the Nine. The post was at one stage filled by a layman, but soon after 1282 it became normal for a monk, very frequently from the Cistercian house of San Galgano, to hold it.⁷⁵ The *Biccherna* had its own notary and as the account books were both maintained and copied in duplicate there must have been work for several others as well as minor employees such as messengers. Decentralization of fiscal matters had begun before the end of the thirteenth century with the hiving-off of the *Gabella* as a separate office, concerned with indirect and other farmed taxes, with its own chamberlain and minor officials.

⁷⁰ B. 9, p. 143.

⁷¹ B 116, ff. 383–4.

⁷² B 83, f. 114 and v.

⁷³ E.g. B. 17 (1257), pp. 109, 121, 175.

⁷⁴ Below, pp. 181–3.

⁷⁵ 'Breve 1250', pp. 16–32; *Const.* 1262, p. 144; *Cost.* 1309–10, 1, pp. 75–7: see Bowsky, *Finance*, pp. 2–9.

Also involved with, but independent of, the Biccherna was the Mint (*Bolzano*), whose premises on the Campo were to form the nucleus of the great Palazzo. This was so clearly a separate entity that it could make loans to the Biccherna.⁷⁶ In 1262 there were three 'lords of the Mint', with two money-changers (*campsores*) appointed as technical advisers and a staff of moneyers (*intalliatores et inconiatores*), not to mention periodical *balie* appointed to consider such matters as the weight of the currency. Around the end of the century the three lords (*domini*) were reduced to one, and later control of the Mint seems to have passed to the consuls of the merchant gild, who appointed the *dominus* and *camerlengo*, each for a six-month tenure.⁷⁷

CHANCERY

The letter-writing (chancery) aspect of the commune's work was less fully developed as a separate organization. The 1262 constitution stated that the commune should have a chancellor elected in the Council who was to be assisted by two notaries, each appointed for one year. The chancellor was to keep the commune's seal and to be responsible also for the preservation of its deeds and public records, including the cartulary in which its privileges were copied; this volume was to be kept up to date by appropriate additions. The commune's letters were sealed only on instructions from the Podestà, judges or Captain ('if there is a Captain in the city'). The chancellor held a supply of paper and sealing-wax, but the letters were written out (and promptly!) by the notaries. Responsibility for the wording of correspondence is not clearly assigned. Copies were to be kept of out-letters sent beyond Sienese territory, and a summary or calendar made of all other letters (but these have not survived for the period covered in this book). The chancellor was paid 1s. for each letter drawn up and these chancery fees were used to meet the salary of the chancellor and notaries. What remained after payment of salaries went to the Biccherna. The monthly salary of the chancellor was 8 l. in 1262; his was not considered an exalted post, for his notaries received slightly more (12 l. in 1250, when there had been only one, 10 l. in 1262). Expenses were also provided, but not for the purchase of parchment or paper, since the commune bought these separately. No fee was payable for making copies in the Caleffo, the cartulary of the commune's privileges.⁷⁸

In the heyday of its activities the Popolo had a chancellor of its own, possessor of a seal to be used only when authorized by the Popolo's signet; both signet and seal bore a lion. Most of the archive recorded in the Popolo's inventory of the mid

⁷⁶ Bowsky, *Finance*, p. 26.

⁷⁷ 'Breve 1250', pp. 78–83; *Const. 1262*, pp. 153–62; *Cost. 1309–10*, 1, p. 276; Bowsky, *Commune*, pp. 225–6.

⁷⁸ 'Breve 1250', pp. 54–7; *Const. 1262*, pp. 120–2.

1250s has vanished.⁷⁹ The loss may be due to the decline of the institution itself; but the analogy of the commune suggests that the notion of a chancery, with its own head official, became unpopular, possibly through fears that the chancellor might achieve some independence. Certainly the commune had a chancellor in the 1270s, but later references to a 'dictator of letters' or 'scribe' suggest that the office had withered away, probably in the time of Guelf control and before the regime of the Nine.⁸⁰

The chancery was an archive as well as a letter-writing office. By the 1240s the chancellor had the duty of keeping the commune's archive, with the seal, in a chest in the sacristy of the Dominican church. All officials – there was particular insistence on the Biccherna – had to hand over their records to the chancellor on giving up office. The public deeds were supposed to be read aloud annually to the Podestà and various other officials, though the requirement sounds an unrealistic one even if only the new additions to the commune's book of privileges were meant. More chests were required by 1278, in which year Duccio di Buoninsegna was paid 2 l. for painting twelve chests 'in which are the commune's deeds' (*in quibus stant instrumenta communis*). However, in the year 1288 – which is a likely *terminus ad quem* for the chancery's downgrading – a statute provided for the division of the archive into two parts: the Caleffi (volumes of privileges) and older charters remained at S Domenico, but newly created papers were to go to the Biccherna and the Chamberlain inherited the task of registering the commune's rights and of storing the 'modern records' (as they would now be styled). Officials needing to consult the older records were allowed to withdraw for temporary use the deeds still stored in S Domenico, and occasional notes of such withdrawals have survived. Recourse to the records was a routine matter, as witness the Council's decision (1308) that a committee of six, appointed concerning a dispute with Chiusdino, 'should seek out the rights of the commune of Siena and look at the commune's cartulary and the rights and agreements (*pacta*) that the commune has with the commune and men of Chiusdino'.⁸¹

THE JUDICIARY

This search into the commune's rights (*iura*) leads on appropriately to consideration of Siena's judicial institutions. Though the topic is vast and cannot

79 CG 6, ff. 63v–6 (f. 64v for the chancellor), partly printed by L. Sbaragli in *BSSP*, 44 (1937), p. 48.

80 B 53, f. 6 (1273); CG 64, f. 115v ('scriptas et registratas pro communi Sen' manu ser Sozzi Bondonis dictatoris licterarum . . . communis Sen': 1304); B 118, f. 308v ('Jacobus not' f. q. Ildibrandini vocatus Muccius olim scriba communis Sen' et . . . Cam' et iiii in Bich': 1306).

