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How Was Judicial Power Balanced in Malta in Early Modern Times? A cursory Look at the Maltese Legal System through a Historical Perspective

Simon Mercieca

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HOW WAS JUDICIAL POWER BALANCED IN MALTA IN EARLY MODERN TIMES? A CURSORY LOOK AT THE MALTESE LEGAL SYSTEM THROUGH A HISTORICAL PERSPECTIVE

Simon Mercieca*

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I. INTRODUCTION

Today, Malta has one judicial system which is administered from one central building in Valletta. At the same time, the place where justice is administered is known in Maltese as *Qrati tal-Ġustizzja* or Courts of Justice. However, the fact that all these courts are situated under one roof causes the people to associate it

* Director, Mediterranean Institute; Lecturer in Historical Demography, University of Malta, Malta. His work has a special emphasis on behavioural history, population growth, and development amongst people living in coastal areas.

as one institution. I think that this popular perception is more than correct and despite of the use of the word “courts,” all these different seats of power fall under the responsibility of one person—the Chief Justice. This sort of anomaly made me look into the semantic reason for the use of the plural *qrati* rather than the singular *qorti* even though people refer to this building by the latter nomenclature. In my opinion, the use of the plural conveys an older idea when Malta had a multi-court system.

In this paper, I shall be looking at the Court of the Inquisition in Malta and how it administered justice during the early modern period. I want to state from the onset that I am not a juristic scholar by profession. My training is that of a historian. Therefore, in this paper, I shall be analyzing the development of this tribunal between 1530 and 1798, that is, during the period when the Island was ruled by the Order of Saint John. Most of the observations that I shall be making on this tribunal are based on pragmatic observations that I have made on analyzing the different trials or *processi* of criminal justice judged by the Inquisition. I want to state very clearly that the reason for my analysis of these *processi* is to gather information to build the social framework of Maltese society during early modern times. However, studying these trials and other court records belonging to other Ecclesiastical Courts in Malta, I noted the different courts that existed on the Island and the different functions that these courts had in Malta.

II. TRIBUNALS

Already during medieval times, Malta had more than one judicial tribunal functioning on the Island. There was the Tribunal of the Church as well as the Tribunal of the State. Both had civil and criminal roles. Furthermore, the secular arm had more than one tribunal. There was a court in Malta and another in Gozo; both administering civil and criminal justice independently. The Maltese tribunal had its seat at Mdina whilst that of Gozo was situated at the Castello. From 1184, with the setting up of the Inquisition Tribunal in Sicily, Malta would begin to experience a new judicial system.

The Inquisition in Sicily was administered directly by the Dominican Order. It was the duty of the Sicilian General Inquisitor to appoint pro-Inquisitors to travel to those areas where the need was felt, or a request was made, for their presence. Thus, this Medieval Inquisition lacked a formal seat but relied on the figure of a peripatetic judge who began investigating cases according to the exigencies of the moment. Therefore, the figure of this Inquisitor was more of a prosecuting magistrate rather than a judge who had the faculty to investigate and pass sentences.

Local records never speak about the presence of an Inquisitor in Malta throughout the medieval period. Whenever the need for an Inquisitor was felt, a pro-Inquisitor was sent over to Malta. During this period, it is very difficult to differentiate between those cases that fell directly under the Inquisition and those related to the Ecclesiastical Tribunal led by the Bishop. The reason for this mix-up is related to the nature of the Medieval Inquisition itself. The local Bishop, more often than not, assumed a dual role. He could act as Bishop or as Inquisitor depending on the nature of the case. Bishops were given a power of attorney by the General Inquisitor in Sicily to investigate cases related to the Faith. To complicate matters further, more often than not, the Bishop was absent from Malta.

