

ARTICLE

## Members of the Clergy before the Maltese Diocesan Court, 1750–1798

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### Abstract

This article analyzes the procedure of the Maltese diocesan court in dealing with clerical misconduct in the second half of the eighteenth century. The clergy were accused especially of physical and verbal abuse as well as of sexual incontinence. They were given a fair hearing, being assisted by a lawyer, presenting their own witnesses, and having the right to appeal the sentence. The article also discusses how the court tried to protect the clergy's honor and reputation in an attempt to avoid anticlericalism. Convicted priests could stop proceedings against them with a fine, and those of them guilty of immoral behavior were assigned another parish or else transferred to an oratory where they did penance.

**Keywords:** Diocesan Court; Court Proceedings; Out-of-court Settlement; Impunity; Anticlericalism

Historians of the Counter-Reformation have put forward much evidence to prove that a section of the Catholic clergy, stubbornly disobedient to the church laws codified by the Council of Trent, continued to live by the behavioral norms of the preceding centuries. Such behaviors were distant from the Council of Trent's prescriptions for clergy "to regulate their life and conduct that . . . nothing may appear but what is dignified, moderated, and permeated with piety," and not "to give offense to any man, that their ministry may not be blamed; but in all things let them exhibit themselves as the ministers of God."<sup>1</sup> According to Henry Kamen, referring to Catalonia, "a central aspiration of the reform movement, to produce a new breed of dynamic, educated clergy, proved more difficult to achieve than many had realized."<sup>2</sup> Jean-François Soulet makes a similar comment when reviewing religious practice in the central Pyrenees, while Alain Lottin notes the "mediocrity of the secular clergy" in seventeenth-century Lille, most of whom were "idle,

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*Maltese currency:* 1 scudo = 12 tari; 1 tari = 20 grani; 1 uncia = 2½ scudi = 30 tari. 1 scudo = £3.82 = €4.35 = \$4.90

<sup>1</sup>Henry Joseph Schroeder, ed., *Canons and Decrees of the Council of Trent* (Rockford, Ill.: TAN Books, 1978), 152, 106.

<sup>2</sup>Henry Kamen, *The Phoenix and the Flame: Catalonia and the Counter Reformation* (New Haven, Conn.: Yale University Press, 1993), 340.

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lazy and ignorant” in spite of reform efforts.<sup>3</sup> Other researchers have made related remarks while surveying the religious landscape of other European regions such as Counter-Reformation Italy and Lower Austria.<sup>4</sup>

While the present article does not provide any new insights or interpretations of clerical misconduct or its prosecution in the post-Tridentine era, it does add the Maltese experience to the existing body of scholarship. Following the work of Michele Mancino, Giovanni Romeo, and Marco Cavarzere, it analyses the causes processed by the diocesan court.<sup>5</sup> Church tribunals constituted the fundamental disciplinary instrument of bishops attempting to effect a new moral and social order in the Catholic Church. Therefore, the crimes they prosecuted and the punishments they meted out help produce a clear picture of the Tridentine discipline that the Church tried to impose on the clergy. A wealth of records on the subject survives, especially in the *dicta* and the *acta originalia* documents at the diocesan archives in Floriana and Mdina, respectively. Although easily accessible and ready to be excavated, historians have yet to devote attention to such documents. It is hoped that this piece will help to fill this gap.

### I. The Maltese Church

In the second half of the eighteenth century, the period with which this article is concerned, Malta was governed by four bishops, the last of them being the Neapolitan Monsignor Vincenzo Labini who served for twenty-seven years (1780–1807). Following the bishops, the most important members of the secular clergy were the canons of the cathedral and the collegiate churches. They were the sons of the elites, constantly fighting among themselves for precedence and quarreling with the bishop over their privileges.<sup>6</sup> With the exception of the Dominicans, who held the parish of Porto Salvo at Valletta, none of the eight religious orders governed any parish.<sup>7</sup> The faithful were thus largely in the hands of the secular clergy. When the knights of the Order of Saint John arrived in Malta in 1530, the diocese counted some 20,000 souls divided into eleven parishes. By 1782, the number of parishes had grown to thirty-four, seven of which were on the island of Gozo. The faithful were served by a preponderant “clerical army” of 1,091 priests, who made up 1.3 percent of a population of 86,296, or about five clergymen for every 400 individuals. However, the number of souls differed enormously from one parish to another. At Saint Philip’s Żebbuġ there were fifty-four priests—or one priest for eighty-one parishioners—while at Saint Paul’s Safi the parish

<sup>3</sup>Jean-François Soulet, *Traditions et Réformes Religieuses dans les Pyrénées Centrales au XVIII<sup>e</sup> siècle* (Pau: Éditions Marrimpouey Jeune, 1974), 190–201; and Alain Lottin, *Lille: Citadelle de la Contre-Réforme? 1598–1668* (Dunkirk: Les Éditions des Beffrois, 1984), 101, 106.

<sup>4</sup>Adriano Prosperi, “Educare gli Educatori: Il Prete come Professione Intellettuale nell’Italia Tridentina,” *Publications de l’École Française de Rome* 104, no. 1 (1988): 123–140; and Rona Johnson, “The Implementation of Tridentine Reform: The Passau Official and the Parish Clergy in Lower Austria, 1563–1637,” in *The Reformation of the Parishes: the Ministry and the Reformation in Town and Country*, ed. Andrew Pettegree (Manchester: Manchester University Press, 1993), 215–237.

<sup>5</sup>Michele Mancino and Giovanni Romeo, *Clero criminale. L’onore della Chiesa e i delitti degli ecclesiastici nell’Italia della Controriforma* (Rome: Laterza, 2013); and Marco Cavarzere, *La giustizia del Vescovo: I tribunali ecclesiastici della Liguria orientale (secc. XVI–XVIII)* (Pisa: Pisa University Press, 2012).

<sup>6</sup>John Montalto, *The Nobles of Malta, 1530–1800* (Malta: Midsea, 1979), 141–143; and Frans Ciappara, *The Roman Inquisition in Enlightened Malta* (Malta: Publikazzjonijiet Indipendenza, 2000), 189–190.

<sup>7</sup>These religious orders included the Dominicans, minims, grey friars, Carmelites, Capuchins, Jesuits, Oratorians, and Discalced Carmelites. There were also two feminine orders, both of them secluded nuns: the Benedictines of Mdina and Vittoriosa and the Discalced Carmelites of Cospicua.

priest had three clergy at his service for a population of 166 souls (one priest for every forty parishioners).<sup>8</sup> These priests, especially those among them who opposed the conciliar fathers' wish to impose their reformative language, are the focus of this article.

Why a section of the clergy preferred to follow their own moral code is not difficult to explain. It is doubtful, for instance, that their vocation was sincere. Furthermore, the clergy, with their low educational and social standing—and especially with their disproportionate numbers compared to the needs of the faithful—lived in much the same way as their parishioners.<sup>9</sup> This clerical proletariat was essentially comprised of “peasant-priests” who engaged in daily battles for survival with the parishioners.<sup>10</sup> Moreover, the laity were deeply involved in Church affairs. They evinced a high degree of commitment to their church, funding most of the liturgical services themselves. Such lay initiatives in religion deprived the religious profession of its prestige and lessened the distance between clergy and laity, often souring relations between the two.<sup>11</sup> The attempt to establish a clear distinction between clergy and faithful, or what Giovanni Greco calls “Tridentine sacerdotalisation,” had failed.<sup>12</sup>

## II. Clerical Offenses

Between 1750 and 1798, 167 pleadings were made against members of the clergy (see table 1). However, we cannot take these statistics at face value because those causes that actually entered the criminal justice system may only be the tip of the iceberg. There were several reasons why some crimes went unreported and escaped the record keepers. The mere threat of court action might have been enough to cause potential defendants to settle, and since people lived in close daily contact with each other, they may not have wanted to stir up trouble in the community. By sorting out their problems at an informal, personal level, no trace of these disputes was left in the historical record. Commonplace complaints and offensives were more likely to be settled out of court, unlike the more intense, high-stakes cases that appear in the archive. While the 1794 murder of Don Bernardo Busuttill—a priest from the parish of Saint Mary's Żebbuġ on the island of Gozo whose body was thrown into a ravine to be eaten by dogs—testifies to the terrible hostility lurking just beneath the surface between clergy and laymen, this was an exceptional case.<sup>13</sup>

To be sure, there were those who “didn't esteem [the clerical] collar,” such as a layman who warned a priest not to delude himself into thinking “that the tonsure enables [the clergy] to devour the people.”<sup>14</sup> Such litigants had few qualms with taking legal action against a priest, but most parishioners lacked the willpower it took to report one. This reluctance to go to court arose not only because clergy were anointed people

<sup>8</sup> Archiepiscopal Archives, Malta (hereafter cited as AAM), Corrispondenza 20, fol. 29.