81 Good brief treatment in *Archivio di Stato di Siena: Guida-inventario*, 1 (Rome, 1951), pp. iii–viii; G. Cecchini, 'La legislazione archivistica del comune di Siena', *ASI*, a. CXIV (1956), pp. 224–57, prints relevant documents. The most important source is *Const.* 1262, pp. 118–25. See also CG 72, f. 48 (1308).

receive detailed treatment here, the commune's legal system is central to depiction of a culture where law provided the fundamental basis of men's outlook.

The second half of the thirteenth century was a period of rapid growth in the Sienese judicature. In 1250 the Podestà, himself a judge, was assisted by two other judges, one Sienese, the other a 'foreigner'. By 1262 there was no Sienese judge but there were then two 'external' judges, both chosen by three electors selected by lot from the general Council; their pay was 150 l. for one year's tenure, and they could not be from the same city or town as the Podestà. Each was mainly concerned with hearing criminal cases (*super maleficiis*), but a certain division of labour seems to have led to one being also the Podestà's assistant in Council while the other bore responsibility for the preservation of judicial records in the Biccherna. This task and that of receiving fees for exemption from the judicial 'ban' later devolved to a *dominus maleficiorum* who drew a mere 8 l. for his six months' office.⁸²

Three judges – all Sienese – heard disputes connected with agricultural crops (*super intesinis*); their meagre earnings were derived from the fee (12d.) paid in respect of cases which came before them.⁸³ Another specialized court, with a very long history, was that of the Placitum (pleas), no doubt a very busy tribunal bearing in mind the frequency of early death and thus of orphanhood, since it was concerned with wardship: consuls of the Placitum swore that they would come to court 'to give validity to contracts involving minors, to appoint guardians and to do everything concerned with matters pertaining to minors'.⁸⁴ There were three of these consuls, one of whom had to be qualified as a judge, and one (a monk) had to act as the court's chamberlain. They had three subordinate judges (*iudices delegati*), each of whom took an oath to hear, settle and give sentence within two months in all cases referred to him by the consuls of the Placitum; they might keep only half of the 'tenth' paid in respect of such cases, the other half going to the commune. At some stage this rather complicated machinery was replaced. The appointment of paid advocates to represent orphans in the Captain's court (1290) suggests change, and by 1309–10 there was simply one judge for cases involving wards, and he was a non-Sienese.⁸⁵

82 *Const.* 1262, pp. 89–94, 205–7; 'Breve 1250', pp. 12–16. This reconstruction is conjectural so far as the chronology of the period to 1262 is concerned, since the clauses on pp. 89–94 are undated. An invitation to a judge of Borgo S Sepolcro to serve as judge *super maleficiis* in 1256 is in ASS, Concistoro 1773, n. 17.

83 *Const.* 1262, p. 207.

84 *Il Constituto dei Consoli del Placito*, ed. L. Zdekauer, 1 (Siena, 1890), p. 16. For this institution see also Zdekauer's 'Dissertazione illustrativa' in *SS*, 9 (1892), pp. 35–75, particularly 70–3.

85 B 103, f. 77; *Cost.* 1309–10, 1, pp. 144–5; Bowsky, *Commune*, pp. 107–8.

The Captain of the Popolo, like the Podestà, was judge as well as executive officer. The struggle between the two offices certainly had a judicial aspect, particularly during the 1250s, but this has left few traces in the surviving records. In October 1256 the Council of the Popolo discussed the appointment of a *iudex foretaneus de populo* at a salary of 150 l., and no doubt some hoped that his jurisdiction would expand at the expense of that of the Podestà.⁸⁶ Presumably the office of *iudex populi* which makes a number of appearances in the 1262 statutes was the outcome of this debate, but it must have faded away a few years later with the Popolo's own increasing debility, and the successor was undoubtedly the *iudex foretaneus malefitorum* chosen by the Thirty-six mentioned in the Guelf constitution of 1274.⁸⁷ The captaincy of the Popolo also disappeared, but was revived c. 1289, and for a time the Captain's court again became an important tribunal, with special competence in civil disturbances.⁸⁸ Though experimentation continued, the Podestà's 'foreign' judges remained the backbone of Siena's judicial system. Their quality was crucial, so much so that in 1302 200 l. was promised to the Podestà in addition to his salary of 3,200 l. 'in order that he should bring good judges with him' (*a cio che menasse buoni giudici*).⁸⁹ At the time of the 1309–10 constitution the judicial body numbered nine: two collateral judges, two judges for criminal cases, two civil judges and two assessors, and a judge for the Placitum (wardship).⁹⁰ Probably this was the result of recent adjustments, for fragmentary survivals of judicial records for a decade earlier suggest that each terzo then had its own judge *super maleficiis*.⁹¹

The commune was prepared to pay heavily to hire an external judiciary in order to avoid the perils of native judges subject to prejudices and pressure or suspicion thereof. Sienese lawyers must have been involved in pleading, but anti-magnate legislation made it illegal for *grandi* or members of *casato* families to act as advocates in the commune's court.⁹² Justice provided much work for the city's notaries, though only a fraction now remains of the vast mass of *paperasserie* once generated. Five volumes survive of the records of the Podestà's court for the year 1298,⁹³ in which is recorded, with full judicial eloquence, every detail of the evidence given by each of the numerous witnesses in an imposing quantity of criminal cases, many of them minor ones.