The surviving documents of court cases before the Ecclesiastical Tribunal show that this court mainly dealt with various cases of a domestic nature, such as requests from married couples to be granted divorce, nuns asking for dispensations to leave the convent, other cases related to the administration of church property, and issues related to aspects of authority between the Governing body in Malta and the Church.¹ These matters fell under the sole prerogative of the Ecclesiastical Court. Then, there were the cases of ecclesiastics who committed serious crimes and even though their crime was not of a religious or criminal nature, they were still dealt with by the Bishop. Lay people had their own tribunals. They were prosecuted by the tribunals of the Università, which in medieval times was the governing body in Malta. However, the Ecclesiastical Court had the prerogative over cases

1. ALEXANDER BONNICI, *1 STORJA TA' L-INKIŻIZZJONI TA' MALTA* 33 (Rabat, Malta, 1990-1994).

of marriage, such as separation, annulment of betrothals and permission to foreigners to marry after undergoing through what was known as the *Status Liberi* proceeding. Such prerogative remained in the hands of the Bishop even after there was a separation of roles and an Inquisitor began to be appointed for Malta.

With the arrival of the Order of Saint John in 1530, Malta would experience changes. At first, the legal changes were few except that the Knights now became practically responsible for the local lay courts. The magistrates and judges had to pledge their loyalty to these new rulers and immediately, the judges experienced a sense of limitation in their power. While, in medieval times, their power did not cover ecclesiastics, now such a limitation was extended to the members of the Order of Saint John; they too began to enjoy total immunity from the local courts. Instead, the Grand Master set up his own courts where Knights and other members of the Order could submit their complaints, whether civil or ecclesiastical.

While Malta was undergoing these changes, new developments were taking place in the field of the judiciary on the international scene which would have a direct influence on Malta. As part of the process of Catholic reform taking place in the sixteenth century, the Papacy decided to overhaul the structure of the Church's Medieval Inquisition. Today, the word Inquisition carries a very negative semantic meaning. It stands for torture, corruption and utter disregard for human rights. However, these bad attributes are in part the result of a negative literature that has been produced about the subject; the result of a political stratagem aimed at putting the Catholic Church in a bad light. While the responsibilities of this Tribunal are not doubted, it is also an undeniable fact that this system was supported and used by the secular State and that the methods of investigation adopted by this Tribunal were no different to those of other judicial instruments that were being applied in the rest of Europe. Perhaps, in comparison with those of the secular powers, the system of procedure of the Roman Inquisition was fairer and more humane.

A semantic analysis of the word inquisition shows that it derives from the Latin work "inquisere" which had a very simple

judicial meaning to investigate.² However, as early as the year 884, this Latin word acquires the meaning of persecution. Ironically enough, the stimulus for this legal imposition did not come from the Church or the Papacy, but from what may today be termed the Secular State. It was Emperor Charles II who admonished his Bishops to be vigilant over their subjects and obey his orders. Then, in 1184, Pope Lucius III set up the Tribunal of the Inquisition through the famous (or now infamous) decree *Ad Abolendam*. It was intended as a temporary deed, but in judicial systems, temporary measurements have the habit of becoming permanent structures. As already explained, this medieval Inquisition functioned more as an ad hoc tribunal, with a peripatetic judge who moved from one diocese to the next according to the exigencies of the day.

The next important development was the creation of the so called Spanish Inquisition. Due to the practices adopted, including the indiscriminate use of torture, it has become the subject of a number of studies. Torture was not only applied to extract confessions but once a death sentence was passed, extreme torture was used to increase the suffering of the condemned. In 1932, Carlo Havas contributed an important study on the cruel investigative methods applied by the Spanish Inquisition.³ However, closer to our times, the political role of the Tribunal is being revised and re-evaluated through the works of Henry Kamen.⁴

In 1542, Paul III began a long process of reform of the whole system through the bull *licet ab initio*. The Roman Catholic Inquisition was established. In principle, it followed the medieval model with the difference that it had to have a permanent seat whilst the Inquisitor was always accountable to his superiors in Rome. At first, Diocesan Bishops began to be entrusted with the dual role, that of a Bishop and of an Inquisitor. However, this new system also envisaged the appointment of the specific figure of the Inquisitor who could be totally independent of the Diocesan Bishop.

2. *Id.* at 17.

3. CARLO HAVAS, *STORIA DELL'INQUISIZIONE* (Odoya, 2010) (1932).

4. See HENRY KAMEN, *THE SPANISH INQUISITION: A HISTORICAL REVISION* (1997).

In this reform, the inquisitorial judges were specifically instructed to show moderation and to treat all strata of society equally.⁵ The condemned was given the right of appeal to Rome from a sentence handed down.