<sup>9</sup> Frans Ciappara, *Mill-Qiġġan ta' l-Istorja: Il-Kappillani fis-seklu Tmintax* (Malta: Il-Ħsieb, 1987), 11.

<sup>10</sup> Frans Ciappara, “Trent and the Clergy in Late Eighteenth-Century Malta,” *Church History* 78, no. 1 (March 2009): 3–6. For Italy, see Luigi Fiorani, *Il Concilio Romano del 1725* (Rome: Storia e Letteratura, 1978), 96–102. For Siena, see Oscar Di Simplicio, *Peccato, penitenza, perdono: Siena 1575–1800. La formazione della coscienza nell'Italia moderna* (Milan: Franco Angeli, 1994). For southern Italy, see David Gentilcore, *From Bishop to Witch: The System of the Sacred in Early Modern Terra d'Otranto* (Manchester: Manchester University Press, 1992).

<sup>11</sup> Frans Ciappara, “The Parish Community in Eighteenth-Century Malta,” *The Catholic Historical Review* 94, no. 4 (October 2008): 671–694.

<sup>12</sup> Gaetano Greco, “Fra disciplina e sacerdozio: il clero secolare nella società italiana dal Cinquecento al Settecento,” in *Clero e Società nell'Italia moderna*, ed. Mario Rosa (Rome: Laterza, 1992), 95.

<sup>13</sup> AAM, Dicta 28, no. 22.

<sup>14</sup> Ciappara, “Trent and the Clergy,” 16–18.

**Table 1.** Pleadings against the Clergy, 1750–1798

Physical abuse	78
Verbal abuse	27
Physical and verbal abuse	22
Sexual incontinence	25
Others	15
Total	167

Sources: Archiepiscopal Archives, Malta (AAM), Dicta 24–30A; AAM, Informationes 5–6; AAM, Supplicationes 16–19; and Curia Episcopalis Melitensis, Acta Originalia 673, 676–677, 683, 687, 689–694, 696, 698, 701–706, 805.

but also because people may have feared reprisal: “I was about to hit him,” said Benedetto Gelfo of Valletta in 1759, “but I then remembered his clerical character and drew back.”<sup>15</sup> Although priests were not much different from the other peasants in the parish, they did have connections and could, for instance, threaten their opponents with exile from Malta.<sup>16</sup> There was yet another factor that reduced the total number of priests brought to official notice, and therefore their deeds were often not heard in court: people regarded the courts as a last resort and avoided them if they could. Anyone who reported a crime engaged in an expensive operation and victims would often decide it was not worth the time or money to bring their opponent to justice.

The number of pleadings themselves say nothing about how priests became involved in these disturbances, nor do they specify their transgressions. Clergy were indicted on various offences: for appearing in the lay court without the bishop’s permission, for insulting their superiors, or for inciting the people against their parish priest.<sup>17</sup> Others were accused of performing manual work or going about dressed as laymen.<sup>18</sup> Still others were brought to court for inflicting property damage, injury, or even death. For instance, on June 26, 1756, a prosecutor reported the following unfortunate incident to the judge:

My Lords, I must inform this grand court of the deadly accident that occurred last Thursday night toward 10:30 pm. Some women were enjoying themselves in a rocking chair inside a tenement house near the new *barracca* [bastion], the property of Marquis Giliberto Testaferrata. There was also Don Giovanni Mifsud, who lit a rocket [*razzo*] and threw it in the direction of the women to frighten them. It went round and round until it accidentally entered the room where the priest kept a great quantity of gunpowder used to manufacture the rockets and fireworks, against the orders of the bishop. The gunpowder caught fire and destroyed almost the entire building; and several people were wounded or killed.<sup>19</sup>

These were isolated instances, and the suits launched against the clergy can be grouped into three broad categories: physical abuse, verbal abuse, and sexual incontinence. Such were the main crimes for which clergy members were disciplined by the court. Priests

<sup>15</sup>AAM, Dicta 26, no. 3. All translations are my own.

<sup>16</sup>AAM, Dicta 25, no. 8.

<sup>17</sup>Curia Episcopalis Melitensis (hereafter cited as CEM), Acta Originalia (hereafter cited as AO) 689, fols. 56r–88v; and AAM, Dicta 26, nos. 22, 41.

<sup>18</sup>CEM, AO 691, fol. 298.

<sup>19</sup>Three were killed, including a thirteen-year-old girl, while five were injured. AAM, Dicta 25, no. 47.

were supposed to be separate from the laity by what Luciano Allegra calls a cultural “abyss.”<sup>20</sup> Clergy were to be celibate and shun violent behavior, vulgar language, fighting, gambling, and sowing discord among the people. They were also expected to avoid intoxication and bad company in the wine bars and taverns. Due to such proscriptions, their gender identity was blurred and they were viewed as not wholly masculine. However, their “emasculinity” (Robert Swanson’s term) did not prevent them from undeniably being men.<sup>21</sup> Violence offered them a means of affirming their identity publicly and impressing any bystanders. Like other men defending their honor, the clergy would not allow themselves to be verbally insulted or physically jostled without responding. In a world where everyone was quick to draw knives, violence seemed a normal way of settling conflict.<sup>22</sup>

Causes dealing with clergy accused of physical violence dominate the court’s records with 78 cases (46.7 percent). In most instances, punching, kicking, slapping, or biting was noted, but aggressors sometimes used any object they happened to grab hold of as a weapon (such as keys, the straps of a bridle, stones, sticks, a cabbage, pieces of wood or iron, a butt end or a spade handle). Some priests had no problem with trying to throw their opponent down a well, lay their hands on a colleague, or even manhandle their own relatives, including their sister or mother.<sup>23</sup> Some cases were particularly vicious, leading to serious injuries or homicide. One plaintiff was treated at the hospital “where [he] remained for four days” after having been stabbed with a dagger.<sup>24</sup> Physical abuse, which dogged the steps of priests, could begin simply with an insult, a regular part of litigation throughout the period given that it is documented in 49 cases (29.3 percent). As Gerd Schwerhoff remarks of such conflicts: “When the adversaries face each other, certain menacing gestures mark the frontier between verbal and physical violence.”<sup>25</sup> This could even include touching the adversary’s nose, as in the case of Don Giorgio Attard from the parish of Saint George’s Qormi (1770), but quarrels usually started with offensive words.<sup>26</sup> Slanderers had a rich store of vulgarities at their disposal and few kind words for each other, which made the diocesan court a popular venue for the defamed to protect their reputation and be, so they claimed, “restored to our pristine reputation, with which we have always lived.”<sup>27</sup> The court heard cases that involved priests shouting insults at their male opponents, using words such as “knaves,” “cowards,” “thieves,” “scoundrels,” “debtors,” or “swindlers.”<sup>28</sup> Women, who

<sup>20</sup>Luciano Allegra, “Il Parroco: un mediatore fra alta e bassa cultura,” in *Storia d’Italia*, Annali 4, *Intellettuali e Potere*, ed. Corrado Vivanti (Turin: Einaudi, 1981), 897–947.

<sup>21</sup>Robert N. Swanson, “Angels Incarnate: Clergy and Masculinity from Gregorian Reform to Reformation,” in *Masculinity in Medieval Europe*, ed. Dawn Hadley (London: Longman, 1999), 161. See also in the same volume P. H. Cullum, “Clergy, Masculinity and Transgression in Late Medieval England,” 178–96.

<sup>22</sup>For the bread knife used as a weapon, see Gerhard Jaritz, “The Bread-Knife,” in Gerhard Jaritz and Ana Marinković, *Violence and the Medieval Clergy* (Budapest: Central European University Press, 2001), 55–65. See also John Gadsby, *My Wanderings: Being Travels in the East*, vol. 1 (London: F. Kirby, 1894), 42: “The laboring classes always carry with them knives, with which they cut their bread; but they occasionally use them for worse purposes.”

<sup>23</sup>AAM, Dicta 25, no. 32; AAM, Dicta 26, no. 32; and CEM, AO 808, fols. 444r–449v.

<sup>24</sup>AAM, Dicta 25, no. 13; and AAM, Dicta 24, no. 5.