86 CG 6, f. 51.

87 CG 10, f. 8v (1262); *Const.* 1262, pp. 60, 64, 72n, 90n, 93; *BSSP*, 46 (1939), pp. 24–5.

88 Bowsky, *Commune*, pp. 36–9. Surviving material for this period includes Capitano, nn. 3 (petitions, 1290) and 4 (fragment of proceedings, 1302).

89 B 116, f. 338v.

90 *Cost.* 1309–10, 1, pp. 142–6; 2, pp. 461–2; Bowsky, *Commune*, pp. 107–10.

91 Podestà 6, f. 1.

92 *Cost.* 1309–10, 2, p. 388; Bowsky, *Commune*, p. 110.

93 Podestà, 5–9.

Much legislation was devoted to the sittings of the courts. The presence of the Podestà and his *collaterali* was compulsory, as were daily sessions of the criminal courts. The main periods of vacation were determined by agricultural routine and ran from 24 June (Feast of St John the Baptist) to 1 August (for the grain harvest), and then from 14 September (Exaltation of the Holy Cross) to mid October (for the grape harvest), and the summer term itself was broken by a week's vacation in the period before the Feast of the Assumption (15 August).⁹⁴ A military campaign might also lead to a closure of the courts, as could a political crisis, each of which would demand the Podestà's attention. On 12 June 1304, for instance, the Council decided to begin the legal vacation sooner than normal because the situation in Tuscany was so serious that it would probably be necessary to suspend all hearing of civil cases until August.⁹⁵

The courts gave rise to revenues apart from the fines levied and 'compositions' agreed. In certain civil cases, including appellate hearings and some wardship suits, a fee was payable based on the sums involved in the dispute, the full rate of payment being a tenth (*decima*).⁹⁶ In part the fines were funnelled off to provide the pay of minor court officials. In the period under consideration they were normally a useful rather than a major contribution to communal finances. At times, however, taking special measures, justice could be made an important source of revenue. The amnesties of 1302, 1303 and 1307 were attempts to regularize the position of large numbers of *banniti* (outlaws) by offering them *rebannimentum* at bargain prices; the proportion of the original fine for which pardons could be purchased was usually around 25 per cent but at times was as low as 10 per cent.⁹⁷ The 1302 amnesty was particularly productive and yielded more than 30,000 l. to the Biccherna. However, the frequency with which these offers were made inevitably led to diminishing returns, and must have diminished also the credibility of all fines at the time of their initial levy. There was also a tendency for the most productive fines to be dependent on political and social circumstances. In 1310 10,000 l. was extracted from the Tolomei and Salimbeni for 'illegal assembly',⁹⁸ but such levies amounted to a form of pressure on the wealthy which a regime could only maintain intermittently.

THE LAW

Turning from judges and courts to the laws they administered in these courts, the themes of this book will be most clearly illuminated by concentrating on attitudes

⁹⁴ *Cost.* 1309–10, 1, p. 383.

⁹⁵ CG 64, ff. 207–220v.

⁹⁶ *Const.* 1262, pp. 256–7; v. Bowsky, *Finance*, p. 49.

⁹⁷ Pazzaglini, pp. 87–90, 158–69; Bowsky, *Finance*, p. 52; B 117, ff. 53–389.

⁹⁸ Bowsky, *Finance*, p. 50.

to crime and punishment and those problems with which the criminal law was principally concerned. Hence the criminal and penal code will be the main topics treated and little will be said at this point about commercial law, family law, sumptuary statutes or those parts of the code which dealt with the commune's institutions.

The fifth book, or *Distinctio*, of the Sienese statutes, the one concerned with the punishment of crime, deals first with the carrying of arms and will serve as an introduction to what follows. Bearing offensive weapons was punishable with a fine of 10 l. in 1262, which by 1309–10 had risen to 25 l. The equivalent fines for defensive weapons, i.e. armour, were 5 l. and 10 l. Various types of offensive weapon were specified, mainly forms of knife, sword and iron club, and a rather surprising example of versatility is suggested by the inclusion among them of *beccacenerem* (shovel for ashes). A suspicious but probably realistic provision made the penalty for having an empty quiver the same as that for a quiver containing a knife.⁹⁹

The penalties for violent acts are perhaps best considered under five headings. First – to begin with the mildest – came various forms of threat not extending to actual physical violence, such as threatening with or without a metal weapon, chasing, insulting and holding by the garments; the fine for these varied between 10 l. and 25 l. in 1262, but by 1309–10 the penalties could be a great deal higher, the top end of the scale for giving chase, for example, having risen to 100 l. The next point in the scale covered such offences as pushing, tearing clothing or injuriously entering a house; for the first of these the minimum penalty in 1262 was 10 l. and the maximum 25 l. (rising later to 50 l. and 100 l. respectively), that for the second and third offences being 25 l. in 1262 (but not specified in 1309).¹⁰⁰ The third category includes various forms of 'striking' – 'with a knife or sword', 'with a stone', 'on the head', 'without spilling of blood' etc. In 1262 the penalties varied considerably, from 25 l. as a minimum for striking on the head to 200 l. as a maximum for assault with sword or knife. This maximum rose to 400 l. in 1297¹⁰¹ and to 800 l. in 1309. The fourth degree, the infliction of grievous bodily harm – serious wounds such as blinding or severing a tongue, nose or limb – involved a fine of 400 l. in 1262 which rose to a minimum of 500 l. and maximum of 1,500 l. by 1309.