Soon Malta would feel the effect of this reform. In 1558, Paul IV sent an Apostolic Commissioner, Fra Angelo from Cremona, to help the resident Bishop investigate and fight heresy. Thus, the role of the Inquisitor was envisaged as a sort of investigating magistrate rather than a neutral judge who hears and collects evidence. Once Fra Angelo returned to Rome, he made a report wherein he recommended the need of the presence of a resident inquisitor in Malta.

At first, it was decided that Malta's Bishop would be given the added responsibility of Inquisitor besides his other duties. In other words, Rome was confirming the medieval vestiges that the local Bishop might still have had while rekindling any defunct judicial power. Thus, in 1561, Rome decided to set up a permanent Tribunal of the Inquisition in Malta.⁶ The resident Bishop Domenico Cubelles (1540-1566) was appointed Inquisitor.

For less clear reasons, the Bishop took over a year to act on the Papal Ordinance. Perhaps, such a delay demonstrates the resistance put up by the Knights towards instituting this Tribunal. In fact, the Tribunal of the Inquisition would become a cause of contention. Between June 16-19, 1562, the Bishop assembled Grand Master Jean Parisot de La Valette (1557-1568), the Council of the Order, the Conventual Chaplains, priests and friars and officially proclaimed the setting up of the Tribunal of the Inquisition in Malta.⁷ On their part, the Grand Master and the Council discussed the setting up of this new Tribunal at their Council meeting on July 25, 1562. The seventeenth-century Inquisition expert Sebastianus Salelles wrote about this dispute that this was the first and last time that a Grand Master of the Order would attend a sitting or a ceremony presided by the Inquisitor. Future Grand Masters expected the Inquisitor to call on them as Head of the Islands without expecting them to reciprocate.

5. *Id.* at 41.

6. *Id.* at 38.

7. *Id.* at 46.

There is no doubt that Bishop Cubelles had no clear guidance as to how to operate. Rules of procedure had not yet been established. He literally administered this Tribunal by trial and error. On one hand, he relied on instructions and outside help and on the other hand, he realized that this Tribunal had to be governed on the principle of case-law. Case-law becomes an important aspect of this Tribunal, and once praxis was established it would become difficult, if not impossible, to change. For this reason, the Bishop was given an assistant. The first one was Dominican Theologian, Tommaso de Vio but this was not enough and soon a pool of officials began to be recruited to support the trial system of the Inquisition. There should be no doubt that Bishop Cubelles wanted to create a Tribunal for the Inquisition independent from the ecclesiastical one even though he presided over both. Probably, the same court room was used, but both courts had a separate administration.

The Tribunal of the Inquisition was suspended during the period of the Ottoman Siege of Malta of 1565. The theologian de Vio left the Island, most probably out of fear, after the news announcing an impending siege of Malta was received. The suspension of office was so quick that there was not even time to pay the officials of the Tribunal.

With the death of Bishop Domenico Cubelles, in 1566, the occasion arose for serious efforts to be made by the Order of Saint John to curtail the authority of the Court of the Inquisition on the Island. For a long period the Island remained without a Bishop. It was only in 1572, that the Grand Prior of the Knights, Martin Rojas de Portalrubio was appointed Bishop. The Grand Master and the Knights' Council did their utmost to remove the prerogative of Inquisitor from the Bishop's portfolio.⁸ His inquisitorial power was considered a threat to their authority. Their efforts were not in vain. Starting in 1575, Rome separated the role of Bishop from that of Inquisitor. Two different courts were set up administered by two different persons. The Holy See began to send to Malta a resident Inquisitor. Besides being an Inquisitor, the appointee was given the added administrative duty of Apostolic Delegate, which was a lower rank than a Nuncio.

8. *Id.* at 54.

The Knights immediately responded and showed their appreciation by offering the Inquisition a palace in Birgu which until then had been used as the seat of the civil and criminal court, which, in the meantime, was moved to the new capital city of Valletta. The Roman Catholic Inquisition unconditionally accepted this offer.