<sup>25</sup>Gerd Schwerhoff, “Justice et honneur: Interpréter la violence à Cologne (XVe–XVIIIe siècle),” *Annales. Histoire, Sciences Sociales* 62, no. 5 (2007): 1040–1043.

<sup>26</sup>AAM, Dicta 26, no. 11.

<sup>27</sup>AAM, Dicta 27, no. 62.

<sup>28</sup>For shouting being used to make an accusation audible while at the same time “polluting the aural space of others as they lived and worked,” see Fay Bound, “‘An Angry and Malicious Mind?’ Narratives and Slander at the Church Courts of York, c. 1660–c.1760,” *History Workshop Journal* 56 (2003): 67–68.

were more likely to be the victims of sexual defamation, were accorded a broad range of sexually-based epithets such as “whores,” “flirts,” “sluts,” and “prostitutes.” In 1767, one deponent remembered hearing Don Michele Gatt of Saint Philip’s call a woman named Maddalena a “stinking broom.”<sup>29</sup> But defamation did not necessarily consist of verbal abuse alone since an offender could, for example, dirty the door of his enemy’s house with human excrement.<sup>30</sup> In another case that reached the court in 1755, an indictment recited that Don Giacomo Pullicino and his brother of Saint Mary’s Mosta nailed two horns on the door of their opponent’s house, implying that the occupier was a cuckold.<sup>31</sup>

It may come as a surprise that, contrary to evidence found elsewhere, charges of sexual incontinence—the accusation that a priest could not suppress his sexuality—were not a relatively significant part of litigation.<sup>32</sup> Examination of the records turned up only 25 instances (15.0 percent), which means that the Maltese ecclesiastical court could not be called, as it was in England, a “bawdy court.”<sup>33</sup> This comparative lack of sexual cases means either that sexual deviance was an infrequent occurrence or, more likely, that there was a general tolerance toward the sex life of the clergy.<sup>34</sup> So long as the people were satisfied with the minimal pastoral activity and the clergy ministered adequately to their needs—mass on holy days and the celebration of marriages, baptisms, and funerals—they did not report licentious priests. The case of Don Fortunato Vella, parish priest of Senglea, is indicative of this attitude: he spent seven years in the dungeons of the inquisition for his carnal sins but still returned to his cure in 1747.<sup>35</sup> Louis Châtellier makes a similar remark regarding Strasbourg: “Having served their sentence, scandalous priests return without exception to their parishes where they live as if nothing had happened.”<sup>36</sup>

### III. Arrest

A case began in court in one of two ways. The first, *ex officio* (inquisition) cases, were brought in the name of the court itself.<sup>37</sup> These cases were the prime duty of the tribunal’s prosecutor, the legitimate defender of the rights of the Church, who could even break into an offender’s house to catch him in the act (*in flagrante*

<sup>29</sup>CEM, AO 677, fol. 139.

<sup>30</sup>AAM, Dicta 28, no. 7.

<sup>31</sup>AAM, Dicta 25, no. 11. See also Anton Blok, “Rams and Billy-Goats: A Key to the Mediterranean Code of Honour,” *Man* 16 (1981): 427–440.

<sup>32</sup>For ecclesiastical concubinage in Italy, see Oscar Di Simplicio, “Le perpetue (stato senese, 1600–1800),” *Quaderni storici* 23 (1988): 381–412.

<sup>33</sup>Paul Hair, ed., *Before the Bawdy Court: Selections from Church Court and Other Records Relating to the Correction of Moral Offences in England, Scotland, and New England, 1300–1800* (London: Elek, 1972).

<sup>34</sup>As Lawrence Duggan suggests, “given widespread clerical concubinage in the fifteenth century, popular indifference to or acceptance of it, and considerable sentiment among clerics for clerical marriage, it is just possible that clerical marriage would have been officially accepted in the sixteenth century had not the doctrinal issues of the Reformation intervened.” Lawrence G. Duggan, “The Unresponsiveness of the Late Medieval Church: A Reconsideration,” *The Sixteenth Century Journal* 9, no. 1 (April 1978), 21.

<sup>35</sup>Ciappara, *Mill-Qighan ta’ l-Istorja*, 25–28.

<sup>36</sup>Louis Châtellier, *Tradition Chrétienne et Renouveau Catholique dans l’Ancien Diocèse de Strasbourg, 1650–1770* (Paris: Éditions Ophrys, 1981), 178.

<sup>37</sup>For the term *ex officio*, see Henry Ansgar Kelly, “Inquisition and the Prosecution of Heresy: Misconceptions and Abuses,” *Church History* 58, no. 4 (December 1989): 439–442.

*delicto*).<sup>38</sup> One such prosecutor, Don Antonio Mizzi, reported to the court on December 22, 1752:

My Lords, it came to my attention yesterday toward noon that Don Giovanni Gafa of città Burmula had a prostitute, Rosa, in his house. He has already been detained for the same offence and ordered by this grand court not to have anything to do with her. She was hiding in the upper room but the *alarii* [marshals] brought them both to prison, where they are now. I inform Your Lordships of this abuse and demand that they be punished according to the sacred canons and the synodal constitutions of this diocese.<sup>39</sup>

The second and most common form were “instance” or litigation cases, so called because they were promoted “at the instance” of one party who sought redress against the other. 155 (92.8 percent) of the cases examined were litigation cases. As in England, the court’s proceedings depended on how far the people “were willing to assist the courts in an active and positive fashion.”<sup>40</sup>

Of the 167 priests reported to the ecclesiastical court, only 54—a little less than one-third (32.3 percent)—were taken into custody and sent to trial. The reasons for the relative paucity of detentions were various. A complainant could be satisfied with the court ordering the offender to, for example, give the wronged party back his credit, pay reparations for killing his dog, or not shoot at his pigeons under pain of a fine of 10 uncie.<sup>41</sup> In a defamation action from 1767, the plaintiff only asked that his antagonist belie himself publicly or in writing.<sup>42</sup> Initial citations could also be sufficient in bringing one of the parties to heel and accept, for instance, that a *perito* (expert) should estimate the cost of building a dividing wall between two fields.<sup>43</sup>

Priests were taken into detention only after the court had carefully weighed all the evidence and had found enough incriminating information.<sup>44</sup> Poorly supported charges were discarded and unsubstantiated testimony rejected. The judge eschewed hasty accusations, throwing out cases where only one witness could be found or no evidence was available to adequately prosecute the accused.<sup>45</sup> The canonist Panormitanus (Nicholas de Tudeschis, 1386–1445) had argued that a judge should rule on the basis of the evidence, and such precedent made the search for empirical evidence or material proof (*corpo di delitto*) at the scene of the crime an integral part of criminal procedures.<sup>46</sup>

<sup>38</sup>For the duties of the prosecutor, especially in proceedings of the Holy Office, see Andrea Errera, “Modello accusatorio e modello inquisitorio nel processo contro gli eretici: il ruolo del procuratore fiscal,” *Studia borromaica* 23 (2009): 151–208.

<sup>39</sup>AAM, Dicta 24, no. 45.

<sup>40</sup>Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge: Cambridge University Press, 1987), 30.

<sup>41</sup>AAM, Dicta 25, no. 21; and AAM, Dicta 26, nos. 104, 17.

<sup>42</sup>CEM, AO 676, fols. 250r–257v.

<sup>43</sup>CEM, AO 696, fols. 36r–49.

<sup>44</sup>For this phase of the proceedings, the *processo informativo*, see Giovanni Battista de Luca, *Il Dottor Volgare, ovvero Il Compendio di tutta la legge civile, canonica, feudale, e municipale nelle cose più ricevute in pratica*, vol. 6 (Cologne: Modesto Fenzo, 1740), 15–22. For the evolution of this term, see Marco Bellabarba, “Informazioni e fatti: casi di storia del processo penale nell’Italia centro-settentrionale secoli (XVI–XVII),” *Storica* 7 (2001): 155–175, esp. 168–175.

<sup>45</sup>AAM, Dicta 26, nos. 15, 104.

<sup>46</sup>Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, Mass.: The Medieval Academy of America, 1981), 55–60.