Homicide – the fifth category – was normally punishable with the death penalty. There were very few circumstances in which this was not automatic; they included accidental killing (during jousting, for example) and killing by a

99 This paragraph and the next three are based on *Const. 1262. Cont.*, BSSP, 1, pp. 141–2 and *Cost. 1309–10*, 2, pp. 332–44.

100 In 1262 (not specified in the 1309–10 code).

101 BSSP, 7 (1900), p. 245.

minor. By 1309–10 the list of exceptions had extended to include homicide committed in the course of a violent affray or riot (*meschia*), for which the penalty was a fine of 3,000 l. This change could be interpreted as a move towards milder treatment of those drawn by circumstances into unpremeditated homicide, but it may also indicate that the frequency of rioting had brought these judicially difficult cases to the attention of Siena's legislators.

Physical violence and the use of weapons were such normal eventualities that it seemed appropriate to begin this section with them, but the expression of hatred did not always take that form. Clause 203 of the fifth *Distinctio* in the 1262 code illustrates well some of the gentler modes: '*Item*, if a resident of Siena, or outsider, places or causes to be placed, or throws, before the door or house of any resident, by night, any of the following: bones, horns, animal flesh or anything else dirty, filthy or unpleasant, or any writing containing something dishonourable or insulting – let him be punished to the sum of 100 l.'¹⁰² The reference to written insults is a tribute to the literacy of the thirteenth-century Sieneese, whilst the entire clause also reflects the difficulty of enforcing the curfew (which should perhaps be bracketed with the prohibition of arms as the two major general measures against violence).

Such measures were precautions not merely against a normal and accepted violence of manners in people – particularly males – prone to lose their tempers rapidly and resort to physical expression. They were connected with an all-important social institution, the vendetta or family feud. It was laid down that anyone known to have 'capital enmities' might expect to be granted permission to carry defensive weapons, though they would have to obtain a licence for this from the Podestà and Captain.¹⁰³ A 'capital enmity' did not necessarily imply that the vendetta had already occasioned a murder; wounding would qualify in this context. But the vendetta was seen as a particular menace to the peace, a view reflected in an early statute (1238) which ordained perpetual banishment and the confiscation of all property as the punishment for those contravening the terms of a formal peace made in settlement of homicide or wounding. The judicial viewpoint on the vendetta is stated in a clause proclaiming that 'if any Sieneese takes revenge (*fecerit vindictam*) on another Sieneese for an offence committed by someone other than that person, he is to suffer punishment triple that laid down by statute for the offence'.¹⁰⁴

The vendetta leads us into the territory of political violence. The law dealing with the difficult judicial borderline of homicide committed in the course of a riot

102 *Const. 1262. Cont.*, BSSP, 2 (1896), pp. 82–3.

103 *Ibid.*, p. 81.

104 *Ibid.*, pp. 89, 147; *Cost. 1309–10*, 2, pp. 253–4.

had political implications.¹⁰⁵ Clauses on 'bringing about a gathering' (*si quis concitaverit populum Senensem, vel fecerit aliquam coadunantiam populi*), or raising a riot (*chi concitasse el popolo a romore*) by shouting 'A l'arme a l'arme', which led in turn to others about joining in fighting and battles, were clearly dealing with political factionalism.¹⁰⁶ The section of the 1262 constitution concerned with acts of violence provides four different scales of penalty. The full fine is payable when the person attacked is a Siennese citizen residing in the city, but various combinations are set out which involve lower penalties. For instance, a half-rate applies when the victim, though a citizen, is not normally resident (even if the offender is a resident citizen) and a resident citizen who offends against an 'outsider' residing in the contado (*foretaneus de comitatu vel districtu*) pays only one quarter of the normal fine.¹⁰⁷ The status of the victim is not the sole criterion, however. These clauses would seem to imply that a citizen automatically ranked higher than a non-citizen in the eyes of the law, but in fact what is crucial to the underlying philosophy is the view that the commune was less menaced when violence did not involve people living close to each other within Siena. Such crimes were at least not episodes in a Siennese family vendetta. Hence offences involving non-residents were felt to require lesser punishment. The adoption of these criteria incidentally confirms the basic judicial treatment of violence in the statutes as a breach of the peace rather than an offence against a person.

Naturally theft plays a considerable part in the Siennese codes, even though its role may seem less prominent than that of violence. Certain clauses dealing with theft confirm the importance to the Siennese of horticulture and agriculture. Entering the vineyard, orchard, vegetable garden or irrigated plot of a citizen was punishable with a stiff fine of 3 l. 2s., one-third of which was retained by specially appointed guards whose sphere of duty extended to the area within two miles of the city. Inside the city each *terzo* had four 'spies against thieves', a 'neighbourhood watch' with a vengeance, for these men received no pay other than a half share of the fines levied on the thieves whose capture they had ensured. Their responsibility extended to 'any damage to the plots, vineyards, orchards and other property' of the citizens. Stealing domestic doves and birds used in hunting (falcons etc.) was another crime (2 l.). By 1309–10 the scale of penalties for damage to vineyards and orchards had been fixed at 3 l. (entry), 10 l. (damage by day) and 25 l. (damage by night).¹⁰⁸

The statutes do not themselves offer a full picture of the procedure followed in the Siennese courts, which in general terms was based on that of the Roman law.