Therefore, Malta ended up with three judicial authorities, all having their own independent courts of justice. In terms of hierarchy, the Court of the Inquisitor ranked third; second was the Bishop, whilst the Grand Master was the Supreme Primate. In practice, the situation would soon appear to be very different for the Court of the Inquisition, through its direct link with Rome, began to have the upper hand and be shown the highest respect from the Maltese people.

In reality, the Inquisition ended up with two seats in Malta. The first was in Birgu and generally dealt with cases involving Maltese residents. Due to geographical reasons, the Inquisition felt the need to have a separate court in Gozo. Thus, an assistant was appointed for Gozo. Normally, the person chosen was a resident from Gozo who only dealt with those cases that fell under the jurisdiction of the Inquisition, concerning residents from this island.

The Lay Court had three seats for the administration of criminal justice. There was the court, known as Castellania, which was situated in Valletta. It judged religious crimes committed by residents from Valletta, as well as its suburb Floriana together with the three cities, Senglea, Bormla and Birgu and the surrounding environs. Mdina and Rabat and the neighbouring villages were looked after by another court, locally known as that of Captain of the Rod. The judge was always Maltese. Gozo had its distinct court. It was presided by the Governor of the Island, and was assisted by an assessor.

Malta's thriving maritime trade required the setting up of a special court that dealt with cases of corsairing and other maritime disputes. For this reason, the Order set up the *Tribunale degli Armamenti* first in 1605 and the *Consolato del Mare* later in 1697; they were completely an independent courts. Commercial cases were decided through another court structure. There was the

Camera di Commercio, composed of an assessor and merchants to deal with cases of a business and commercial nature.

Lay civil justice was administered through three private auditors appointed by the Grand Master. They judged civil cases at the first instance. Appeal was possible and this was done in front of the Auditor of the Grand Master. Finally, there was a sort of a family judge to preside over cases of a household nature, such as cases concerning rent. For this reason, the judge was known as a Home Judge.⁹

The Inquisition expresses a high esteem regarding the Maltese Civil Courts in particular how they operated in the second half of the eighteenth century. On July 21, 1777, Inquisitor Antonio Felice Zondadari (1777-1785) wrote that the sentences handed down by the Maltese Civil Court are essentially just. However, he had reservations about the training of the local advocates. The advocates and the officials of the Civil Courts were all Maltese, some of whom had studied abroad. However, for Zondadari, some of the advocates were not sufficiently prepared, with the result that one had to be extremely vigilant to ensure that the correct court procedure was being employed. In case someone felt aggrieved by a sentence or a decision of the Civil Court, as a remedy, he could petition the Grand Master for redress. Grand Master Emmanuel De Rohan Polduc (1775-1796), for example, used to give particular attention to these petitions and used to appoint commissioners to investigate the cases.

III. THE DUTIES OF THE INQUISITION

The first obligation of the Inquisition was to safeguard the purity of the Catholic Faith and maintain obedience to the Holy See.¹⁰ This was done by being vigilant against heresy, polygamy, solicitation during confession, apostasy and superstition or better still magic. Swearing was judged by this Office as another form of heresy, while defamation was considered the same as swearing and was therefore judged by this Office.¹¹ The non-observance of

9. 3 BONNICI, *supra* note 1, at 439.

10. ELINA GUGLIUZZO, *IN VESTE DEVOTA, LE CONFRATERNITE DI MALTA IN ETÀ MODERNA* 85 (Rubbettino ed. 2009).

11. *Id.* at 84.

abstaining from eating meat on Wednesdays and Fridays as well as throughout Lent was considered a crime that undermined the purity of the Faith.¹² Whilst circumcision was the hallmark that singled out a person as a Jew or Muslim during this period, abstinence distinguished a Catholic from other faiths.

Whatever a person's position in society was, by contravening one of the briefs that fell under the jurisdiction of the Inquisition, he or she became liable to prosecution. Not even the Knights or the Bishop were immune from the Inquisition's jurisdiction. This was considered by the Knights extremely dangerous. Besides, there was the privilege of immunity granted to the members of the Inquisitor's retinue. They too enjoyed the privilege or immunity of not being prosecuted by any other court in Malta, even those who were not directly related to religion and therefore in normal circumstances did not fall under the competence of the Inquisition. In case of civil or other criminal infractions they would still be judged by the Inquisition.