Therefore, the best way to ascertain whether one Don Angelo Zahra really had used a *marzucca* [sic] to beat Salvatore Spiteri was to search his house. Don Angelo claimed that he kept no “offensive weapons,” but in 1767 the prosecutor found both the incriminating instrument at his residence as well as a pointed tool and a stick.<sup>47</sup>

Certain conclusive proofs were needed to determine if a clergyman violated a woman. As two midwives reported in a case from 1756:

Your Lords, on orders from this grand court, we have examined today Grazia Baldacchino, kept in these prisons of Vittoriosa. We affirm as experts in obstetrics and after making the opportune considerations that Grazia has given birth to several children. She confessed to having been deflowered by a young man who served in his father’s windmill at Mosta many years ago. However, we repeat without any doubt that Grazia has repeatedly got herself with child.<sup>48</sup>

It was only after the court collected all the evidence (*processo informativo*) that the judge decided to take action and the suspect enjoined to appear in court. This order was served personally by the captain and his *alarii*.<sup>49</sup> However, as a priest was not to be humiliated, he was not necessarily taken straight to the ecclesiastical prisons at Vittoriosa; he could instead be put under house arrest or sent to an oratory to await trial.<sup>50</sup> In the case of Don Alberto Abela of Saint Catherine’s Żejtun, who knew that the tribunal was gathering information against him for having assaulted two brothers of the Confraternity of the Rosary, the priest voluntarily appeared before the vicar-general in 1755. He must have realized that cooperation with the prosecution could help his case.<sup>51</sup>

Conversely, some defendants were rendered contumacious for their failure to respond to court citations, which demonstrates that the efforts of the captain to round up suspects were not always successful. Some accused avoided arrest by escaping through windows or seeking sanctuary in a church.<sup>52</sup> In 1783, the aggressive priest Don Arcangelo Cumbo of Tarxien threatened the court’s officials with a hoe when they tried to apprehend him.<sup>53</sup> A particularly interesting case comes from 1756 when Don Salvatore Hellul, a morally dubious priest from Qrendi, pelted the *alarii* with stones from the top of his house when they demanded entry. Failing to get his permission to enter, they knocked down the door and went up a spiral staircase where they found an armed Don Salvatore wearing only a shirt and underpants. He tried to shoot at them but, fortunately for the *alarii*, the gun did not fire. It was only then that he surrendered, put on his clothes, and was taken to prison on his donkey.<sup>54</sup>

<sup>47</sup>CEM, AO 677, fol. 94.

<sup>48</sup>AAM, Dicta 26, no. 97.

<sup>49</sup>The *alarii* came from the lower ranks of society and combined their trades with court work, assisting the captain only when the need arose. They were primarily bakers, cotton beaters, gardeners, tenant farmers, tavern keepers, and sailors. See AAM, *Alarii et Servientes*, passim; and AAM, *Supplicationes* (hereafter cited as *Supp.*) 16, no. 191.

<sup>50</sup>CEM, AO 698, fol. 71. For one such example, see AAM, Dicta 26, no. 98.

<sup>51</sup>AAM, Dicta 25, no. 7.

<sup>52</sup>AAM, Dicta 25, no. 70; and AAM, Dicta 24, no. 36.

<sup>53</sup>AAM, *Informationes* (hereafter cited as *Inform.*) 6, no. 92.

<sup>54</sup>When again in trouble two years later, Don Salvatore escaped across the roof of a neighboring house and hid himself in a manger. AAM, Dicta 26, no. 97.



#### IV. Cross-Examination

The arrests of Don Arcangelo and Don Salvatore were exceptional cases, for most priests made their way peacefully to Vittoriosa to await trial. They did not appear before the bishop who, despite serving as the diocesan court's head and principal judge invested with all jurisdiction, did not preside in person over its sessions.<sup>55</sup> Most ordinaries were often encumbered with business elsewhere, and some lacked the specialized legal knowledge required to properly preside. Still others, as was the case of Bishop Bartolomeo Rull (1757–1769), were incapacitated by ill health.<sup>56</sup> Instead, the vicar-general acted as deputy president in the bishop's absence.<sup>57</sup> However, the vicar-general delegated some of his judicial functions to the provicar of the island of Gozo and the archdeacon of the cathedral at Mdina.<sup>58</sup> With some rare exceptions, church judges were experienced lawyers—skilled, able, and dedicated men who, like Reverend Canon Don Adriano Gurgion, held doctorates in both canon and civil law (*in utroque iure*).<sup>59</sup> They were assisted by the assessor and the prosecutor (*promotor fiscalis*), who, together with the court's chancellor, were responsible for diocesan justice and administration.<sup>60</sup> The notary held an important office since only he had the skills required to draw up the innumerable technical instruments for navigating the complicated path of the law's process.<sup>61</sup>

There was no time frame that determined when the judge had to begin interrogating the accused. Interrogations could occur two or four days after incarceration, if not the same day.<sup>62</sup> Don Federico Busuttill of Cospicua, however, was arrested on July 8, 1794, and did not make his appearance in court until seven days later on July 15.<sup>63</sup> Captivity would, perhaps, make the defendants search their conscience and change their attitude. As Don Pantaleone Dalli of Saint Mary's Gudja stated, "During that time I always turned over in my mind the cause of my imprisonment." The details of this incident are found in a petition he addressed to the judge: he was accused of incest for having fathered a child with his brother's fiancée. On April 4, 1794, a month after his arrest, he appeared voluntarily before the ecclesiastical judge, admitted his crime and demanded that the tribunal "solve this matter of so much importance."<sup>64</sup>

<sup>55</sup>For the members of the court, see *Synodus Dioecesis ab Illustrissimo et Reverendissimo Domino Fratre Cocco Palmerio Episcopo Melitensi* (Malta, 1842), 147–151. For the direct intervention of Saint Carlo Borromeo in judicial affairs, see Danilo Zardin, *Carlo Borromeo. Cultura, santità, governo* (Milan: Vita e Pensiero, 2010), 223–291.

<sup>56</sup>Ciappara, *Mill-Qighan ta' l-Istorja*, 32–41.

<sup>57</sup>For the central role of the vicar-general in the administration of justice, see Giovanni Battista De Luca, *Il Vescovo Pratico ovvero discorsi familiari nell'ore oziose de giorni canonicoli dell'anno 1674* (Rome: Corbelletti, 1675), 431–432.

<sup>58</sup>CEM, AO 704, fol. 277; and AAM, Inform. 6, no. 18.

<sup>59</sup>One such exception was Canon Giovanni Maria Azzopardi Castelletti (1758–1764), who seriously disrupted diocesan justice. The charges against him centered especially on his inflexibility, corruption, and simony, which made it easy for prostitutes to get communion tickets. Ciappara, *Mill-Qighan Ta' l-Istorja*, 34–41. For the qualifications of church judges, see AAM, Inform. 6, no. 18.

<sup>60</sup>They were recruited from the highly qualified lawyers of Malta like Fabrizio Grech. See Archivum Cathedralae Melitense (hereafter cited as ACM), Misc. 24, fol. 291; Ignazio Saverio Mifsud (CEM, AO 660, fol. 223); and Giuseppe Borg Olivier (CEM, AO 689, fol. 192).

<sup>61</sup>For the importance of notaries in diocesan chanceries, see Giorgio Chittolini, "Introduzione," in *I Notai della Curia Arcivescovile di Milano Secoli XIV–XV*, eds. Cristina Belloni and Marco Lunari (Rome: Archivi di Stato, 2004), ix–lxxxv.

<sup>62</sup>CEM, AO 691, fols. 285r–286; and CEM, AO 677, fols. 90r–91.

<sup>63</sup>AAM, Dicta 28A, no. 8.

<sup>64</sup>AAM, Inform. 6, no. 65.