¹⁰⁵ Above, p. 66.

¹⁰⁶ *Const. 1262, Cont.*, BSSP, 1, p. 143; *Cost. 1309–10*, 2, pp. 237–8.

¹⁰⁷ *Const. 1262, Cont.*, BSSP, 3, pp. 84–5.

¹⁰⁸ *Ibid.*, 1, pp. 271–3; 3, p. 84; *Cost. 1309–10*, 2, pp. 345–6.

The judges *super maleficiis* were not judges in the full sense, since they did not pronounce verdicts but were, technically at least, advisers to the Podestà. Much of the hearings fell to them, but the verdict could only be formulated by the Podestà himself.¹⁰⁹ The administration of torture must have been common, but a formula was provided for the circumstances which justified it. Either the accused had to be 'of ill fame' or the case against him a strong one (*probabilis suspicionis*), or he had to be a 'public thief or forger', or the accusation had to be one involving false witness, the forgery of deeds, or treason. In the 1309–10 code it was laid down that torture might be applied in investigation of certain accusations, but only if there were at least five witnesses against the accused. An additional clause specified that the Podestà and judges should use moderation (*abiano temperanza*) in the use of torture.¹¹⁰

Although the gallows figure prominently in Lorenzetti's depiction of good government in the countryside, as well as in the statutes, the law of Siena did not readily condemn to death. Capital punishment was the normal penalty for murder (but not that of a *forestiere*), for certain forms of forgery and for arson. In these cases death was inflicted by burning. A woman found guilty of poisoning wells was flayed alive and then burnt. Mutilation also was inflicted, amputation of a hand or foot being a punishment for certain forms of civil warfare, and anyone who had undergone judicial mutilation was compelled to quit the city if he was not a citizen. A rash jester who made certain accusations (of parricide, for example) could lose his tongue, and a man's eye might be put out. Sodomy was punishable by a fine of 300 l., but if this was not paid within a month the offender was to be hung up 'by his masculine members' in the market-place. Banishment and confiscation of property have been mentioned above as penalties; a more surprising one was the subsidiary punishment inflicted on forgers – as well as being executed they were portrayed, by way of warning, in the Palazzo del Comune.¹¹¹

Imprisonment had great disadvantages as a form of punishment; to keep people confined and fed was an expensive matter. Pardons to prisoners were a routine accompaniment of the religious festivals.¹¹² This was not exactly making a virtue of necessity, but there were occasions when starving prisoners had to be sent round the city to beg for food. Moreover those in gaol had to be housed in the

109 R. Celli, *Studi sui sistemi normativi delle democrazie comunali*, 1 (Florence, 1976), p. 313n. For these judges, see above, p. 63.

110 *Const.* 1262, *Cont.*, BSSP, 1, p. 144; *Cost.* 1309–10, 2, pp. 276–7 (see also pp. 337, 403–4).

111 *Cost.* 1309–10, 2, pp. 271–2, 336–7, 354–5, 357. The death penalty could be applied for treason, but only in certain circumstances (2, p. 331): see also above, pp. 65–6. For the other punishments cited see B 35, f. 25 (1262).

112 E.g. CG 22, f. 64 (many other instances could be given): see also Pazzaglini, pp. 92–3.

style to which they were accustomed. No doubt conditions for the ordinary criminal were grim, but *grandi* and other 'good men' had a special place of detention so that they should not be compelled to mingle with 'thieves and those condemned for crime'. These privileged prisoners were permitted only one servant (for a group) and each of them was restricted to three guests for meals and overnight stays.¹¹³ Since it was much more satisfactory to receive a fine than to receive a prisoner, the commune's preference was for the former, and imprisonment was not the punishment prescribed automatically for any type of offence. Prisoners, in the main, must have consisted of those who had been sentenced to pay fines but were unable to raise the money.

Those guilty of violence or theft, if they came to trial and were convicted, paid if they could and went to gaol if they could not, but there were many who fled rather than face a court. Contumacy (failure to appear at the trial) was treated as a confession of guilt and was punishable by outlawry, the *bannum*.¹¹⁴ Although banishment could be applied in the case of a man who failed to pay his fine, its most normal use was as a response to contumacy. In these circumstances the *bannitus* was faced with a dilemma: his initial ban was a provisional one, and if he decided within a few days to come to trial, he was in time to escape the formal ban. If however he allowed the period proclaimed in his initial summons to pass and then let the provisional be followed by the formal ban (the interval between the two being eight days, till the late thirteenth century, and thereafter only three), he had opted for contumacy and flight.

The outlawry, which deprived the person condemned to a total loss of judicial rights and exposed him to the possibility of capture by all residents of Siena and its subject territory, comprised also a fine roughly equal to that which would have been imposed if he had gone to court and been found guilty. The proclamation of the ban by the commune's uniformed criers (*banditores*) from horseback was a common Siennese spectacle. An investigator has calculated that on average nearly 100 men were outlawed each month in the summer of 1256, over 100 in May 1258 and 180 in March 1259. These figures related to the initial, or provisional, ban, and in only about half these instances was this followed by the full formal ban; nevertheless the numbers are impressive. The ban was 'a guarantee of some form of punishment', even for the contumacious, but above all it was a means of driving those guilty of violence and theft from the city and its immediate environs. The law, it has been well said, 'did not worry about where the *bannitus* went; it concentrated more on getting him out of the community or forcing his return to court'. It must have served to reinforce many a robber band and

113 *Cost. 1309–10*, I, pp. 92–3.