Following a decree of the Roman council of 1725 that one should not incriminate oneself in criminal matters, the litigants did not speak under oath (unlike those who testified in the tribunal of the Roman Inquisition).<sup>65</sup> Having given their own personal details, they were asked whether they knew the cause of their detention. Most pretended that they did not know and declared they were innocent, but they could declare with sincerity, for example, that “my mother told me it was for my supposed scandalous relations with Clara and Anna Maria.”<sup>66</sup> Questions followed one another naturally, though leading questions were prohibited. Cross-examination sometimes extended till the late evening (*ora esset tarda*) before continuing on some other day, with an interim of even two weeks.<sup>67</sup>

Such persistent questioning was only one way to wear down the defendants’ resistance. To make them admit their guilt, witnesses’ reports were read out to them and, in some rare cases, defendants could be made to confront their opponents.<sup>68</sup> “This priest,” declared a clergyman of Valletta in 1777, “is Don Francesco but I don’t know his surname.”<sup>69</sup> These attempts were often successful, which made some priests capitulate. This is what Deacon Giovanni Battista Cassar of Senglea admitted in 1794: “I confess that I made a mistake and beg for pardon.”<sup>70</sup> Likewise, Don Giovanni Paolo Borg of St Helen’s confessed in 1779: “although I’ve denied that I had commerce with Anna, here present, the truth is that I twice made use of her body, the second time being last January.”<sup>71</sup>

Though verbally pressured, priests were given a fair trial and there are no recorded instances of torture. Priests had several substantial prerogatives in court: they could compel the attendance of witnesses on their behalf, and those who could not afford a defense counsel were assisted by the *procuratore dei poveri* (legal aid).<sup>72</sup> These lawyers did not appear personally in court but did provide sought-after written advice before or after the trial. They were especially helpful in exposing weaknesses in the evidence, basing their strategies on legal texts by renowned canon lawyers like Sebastiano Guazzini (1559–circa 1615) and Prospero Farinacci (1554–1618). A good example of such defense is the six-folio report dated 1756 by Don Ludovico Barbaro, a talented and exemplary priest of good reputation having been a consultor at the Inquisition. His client, Don Federico Busuttill, had never previously been reprimanded for his licentious life, as canon law demanded, nor were the threats his client addressed to the parish priest injurious. He did carry firearms for his own defense, and if he played cards, it was only for a pastime.<sup>73</sup> Other extenuating circumstances produced by the lawyers included the defendant having been drunk or provoked.<sup>74</sup> Another important question lawyers needed to address was whether the offence had been done with malice, premeditatedly, or in sudden anger.<sup>75</sup> Additionally, a good lawyer would quickly realize the

<sup>65</sup>Frans Ciappara, “The Roman Inquisition Revisited: The Maltese Tribunal in the Eighteenth Century,” *The Catholic Historical Review* 103, no. 3 (Summer 2017): 446; and Fiorani, *Il Concilio Romano del 1725*, 251.

<sup>66</sup>AAM, Dicta 28A, no. 8.

<sup>67</sup>AAM, Dicta 26, no. 97; and AAM, Inform. 6, no. 18.

<sup>68</sup>AAM, Dicta 23, no. 39.

<sup>69</sup>AAM, Inform. 6, no. 85.

<sup>70</sup>AAM, Inform. 6, no. 69.

<sup>71</sup>CEM, AO 691, fols. 290r–v; and AAM, Dicta 27, no. 30.

<sup>72</sup>On this legal aid, see De Luca, *Il Dottor Volgare*, 36–37.

<sup>73</sup>AAM, Dicta 26, no. 97. For the 1794 nine-page-long report by Don Giuseppe Agius, written in defense of Don Federico Busuttill, a canon of Senglea, see AAM, Dicta 28A, no. 8. For Dr. Giuseppe Calcedonio Debono, see CEM, AO 698, fols. 229r–230v.

<sup>74</sup>CEM, AO 698, fol. 74v; and AAM, Dicta 24, no. 21.

<sup>75</sup>AAM, Dicta 25, no. 67.

contradictions of a plaintiff's statement and might even bring him, rather than the defendant, under suspicion.<sup>76</sup>

Lawyers challenged the witnesses' authenticity, making their statements appear false or suspect. They could claim that the witnesses were the friends or relatives of the denouncer, or that they testified only on the basis of hearsay (*de auditu*) and not because they themselves had, for instance, really seen (*de visu*) a priest enter the house of a woman.<sup>77</sup> The testimonies of boys were ignored since they were under age and assumed to be impressionable, potentially repeating whatever the accused told them to say.<sup>78</sup> Lawyers also called into question the character or competence of the deponents, claiming that those who had informed against their client were well known knaves of the worst moral quality, being thieves or rapists, impostors or quarrelers.<sup>79</sup> One instance of this belittlement can be seen following the serious charge brought by deponent Giuseppe Azzopardo of Nadur against a parish priest. The witness claimed that his son, who had died on July 7, 1786 at the age of seventeen, had been beaten to death by the priest, yet only one of the testimonies confirmed this assertion. For Don Saverio Cassar, the provicar of Gozo, this was a false charge since the lad died a year after the incident. For his part, the physician who treated the boy, Doctor Giuseppe Stivala, dubbed the accuser a first-class liar. The judge thus excluded the case for these reasons.<sup>80</sup>

#### V. Out-of-Court Settlement

Having made his defense and (usually) pleading not guilty, the priest on trial left "the matter to the good justice of [the] grand court," and waited for his sentence.<sup>81</sup> Even so, it seems that a judicial sentence was not always the most suitable instrument with which to settle disputes involving the clergy.<sup>82</sup> Rather, as Marco Cavarzere has observed in the Brugnato and Luni-Sarzana dioceses of eastern Liguria, such sentences were "an obstacle or an *extrema ratio* to which recourse was made only when all the other ways had been exhausted."<sup>83</sup> Ottavia Niccoli concurs, referring to the tribunal of the Torrione at Bologna when she claims that "the proceedings seldom end with a sentence." Niccoli demonstrates that as many as 45 percent of the cases within a ten-year period (1633–1642) were resolved by the litigants outside court.<sup>84</sup> Renata Ago has also come to a similar conclusion: the number of sentences passed by the Roman tribunal of the *auditor camerae* in the seventeenth century were for only 30 percent of all cases.<sup>85</sup> Stuart Carroll makes the same point

<sup>76</sup>AAM, Inform. 6, no. 20; and CEM, AO 702, fols. 13r–21. On this topic see Lawrence R. Poos, "Sex, Lies and the Church Courts of Pre-Reformation England," *Journal of Interdisciplinary History* 25, no. 4 (Spring 1995): 589.

<sup>77</sup>AAM, Dicta 28A, no. 8.

<sup>78</sup>AAM, Dicta 24, no. 42.

<sup>79</sup>AAM, Dicta 28A, no. 6; and CEM, AO 808, fols. 365r–431v.

<sup>80</sup>AAM, Supp. 18, no. 50.

<sup>81</sup>AAM, Dicta 26, no. 97.

<sup>82</sup>Michele Mancino, "Governare la criminalità degli ecclesiastici nell'Italia del primo cinquecento: il caso di Napoli e della Campania," *Studi Storici* 50, no. 1 (2009): 123. See also Mancino, "La giustizia penale ecclesiastica nell'Italia del seicento: linee di tendenza," *Studi Storici* 51, no. 4 (2010): 1028–1029.

<sup>83</sup>Cavarzere, *La giustizia del Vescovo*, 37. The same can be said for Venice, as seen in Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice* (Aldershot: Ashgate, 2004), 50–51.

<sup>84</sup>Ottavia Niccoli, "Rinuncia, pace, perdono: Rituali di pacificazione della prima età moderna," *Studi Storici* 40, no. 1 (1999): 224.

<sup>85</sup>Renata Ago, "Una giustizia personalizzata: I tribunali civili di Roma nel XVII secolo," *Quaderni Storici* 101, no. 2 (1999): 397.

for France while Ronald A. Marchant, Richard M. Wunderli, R. B. Outhwaite, and especially R. H. Helmholz do the same for England.<sup>86</sup>

This is no less true for Malta. The absence of a verdict could mean poor recordkeeping but, while such negligence is possible, the popes' concern for the archives—especially the archivist Pope Benedict XIII Orsini (1724–1730) who insisted on the erection of ecclesiastical archives in order to improve administrative efficiency and transmit “faith and truth”—makes this unlikely.<sup>87</sup> There must have been a much more worthwhile reason for this apparent lack of sentences, such as purposeful omission due to lack of action on the part of the court.

The principal aim of the ecclesiastical judge was not to enforce repression, but rather to facilitate a means for litigants to bring their suits to a speedy out-of-court settlement. Seven such examples were found in the research undertaken.<sup>88</sup> One of these instances, which Renata Ago would call *una giustizia personalizzata* (or “personalized justice,” a recognized alternative to “official justice”), concerned the 1759 case between Giuseppe Micallef and Don Francesco Abela from the island of Gozo. The priest had hit his opponent in the face and chest with a hammer, causing him to bleed from his nose and lip, but ten days later the plaintiff appeared in court and withdrew the case.<sup>89</sup>

Unlike other places, litigants in Malta did not notarize their agreement or give a sign of peace such as a kiss, a handshake, or having lunch together.<sup>90</sup> Instead of a physical sign of friendship, the court's clerk inserted the notation *cessit et cedit* in the dossier to serve as a record if ever one was needed. Rarely do the records hint at who actually brought the litigants to a solution given that there was no formal mechanism for dispute settlement, although it could have been the court itself. In 1753, the court's public prosecutor tried to sponsor one such extrajudicial, though ultimately unsuccessful compromise between Pasquale Giuve and two priests, Don Giuseppe Muscat and Don Francesco Borg.<sup>91</sup> However, the mediators were often from outside the court, with reconciliation resulting from Christian obligation and community or kinship pressure rather than legal means. It must be presumed, therefore, that relatives reconciled Angelo Attard with his brother Don Giorgio in 1770, yet the mediator could also have been the parish priest.<sup>92</sup>

<sup>86</sup>Stuart Carroll, “The Peace in the Feud in Sixteenth- and Seventeenth-Century France,” *Past and Present* 178 (2003): 74–115; Ronald A. Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York, 1560–1640* (Cambridge: Cambridge University Press, 1969), 1–11, 243–245; Wunderli, *London Church Courts*, 49; R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500–1860* (Cambridge: Cambridge University Press, 2007), 10; R. H. Helmholz, “Canonical Defamation in Medieval England,” *American Journal of Legal History* 15, no. 4 (1971): 255–268; Helmholz, “Crime, Compurgation and the Courts of the Medieval Church,” *Law and History Review* 1, no. 1 (1983): 21; Helmholz, “Usury and the Medieval English Church Courts,” *Speculum* 61, no. 2 (1986): 377–378; and Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), 135–138.

<sup>87</sup>For Pope Benedict XIII's 1727 constitution *Maxima vigilantia*, see Ermanno Loevinson, “La costituzione di Benedetto XIII sugli archivi ecclesiastici: un papa archivista,” *Gli archivi italiani* 3 (1916): 159–206.

<sup>88</sup>For such examples, see CEM, AO 703, fol. 235v; AAM, Dicta 26, nos. 16, 76; AAM, Dicta 27, nos. 29, 54; AAM, Dicta 28, no. 10; and AAM, Supp. 16, no. 108.

<sup>89</sup>AAM, Dicta 26, no. 76.

<sup>90</sup>Alfred Soman, “Déviance et justice criminelle en Europe occidentale 1300–1800: vers une problématique,” *Criminal Justice History* 1 (1980): 13–8; and Luisella Cabrini Chiesa, “Gesti e formule di pace: note in margine all'età medievale,” *Quaderni di storia religiosa* 12 (2005): 47–59.

<sup>91</sup>AAM, Dicta 24, no. 64.

<sup>92</sup>AAM, Dicta 26, no. 11; and CEM, AO 808, fols. 361r–364v. On this topic, see Martin J. Ingram, “Communities and the Courts: Law and Disorder in Early-Seventeenth-Century Wiltshire,” in *Crime in*

Disputes settled privately were made “for the love of God” (*per amorem Dei*), an expression which relates to the Christian command to love one’s neighbor.<sup>93</sup> This Christian brotherhood was one item of the statutes of the confraternities, whose members were not permitted to file legal suits against each other.<sup>94</sup> Compromise, though it was not necessarily an altogether altruistic act because legal proceedings, could be renounced in return for a cash indemnity or, in cases of rape, for a dowry.<sup>95</sup>

## VI. Judgment and Punishment

As table 2 shows, only one of the clergy whose case made it all the way through to a verdict was declared innocent and thus acquitted, the judge declaring: “He is guilty in no way.”<sup>96</sup> Fifteen priests received a conditional sentence, or what Cardinal De Luca called a “conditional absolution.”<sup>97</sup> They were required to present themselves (*de se praesentando*) to the ecclesiastical court whenever summoned and were to keep distant from their former opponents or lovers (*de non tractando seu conversando*).<sup>98</sup> Don Constanzo Madiona, a cloth and cotton merchant from the island of Gozo, was found not guilty of usury but, since several deponents confirmed that he had cheated them, he was prohibited from lending and selling cotton.<sup>99</sup>

Nevertheless, if church tribunals were at pains to deal with delinquent priests, they keenly defended their image and honor. As has been said for Italy, proceedings against recalcitrant clergy generally ended only in “the pulling of their ears.”<sup>100</sup> The ideal solution for their crimes was to satisfy the court with a financial payment (12 cases), which settled the matter and prevented the priest from enduring public humiliation. Take the case of Don Valerio Borg of Cospicua, who was charged in 1757 with having had scandalous relations with one Fortunata. He paid 12 uncie for the proceedings against him to be dropped so as “to keep the good reputation which he enjoyed as a priest.”<sup>101</sup> Another solution, which shows that causes ideally were to be resolved with little fuss so as not to compromise the clergy in the eyes of the locals, was to transfer a problematic priest to another parish.<sup>102</sup> This was the case of Don Salvatore Sammut,

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*England 1550–1800*, ed. James S. Cockburn (Princeton, N.J.: Princeton University Press, 1977), 125–127; and James A. Sharpe, “Such Disagreement betwyxt Neighbour: Litigation and Human Relations in Early Modern England,” in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 173–178.

<sup>93</sup>John Bossy, *Christianity and the West, 1400–1700* (Oxford: Oxford University Press, 1985), 57–75; and Bossy, *Peace in the Post-Reformation* (Cambridge: Cambridge University Press, 1998).

<sup>94</sup>Christian brotherhood was also the primary aim of the Capuchins’ and, especially, the Jesuits’ missions. See Frans Ciappara, “Confraternal Organisation in Early Modern Malta,” *Confraternitas* 29, no. 1 (2018): 13; and Adriano Prosperi, *Tribunali della coscienza: Inquisitori, confessori, missionari* (Turin: Einaudi, 1996), 292–295.

<sup>95</sup>AAM, Dicta 26, no. 4; and AAM, Dicta 24, no. 58.

<sup>96</sup>CEM, AO 683, fol. 48v.

<sup>97</sup>For this term, see De Luca, *Il Dottor Volgare*, 45.

<sup>98</sup>CEM, AO 705, fol. 47. See also AAM, Dicta 24, no. 36: “de non accedendo ad domum Angelo Bonnici, nec conversando cum Maria eius uxore.”

<sup>99</sup>AAM, Dicta 26, no. 15.

<sup>100</sup>Mancino and Romeo, *Clero criminale*, 198; and Minucci Del Rosso, “I Famigli e le Carceri di una corte arcivescovili dal secolo XVI al secolo XVIII,” *La Rassegna Nazionale* 8, no. 29 (1886): 138.

<sup>101</sup>AAM, Dicta 25, no. 84.

<sup>102</sup>Irene Fosi, *Papal Justice: Subjects and Courts in the Papal State, 1500–1750*, trans. Thomas V. Cohen (Washington, DC: Catholic University of America Press, 2011), 169.

**Table 2.** Sentences by the Ecclesiastical Court, 1750–1798

Imprisonment	House Imprisonment	Penance	Fine	Exile	Acquittal	Release	Conditional Release	Total
6	1	9	12	1	1	9	15	54

Sources: Archiepiscopal Archives, Malta (AAM), Dicta 24–28A; AAM, Informationes 5–6; AAM, Supplicationes 16–19; and Curia Episcopalis Melitensis, Acta Originalia 673, 677, 683, 689–692, 694, 698, 705, 706.

who, in 1796, was made to leave his parish of the annunciation Balzan and go to stay with his sister at Saint George’s Qormi so that he could not consort with Maria, his lover.<sup>103</sup>

The diocesan court’s indulgence followed the advice of Trent that “benevolence toward those to be corrected often effects more than severity, exhortation more than threat and charity more than force.”<sup>104</sup> These accommodating procedures opposed the repressive reforms that Saint Carlo Borromeo (1538–1584) inflexibly laid down for his diocese of Milan.<sup>105</sup> They also went against Cardinal De Luca’s warnings. In 1674, De Luca argued that the number of clergy was small in ages past, their positions limited according to the needs of the Church. They would have joined the “clerical army” to serve God and lead a more spiritual and perfect life. Crimes were rarely heard of and the judge proceeded with mercy and prudence, as a loving father treats his children, so as not to damage the Church’s reputation or scandalize the people with public punishment. “But nowadays,” De Luca continued in *Il Vescovo Pratico*, “and particularly in Italy where the number of clergy almost equals that of laymen, [most] embrace the clerical state to enjoy an easy life and commit crimes. . . . The bishop should proceed against them with more rigor than the lay magistrate because a crime committed by the clergy is greater than one perpetrated by laymen.”<sup>106</sup> This policy of repression failed, however, and there prevailed instead a broad tolerance toward criminal clergy, with the judges preferring a noiseless, quiet type of judicial administration. Repentance, reformation, and amendment were the watchwords of the Church judges, with redemption valued over punishment. In the authoritative words of Giovanni Romeo, Church authorities preferred “the oil of mercy to the wine of discipline.”<sup>107</sup>

Not even imprisonment was intended to tarnish the priests’ reputation unnecessarily. Ecclesiastical prisons were generally “provisional” rather than “punitive” places, for most priests were detained only briefly before being transferred to stay with the Capuchins at Calcara, the Jesuits at Floriana, or the Oratorians at Vittoriosa or Senglea.<sup>108</sup> In these places, convicted clergy undertook penance for their soul’s health

<sup>103</sup>AAM, Inform. 5, no. 63.