114 Pazzagliani; *Const. 1262, Cont.*, BSSP, I, p. 279.

mercenary company. If some outlaws frequented the more remote parts of Siena's own contado, others went further afield. In the 1290s four brothers, the sons of Cione Picchiati, fled and were placed under the ban after one of them had killed the murderer of his father. They settled some hundred kilometres to the south, in Viterbo, and rose to considerable prosperity as merchants.¹¹⁵

If banishment was a common institution, so too was purchase of the lifting of outlawry. Some 6,000 instances of *rebannimentum* are recorded for the years 1243–56 alone and this was a frequent and considerable source of revenue. Late payment of fines carried a fixed penalty of an additional one-third, but purchase of *rebannimentum* involved agreement on a sum as 'composition' for the condemnation 'in property and person'. Special offers of amnesty to *banniti* at reduced rates became common in the first decade of the fourteenth century. The terms offered (which in some cases were only available if the *bannitus* had reached a formal pacification with the injured party or his heirs) were composition payments of such amounts as 2,000 l. or 500 l. in the case of citizens, while contado inhabitants paid half these sums. In effect these were sales of pardons at anything from 25 per cent to 10 per cent of the original fine. They yielded very well, the amnesty of 1302, for example, bringing in more than 30,000 l.¹¹⁶

A renaissance in legal study and Roman-inspired law had been taking place in Italy since the beginning of the twelfth century. To what extent is this movement reflected in the outlook implicit in the Sienese constitutions? Certainly they embody many notions and practices surviving from the earlier medieval centuries. One instance is the role of the judicial duel. Two forms of duel were provided for, that between accuser and accused and that in which proof was sought by a duel between the accused and the commune's representative in combat, the champion. In the case of an accusation of dishonest use of a company's funds, settlement could be achieved by battle between accuser and accused or by champions on their behalf; victory by the former was treated as confession of guilt, by the latter as a decision for absolution. Some nocturnal offences such as murder of a Sienese citizen, or arson, could also involve proof by duel between the commune's champion and the accused ('and if he loses the duel, let him suffer punishment'). In certain other cases an individual on whom local repute laid blame could attempt disculpation by battle against the commune's champion. These eventualities were probably uncommon, but in 1248 the champion received payment for this service in a combat, and a few years later a judge sought

115 Pazzaglini, especially pp. 99–109; Waley, 'A blood-feud with a happy ending: Siena, 1285–1304' in T. Dean and C. Wickham (eds.), *City and Countryside in Late Medieval and Renaissance Italy* (London, 1990), pp. 45–53.

116 Pazzaglini, pp. 72–98; Bowsky, *Finance*, p. 52; B 117, ff. 53–289.

advice about his own presence at a judicial duel.¹¹⁷ The institution of proof by ordeal had not totally disappeared from contemporary Tuscany but is not found in these Siennese codes.

More rational forms of investigating truth included the swearing of oaths and the provision of oath-helpers (*fideiussores*) and guarantors. The latter were so much a central feature of life that each *terzo* had to maintain a list of 500 men eligible to serve as legal guarantors.¹¹⁸ The concept of reputation or 'good fame' also had a considerable part to play. The *famoso ladrone* (notorious thief) could not expect the same treatment as the man who enjoyed good fame, and many accusations – of 'secret' murder, for instance – called for investigation into reputation.¹¹⁹ The guarantors of Siennese law may appear to be connected with the 'kin', but the distinction is an all-important one. Indeed, the role of kinship in the Siennese codes is a useful touchstone for the persistence of barbarian elements in the laws and the society for which they were designed; the statutes relating to the blood feud certainly show such a survival. Nevertheless, despite special provisions for the joint ownership implied by *consorzerie* and for such matters as paternal discipline,¹²⁰ the general emphasis of the Siennese laws is on the individual rather than the kin group.

The status of those involved – particularly the victim – as a determinant of the penalty is another indication of barbarian, as opposed to Roman, jurisprudence. The fine for using 'injurious words' depended on both the words and *la qualità de le persone*, while the different scales for violent crime have already been mentioned in connection with the commune's greater interest in the regular resident.¹²¹ Yet the penalties for violent acts depended primarily on the severity of the injury inflicted or the degree of violence used; they were not linked with the social rank of the victim. The anti-magnate legislation in Siena, as elsewhere in Italy, provided for higher penalties against the socially prosperous, so the judicial scales were weighted against the mighty, not against those who offended them. By such tests the Siennese statutes emerge as fundamentally Romanist.

There is still an element of paradox in the situation of Siena's Podestà and judges, men trained in the Roman law, administering a code which made provision for the blood-feud and put some trust in trial by combat. In particular it seems ironical that a suit involving malversation of a bank's funds could be settled by a duel;¹²² here one is at the point of intersection of two very contrasted worlds.

117 *Const.* 1262, pp. 227, 232, 234; *Cont.*, *BSSP*, 1, p. 144 and 2, p. 322; *Cost.* 1309–10, 1, p. 443; 2, pp. 337, 552; *B.* 8, pp. 94–5; *CG* 6, f. 52.

118 *Cost.* 1309–10, 2, p. 457.

119 Above, p. 168; *Const.* 1262, *Cont.*, *BSSP*, 1, pp. 144–5.

120 *Ibid.*, *BSSP*, 3, p. 90 (= *Cost.* 1309–10, 2, p. 387).