<sup>104</sup>Schroeder, *Canons and Decrees of the Council of Trent*, 81.

<sup>105</sup>There is a vast literature on Borromeo. See, for instance, *San Carlo e il suo tempo: Atti del Convegno Internazionale nel IV centenario della Morte (Milan, 21–26 maggio 1984)* (Rome: Storia e Letteratura, 1986); Zardin, *Carlo Borromeo*; and Giuseppe Alberigo, “Carlo Borromeo come modello di Vescovo nella Chiesa Post-Tridentina,” *Rivista Storica Italiana* 79, no. 3 (1967): 1031–1052.

<sup>106</sup>De Luca, *Il Vescovo Pratico*, 439–441. For De Luca, see Agostino Lauro, *Il Cardinale Giovan Battista De Luca: Diritto e Riforme nello Stato della Chiesa, 1676–1683* (Naples: Jovene, 1991).

<sup>107</sup>Mancino and Romeo, *Clero criminale*, 96.

<sup>108</sup>For the transformation of prisons from places of detention to places of punishment, see Nicoletta Sarti, “Appunti su Carcere-Custodia e Carcere-Pena nella Dottrina Civilistica dei Secoli XII–XVI,”

and were restored to a healthy relationship with God and their neighbors. In other instances, they were discharged from prison after a short period, the time they had spent in detention serving as their punishment. Various examples of this kind of negotiable justice can be cited, and priests based their demand to be set free on several factors.<sup>109</sup> Don Giovanni Paolo explained to the court in 1779 that detention not only meant the loss of liberty but also the loss of a stable source of livelihood. As the family's breadwinner, his detention put his mother and brother under significant privation, for it cost him more than 8 tari a day to support them.<sup>110</sup> A priest could plead, with some exaggeration, the danger of "losing his health" if he stayed any longer in prison because he suffered from a "malign fever" or "strong hypochondria."<sup>111</sup> The admission by three priests from Rabat in 1755 that they deserved a greater punishment than imprisonment for addressing offensive words to the cathedral's *maestro di cappella* (choir master) opened the door to a merciful pardon.<sup>112</sup> Don Saverio Said of Saint Philip's claimed in 1757 that he had been sent to prison for nothing more than a minor offence: punching Angelo Bonnici in the face in the sacristy of the chapel of Our Lady of Sorrows. Detention aside, he argued that he had already atoned for the crime by his suspension *a divinis*—where he was prohibited from saying mass and administering the sacraments—which, "as everyone knows, is a terrible punishment."<sup>113</sup>

Furthermore, there was always the possibility of countermanding the diocesan court, even though the Council of Trent—wishing to reinforce the bishop's powers and repeating the thirty-fifth constitution of the fourth Lateran council (1215)—decreed that appeals could be made only after a definitive sentence by the initiating court or after two years.<sup>114</sup> These appeals demonstrate how the bishop's jurisdiction could be circumscribed.<sup>115</sup> The religious orders, for instance, judged their own members and ran their own prisons.<sup>116</sup> In addition, crimes like witchcraft and apostasy fell within

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*Rivista di Storia del Diritto Italiano* 53, no. 54 (1980–1981): 67–110. See also Christopher Black, *Italian Confraternities in the Sixteenth Century* (Cambridge: Cambridge University Press, 1989), 221.

<sup>109</sup>On this topic, see Karl Härter, "Negoziare sanzioni e norme: la funzione e il significato delle suppliche nella giustizia penale della prima età moderna," in *Suppliche e "gravamina": politica, amministrazione, giustizia in Europa (secoli xiv–xviii)*, eds. Cecilia Nubola and Andreas Würigler (Bologna: Il Mulino, 2002), 263–305.

<sup>110</sup>CEM, AO 691, fols. 294r–v.

<sup>111</sup>AAM, Dicta 24, nos. 21, 45.

<sup>112</sup>AAM, Dicta 26, no. 101.

<sup>113</sup>AAM, Dicta 25, no. 67.

<sup>114</sup>*Disciplinary Decrees of the General Councils*, ed. and trans. Henry Joseph Schroeder (St. Louis, Mo.: B. Herder, 1937), 271; and Schroeder, *Canons and Decrees of the Council of Trent*, 211. For the cardinals' demand at the Roman provincial council of 1725 that clergy could appeal to Rome even in first instance, see Maria Teresa Fattori, "Il concilio provinciale del 1725: liturgie e concezioni del potere del papa a confronto," *Cristianesimo nella storia* 29, no. 1 (2008): 33.

<sup>115</sup>On this point, see Paolo Prodi, *Una storia della giustizia: Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto* (Bologna: Il Mulino, 2000), 288–297. On the bishop's powers, or lack thereof, see Claudio Donati, "Vescovi e Diocesi d'Italia dall'Età Post-Tridentina alla Caduta dell'Antico Regime," in *Clero e Società nell' Età moderna*, ed. Mario Rosa (Rome-Bari: Laterza, 1992), 321–389.

<sup>116</sup>Archives of the Inquisition Malta (hereafter cited as AIM), Processi 115A, fols. 393r–398v; and AIM, Processi 117B, fols. 534r–537v. See also Marlene Mifsud Chircop and Mark Montebello, *Min qatel il-patri? Ġrajja storika* (Malta: Midsea, 2016), 104. For central Europe, see Ulrich Lehner, *Monastic Prisons and Torture Chambers: Crime and Punishment in Central European Monasteries 1600–1880* (Eugene, Oreg.: Wipf and Stock, 2013).

the remit of the inquisitor.<sup>117</sup> The diocesan court proceeded only in the first ruling, for both Palermo's metropolitan court and the *sacra congregazione de' vescovi e regolari*—the sacred congregation of bishops and regulars set up in 1573 by Gregory XIII—had the power to review its sentences.<sup>118</sup> It was for this reason that Cardinal De Luca advised ordinaries not to be unnecessarily harsh in their sentences, lest they be overruled.<sup>119</sup>

Nevertheless, as has been observed for northern Italy, there were very few appellants from Malta.<sup>120</sup> Maltese priests considered appeals to be “no little dishonor to the nation,” not to mention timely and costly ventures.<sup>121</sup> Additionally, the government under Advocate General Giovanni Nicolò Muscat (1735–1803) was firmly opposed to any recourse to foreign courts since it went against one of the most important freedoms of the Maltese: the sovereignty over litigation within their own country. Instead, priests hoped “to merit the compassion of the court within a short time.”<sup>122</sup> All the same, those defendants who lost their case were allowed time to file an appeal against their conviction, and whoever chose this road could count on the annulment or mitigation of the sentence.<sup>123</sup> Don Celestino Borg of Vittoriosa, for one, walked out a free man in 1796.<sup>124</sup>

The office of bishop worked to maintain a balance between mercy and justice, and a judicial model that limited the abuses of the clergy without damaging the Church was developed. Priests were not to be dishonored or suffer public and disgraceful punishments. No instances of shaming, such as those so popular with the spiritual courts in Elizabethan England, are found in the Act books studied.<sup>125</sup> Nor were priests sent to row on the galleys or paraded through the parish. Following the directives of Trent, they were not publicly absolved in cases of excommunication.<sup>126</sup> Take the case of Don Saverio Sammut and his brother Don Giuseppe from Saint Mary's Attard, who had beaten the deacon Giuseppe Sant. Cardinal Francesco Carafa (1722–1818), the prefect of the sacred congregation of bishops and regulars, enjoined the bishop

<sup>117</sup>For the tribunal of the Roman inquisition in Malta, see Frans Ciappara, *Society and the Inquisition in Early Modern Malta* (Malta: Publishers Enterprises Group, 2000). For the relations between bishops and inquisitors, see Ciappara, *Society and the Inquisition*, 237, 346–348; and Ciappara, *The Roman Inquisition in Enlightened Malta*, 71–76. For Italy, see Giovanni Romeo, *L'Inquisizione nell'Italia moderna* (Rome: Laterza, 2002); and Andrea Del Col, *L'Inquisizione in Italia dal XII al XXI secolo* (Milan: Mondadori, 2006).