121 *Cost.* 1309–10, 2, p. 350; above, p. 67.

122 Above, p. 70.

Proceedings in Sienese courts were naturally conducted in the vernacular, yet the voluminous paper-work involved, including the full recording of the evidence, was carried out in Latin.¹²³ Despite talk among legists of a 'common law', the fundamental feature of the situation was that each commune legislated indefatigably, seeking to provide itself all the answers for its own city.¹²⁴ Such independence was a natural expression of Siena's political status.

The main impression left by this review of the commune's institutions should surely be of the great volume of work transacted by Siena's citizens and the time dedicated by them to civic affairs of every variety. Their involvement in office and in conciliar meetings, great and small, offered them wide experience in many fields, financial, military, diplomatic and others, while they also received a training in the arts of verbal persuasion, the drafting of legislation and administration. Siena's policies were the outcome of their decisions and must have been the subject of their earnest thoughts and discussions outside the council-chamber as well as within it. Siena made them (as Dante said of one of the Tolomei) but they were conscious too that they made Siena.¹²⁵ With that in mind, it is worth turning briefly to the conditions governing citizenship and to the survival of the notion of the full gathering of citizens, the parliament.

EXCURSUS 1 CITIZENSHIP

The status of being a Sienese citizen has been mentioned more than once in the preceding pages. It might be expected that citizenship, with its implied civic rights and obligations, was of paramount importance to a resident. In reality, however, the question of citizenship arose quite rarely and its achievement was less significant than might be supposed. The topic is a complicated one and what follows is an attempt to treat it in brief outline.¹²⁶

The payment made to become a citizen was itself too small to suggest a coveted and all-important change of status: it was 5s. until after the middle of the thirteenth century, then 20s., and from 1295 5 l. There were men who settled in the city and pursued their affairs in comfort without taking up citizenship. This was the experience of the Florentine Tano degli Infangati, a cloth merchant who lived at Siena and paid his taxes there for more than a decade before he decided to petition for citizenship, apparently because this was a necessity for joining the

123 Podestà 7 (1298), f. 1; Capitano 4 (1302).

124 Mondolfo, 'La legislazione statutaria senese dal 1262 al 1310', *SS*, 21 (1904), pp. 230–56; Celli, (n. 109 above), pp. 263–346.

125 *Purgatorio*, V, 134 ('Siena mi fe').

126 The subject has been treated more fully in D. Bizzarri, 'Ricerche sul diritto di cittadinanza nella costituzione comunale', *SS*, 32 (1916), pp. 19–136 (a rather legalistic approach) and Bowsky, 'Medieval citizenship . . .', *Studies in Medieval and Renaissance History*, 4 (1967), pp. 195–243.

clothiers' gild. At some stage (the date is unclear) ten years residence in the city as a 'continual citizen' became a required qualification for membership of councils and tenure of office.¹²⁷

The number of new citizens varied greatly from year to year. A document of the 1250s gives a list, which may not be complete, of about 150 men admitted as citizens in the years 1219–50. In the first half of 1251 more than 300 new citizens were created, but this was totally exceptional; quite often the number of new admissions in a half-year was below ten.¹²⁸

Becoming a citizen was a different matter for one who was already a resident of the Sienese contado. These were a great majority among the new citizens and require treatment separately from the 'outsiders'. Clauses in the 1262 constitution made it clear that the commune's policy was to encourage *comitatenses* to immigrate to the city and become citizens, though there were safeguards for the interests of lords in the contado, many of whom were themselves citizens. Occasionally men were offered persuasion in the form of grants of fiscal exemption for a term of years, but it was normal for this privilege to be reserved for outsiders.¹²⁹ Indeed the payment of direct taxes to the commune was usually a *sine qua non* for the achievement of citizenship; it was vital to ensure that nobody escaped the tax-man by removing himself from rural fiscal lists without taking a place in urban ones.¹³⁰

His oath bound a new citizen to a minimum of four months' residence in each year and he had to have a house in the city or *burgi*, though this might be rented. If a man paid his direct taxes and kept the terms of the oath he had the right to be 'defended as a citizen'. This status might assist him in his authority over his men (i.e. those of servile rank) if he was himself a lord in the contado and certainly aided him in securing repayment of debts.¹³¹ But the gain was not absolutely clear-cut – citizenship was a recognition of standing and of duties performed rather than a promotion to privilege – as is revealed by a clause in the 1309–10 constitution which provided for the case of those whose fathers had been citizens and who themselves paid taxes yet alleged that they were not citizens.¹³²

'Whoever comes to the city of Siena from beyond its contado and wishes to be a citizen and to live there continuously (*assiduamente*) like the other citizens, the

127 CG 68, ff. 156 and v; *Cost. 1309–10*, 1, p. 192.

128 Lira 1; *B.11*, pp. 4–27; 17, pp. 12–15, 29; 79, ff. 1–3v; 80, f. 29v.

129 *Const. 1262*, pp. 416–19; for fiscal exemption in 1260 see Lira 5, ff. 229, 230, 231v, 239, 263v (the names of the exempt do not suggest that they were all outsiders).

130 Bowsky, 'Medieval citizenship', pp. 210–12.

131 *Const. 1262*, pp. 409–10, 416–17; *Cost. 1309–10*, 2, pp. 169–70; *Il Constituto dei Consoli del Placito*, p. 37.

132 *Cost. 1309–10*, 1, pp. 393–4.