<sup>118</sup>For the relationship between this church department and Italian bishops, see Giovanni Romeo, “La Congregazione dei Vescovi e Regolari e i Visitatori Apostolici nell'Italia post-Tridentina: un primo bilancio,” in *Per il Cinquecento Religioso Italiano. Cultura e Società*, ed. Maurizio Sangalli, vol. 2 (Rome: Edizione dell'Ateneo, 2003), 607–614.

<sup>119</sup>De Luca, *Il Vescovo Pratico*, 446.

<sup>120</sup>On this topic, see Marco Cavarzere, “La Giustizia Ecclesiastica in Periferia. Il Pluralismo Giurisdizionale della Chiesa attraverso il Caso di Aquileia,” *Giornale di Storia* 9 (2012): 1–10.

<sup>121</sup>AAM, Supp. 19, no. 99.

<sup>122</sup>Frans Ciappara, *Church-State Relations in Late-eighteenth-century Malta: Gio. Nicolò Muscat 1735–1803* (Malta: Malta University Press, 2018), 130–133.

<sup>123</sup>AAM, Dicta 26, no. 97.

<sup>124</sup>AAM, Inform. 6, no. 102.

<sup>125</sup>Frederick George Emmison, *Elizabethan Life: Morals and the Church Courts* (Chelmsford: Essex County Council, 1973), 281.

<sup>126</sup>Schroeder, *Canons and Decrees of the Council of Trent*, 198. See also Elena Cristina Brambilla, “La polizia dei tribunali ecclesiastici e le riforme della giustizia penale,” in *Corpi armati e ordine pubblico in Italia XVI–XIX sec.*, eds. Livio Antonielli and Claudio Donati (Catanzaro: Rubbettino, 2003), 90–92.



on May 6, 1777 to absolve the brothers “privately.”<sup>127</sup> No irreparable harm was to be made to their honor. However, this was not the procedure accorded to laymen like Vincenzo Mifsud, who, in 1781, had beaten Don Stefano of Saint Bartholomew’s Gargur with his fists. He was reintegrated into the community only through a public ceremony of repentance (*in forma pubblica*)—conducted by the parish priest on a Sunday before high mass—where he begged for pardon.<sup>128</sup>

The Church attempted to hide all traces of transgressions committed by its wayward clergy. In order to protect priests from bad publicity, the Church administered a lenient type of justice, with its judges favoring, whenever possible, a secretive handling of the cases. Giovanni Romeo, citing Paolo Salodi’s *Praxis compendiosa de visitatione* (Milan, 1593), asserts that clerical scandals were not to reach the faithful, who were to remain ignorant of any corruption and vices so as not to stoke anticlericalism or frustration with the priests.<sup>129</sup> Likewise, Michele Mancino has detailed the impunity guaranteed to delinquent priests and clerics in Italy.<sup>130</sup> Helmut Puff, having analyzed debauched priests in Europe north of the Alps in the medieval era, claims that “there is very little evidence that the regulations of canon law were enforced against clerical sodomites on a regular basis.”<sup>131</sup> The same may be said of the Maltese clergy. According to records, 12.6 percent of them were recidivists, which suggests many knew that they would receive preferential treatment by the clerical judge. The aforementioned Don Celestino Borg was one such example of a multiple offender: he was reported three times between 1778 and 1794, once for physical assault and twice for sexual incontinence, having fathered a son to one Aloisia.<sup>132</sup>

It must not be presumed, however, that priests who had greatly offended the standards of the community and the universal Church were left unpunished.<sup>133</sup> The most miscreant individuals became objects of local scorn: their deplorable reputation and disordered lives were widely known, and their behaviors damaged the reputation of other clergy while undermining the authority of the Church. The diocesan court was indeed able to mete out satisfactory punishments for them, as can be seen in the case of Don Filippo Borg of Saint George’s. In 1781, he beat a boy suffering from epilepsy to death with a piece of wood during a quarrel over a wall dividing their fields. The judge condemned him to exile from Malta for five years and ordered him to pay the victim’s relatives 70 scudi to cover costs and expenses. He was also suspended *a divinis* and, although he asked in 1782 to be pardoned of this ecclesiastical censure, his petition was refused.<sup>134</sup>

<sup>127</sup>AAM, Dicta 27, no. 2.

<sup>128</sup>AAM, Dicta 27, no. 43. Yet for some reason, when Luca Cilia, Francesco Canaletto, and Rosa Canaletto manhandled Don Vincenzo Micallef in 1768, they were absolved from excommunication privately by the parish priest at his residence at Senglea. See AAM, Dicta 30A, no. 66.

<sup>129</sup>Mancino and Romeo, *Clero Criminale*, 79.

<sup>130</sup>Mancino, “La giustizia penale,” 1009.

<sup>131</sup>Helmut Puff, “Localizing Sodomy: The ‘Priest and Sodomite’ in Pre-Reformation Germany and Switzerland,” *Journal of the History of Sexuality* 8, no. 2 (1997): 166.

<sup>132</sup>AAM, Inform. 5, no. 59; and AAM, Inform. 6, nos. 87, 102.

<sup>133</sup>On this subject, see Marco Bellabarba, “Pace pubblica e pace privata: linguaggi e istituzioni processuali nell’Italia moderna,” in *Criminalità e giustizia in Germania e in Italia: pratiche giudiziarie e linguaggi giuridici tra tardo medioevo e prima età moderna*, eds. Marco Bellabarba, Andrea Zorzi, and Gerd Schwerhoff, (Bologna: Il Mulino, 2001), 189–213.

<sup>134</sup>CEM, AO 694, fols. 71r–190v. See also AAM, Corrispondenza 19, fols. 993r–995r.

## VII. Conclusion

Several important questions remain at the end of this article. Could this unchristian behavior by the clergy be interpreted as a sign that the reforms enunciated at Trent had failed? Can the disordered life of priests and the poisonous relations that sometimes existed between the clergy and laity be interpreted as the reforms being all for naught, or that no real renewal had been made that could undo the inertia of Mediterranean backwardness? Did the fervor of the Council's projects slide miserably into a delusive stalemate, meaning that many good intentions came to nothing?

Data from Malta suggests that such a judgment is unfair. The number of indictments against the clergy was small, and even if the charges were a routine part of the business of the diocesan court, they were never a large part. There is no evidence that a lack of discipline was a significant issue or problem in Malta. The tribunal heard only a few cases each year—an average of three—which, needless to say, makes this piece a one-sided account of human failings. Since court records are by nature depositories of information about wrongdoing, widespread misconduct cannot be construed from these collections of individual misdemeanors. For instance, tiny parishes like Saint Paul's Safi, Saint Mary's Dingli, or Saint Leonard's Kirkop did not register any crimes at all, while others went for years without a single recorded crime. It should not be said, therefore, that the diocesan court obtained no results in its attempts to control the clergy.

As Danilo Zardin admirably argues, to represent the period after Trent as a failure would mean ignoring the fundamental innovations that transformed Catholic religious conscience and shaped the modern world. The result was a new type of dynamic Catholicism with its devotions, piety, religious practice, mysticism, literature, music, and sacred art.<sup>135</sup> Hubert Jedin proposes in *Riforma Cattolica o Controriforma?* that the Council brought the Church out of the Middle Ages and ushered in a new, transitional period in Catholic history; if it had been only a fleeting episode, its effects would not have lasted for centuries.<sup>136</sup> To quote John O'Malley: "The Council of Trent without a doubt had a direct and long-term impact on modern Catholicism that in its pervasiveness transcended the immediate influence of any single person or any other happening in the period."<sup>137</sup>

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<sup>135</sup>Danilo Zardin, "Il concilio di Trento e il rinnovamento cattolico dell'età moderna," in *Religione, cerimoniale e società nelle terre milanesi*, eds. Danilo Zardin, Fabrizio Pagani, and Carlo Alessandro Pisoni (Germignaga: Magazzeno storico verbanese, 2014), 31–45. See also Pierre Janelle, *The Catholic Reformation* (Milwaukee: The Bruce Publishing Company, 1949).

<sup>136</sup>Hubert Jedin, *Riforma Cattolica o Controriforma Reformation?* (Brescia: Morcelliana, 1957), 76–77.

<sup>137</sup>John O'Malley, *Trent and All That: Renaming Catholicism in the Early Modern Era* (Cambridge, Mass.: Harvard University Press, 2002), 135.

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