Podestà is to receive him as a citizen and defend him in his rights', proclaimed a law of 1292. Such migration was to be encouraged and the Sieneese were forbidden to behave in an unfriendly manner towards the newcomer; he was not to be denied fire or water and the neighbours were not to greet him with silence.¹³³ This sort of citizen was making a more thorough change than the *comitatensis* and the accompaniments of his new status were different. The cases of two petitioners in 1292 illustrate the situation of a 'foreigner' seeking to achieve Sieneese citizenship. Both had already served at Siena as judges. Conrad of Stradella was offered a ten-year tax exemption and eligibility for office as though he were one of the 'ancient and native-born citizens' (*antiqui et naturales cives*). Porrina, whose place of origin is not stated, explained that he intended 'to acquire most beautiful and agreeable (*pulcerimas et amenas*) possessions' in the city and contado and wished to spend large sums of money on their acquisition. The council voted in favour of his citizenship by 132 votes to 27, though three of the four speeches made opposed (unsuccessfully) the grant in his case of the full tax privileges received four months earlier by Conrad.¹³⁴ An earlier statute had granted such citizens exemption from direct taxation for a period as long as fifteen years, but specified that there could be no exemption from military service.¹³⁵ These outsiders had to acquire a house, but their fiscal advantages were such that they had undergone a very different sort of metamorphosis from the men moving in from the Sieneese countryside.

EXCURSUS 2 PARLIAMENT

In the earliest stages of development of the Italian communes the 'parliament' or *arena* of all the citizens had been the ultimate constitutional authority whenever a notional general consent was requisite. As councils took over its role this institution tended to wither away. However the word *parlamentum* was still used in Sieneese documents of the second half of the thirteenth century and it is difficult to decide what sense it then bore and to what extent it continued to correspond to constitutional and institutional realities.

'Parliament' means, literally, 'talking', and its use was not necessarily a strictly technical one. It is to be found in the 1262 constitution in the general sense of 'a meeting', the usual context being a reference to a 'parliament or council' (*parlamentum vel consilium*).¹³⁶ The word was also connected with a more juridical

133 *Ibid.*, 2, p. 177.

134 CG 43, ff. 77v–8; 44, ff. 148–9v.

135 *Const.* 1262, p. 423.

136 *Const.* 1262, pp. 28 ('cum fit contio sive parlamentum, gentes possint sedere et morari super ipsis gradibus'), 76 ('aliquod parlamentum seu contionem'), 77, 78, 91, 113, 118, 120, 141, 188; for similar use, CG 5, f. 96v (1255).

notion in that it could refer to an occasion on which formal publicity was given to an event or decision. In the first half of the thirteenth century it was commonly applied to occasions such as the choice of a Podestà or the reception of a new one, a proclamation of outlawry (*bannum*) or its revocation, the proclamation of a military campaign and the issue of banners and ordinances for the army, and the swearing of an important oath.¹³⁷

The concept of a publicity-giving parliament survived, though the occasions themselves probably became rarer.¹³⁸ A characteristic use was to emphasize Sienese overlordship in the contado. Thus Count Guglielmo Aldobrandeschi took an oath to the commune in 1227 in *parlamento*, representatives of Montalcino and S Angelo in Colle were called *ad parlamentum* as were the Ardengheschi counts (1231), and knights were summoned from the contado in connection with the choice of a Podestà (*ad parlamentum fiendum pro potestate futura*).¹³⁹ The terms of the oath sworn by contado communes included the obligation of parliament (*facere parlamentum*, the equivalent of the feudal duty of giving counsel). Montepulciano's submission of 1261 incorporated a promise to send two representatives to Siena annually 'when the Sienese commune has a parliament' (*faciet parlamentum*), repeated in similar terms in the re-submission of 1294.¹⁴⁰

References to 'the January parliament' in the 1262 code imply the continuation of a regular annual meeting, perhaps that at which the new Podestà formally took office. In 1273 a Council meeting agreed – noting that a two-thirds majority was needed for the decision – that a *parlamentum* should be called to give formal consent to Siena's acceptance of the pope's terms. Thus the interdict and excommunication came to an end and the commune returned to obedience in a public occasion of particular solemnity.¹⁴¹ In the 1309–10 constitution the statute which forbade the Podestà to summon a parliament without the consent of a two-thirds majority in Council remained, as did a ruling that the statutes of Campagnatico could not be altered by any Sienese Council, 'nor even by the entire parliament (*tutto el parlamento*) of the city'.¹⁴² By 1337, however, a *parlamentum* was merely a useful descriptive word for a forbidden gathering of armed men.¹⁴³

137 B. 1, pp. 50, 58, 88, 89; 4, p. 122.

138 B. 15, p. 160 (outlawry, 1254); 28, f. 160 (new Podestà, 1258); 82, f. 148v (military ordinances, 1282), all in 'parliaments'.

139 B. 1, p. 40; 3, p. 341; 4, pp. 99, 150.

140 CV, 2, pp. 852–6 (n. 629); 3, p. 1388 (n. 992).

141 CG 17, f. 9v.

142 *Cost. 1309–10*, 1 pp. 172–3, 300–1. Elsewhere in this code (1, pp. 142, 151, 548; 2, pp. 325, 361) this word is used as synonym for 'council'.

143 Rubric of clause in 1337 statutes (Statuti, n. 26) printed in Ciampoli, p. 65.

The Sienese parliament, then, was an occasion rather than an institution. It was not just another council meeting, the difference being most marked on those occasions when subjects and representatives of subject communities were present. It is not clear whether such gatherings ever involved the presence of non-conciliar elements from Siena itself in an approbatory role.