The Inquisitors observed two particular characteristics in Malta. The first one was the risk of apostasy. This was a cause of grave concern due to the presence of Jews and Muslims and the contact that the Maltese had with North Africa and the Orient. The second one was a tendency, among the Maltese, to tell fat lies. They had no scruples about spreading false information to taint the names of honest people.¹³ While these were the cause of moral concern, what created the biggest political concern was the issue of heresy as it became the bone of contention between the Inquisition and the Knights.

This was one of the few responsibilities which directly affected them and made them liable to prosecution. In fact, the Inquisitor could judge the Knights on two counts. In cases where they committed acts against the Faith and when they attacked any of their dependents.¹⁴ Both were highly contentious. With regard to the first, it was an open secret that a number of Knights were attracted to the teachings of Luther and other protestant reformers. Some even began to give protection to foreign individuals who

12. 1 BONNICI, *supra* note 1, at 214.

13. GUGLIUZZO, *supra* note 10, at 93.

14. 1 BONNICI, *supra* note 1, at 156.

happened to be in Malta and expressed diverse religious feelings which went against the official teachings of the Church. For example, some French Huguenots in Malta found asylum and support from French Knights.¹⁵ Thus, they were liable to be prosecuted by the Inquisition. The second point was even more disturbing since it undermined the aristocratic Knights' authority.

Most, if not all the men in the Inquisitor's entourage, were Maltese and the Knights in Malta were losing their political edge to the Inquisition which was being run by the locals. While the local courts did not have any political will power to proceed against a Knight, in cases of a criminal act against a local who happened to belong to the entourage of the Inquisition, the entire judicial system was being turned upside down. Moreover, the Inquisitor began to surround himself with a number of consultants, most of whom happened to be locals.

This situation began to cause tension. The Order had the tendency to back the immunity of its members and at times would even use force against the Inquisitor's agents who attempted to arrest Knights who were accused of heresy and were being summoned to appear before the Inquisition. This remained a bone of contention throughout their stay in Malta. Under such circumstances, one understands why the Knights did all in their power not to fall under the Inquisition and when this became unavoidable, they claimed that they ought to be treated differently to the rest of the population.¹⁶

Each time they felt there was undue interference from the Inquisitor on matters which they considered an internal affair, the Knights lodged a protest against the Inquisition to the Pope's Secretary of State through their ambassador in Rome.¹⁷ However, the Papacy, as expected, tended to support the Inquisitor.¹⁸

However, the Inquisitor's hands were tied. He could not enter into open conflict with the Grand Master. More often than not, he needed the latter's help to execute particular sentences where force was required to execute an order, including those that

15. *Id.* at 151.

16. 1 BONNICI, *supra* note 1, at 120.

17. GUGLIUZZO, *supra* note 10, at 91.

18. *Id.* at 92.

did not involve members of the Order.¹⁹ The Grand Master had to be kept informed about the outcome of cases where the punishment entailed the assistance of the Secular State such as executing capital punishment. The Inquisitor was bound to personally call on the Grand Master and present him the relevant information about the case. Confidentiality was necessary in these cases since the Inquisitor was bound and had to restrain from making references or revealing the names of the witnesses.²⁰

It was within such a climate that a series of written and unwritten rules began to take hold and regulate the behaviour of the Inquisition and the procedure to be adopted in such cases. First of all, the Grand Master obtained the right to be informed beforehand whenever one of his members was going to be judged by the Inquisition. The Grand Master judged each and every case according to its own merits and when it was found that the indicated facts did not fall within the jurisdiction of the Inquisition, the latter's role became that of a mediator. On the other hand if it was ascertained that the accusations were the competence of the Inquisition, then the Grand Master was to be kept informed of the outcome.²¹ To further strengthen the role of the Grand Master, the Order even acquired the right to be represented on the Tribunal by the Grand Master together with the Grand Prior and the Vice-Chancellor.²² Yet, these measures created more problems than they solved.

Elina Gugliuzzo in her book *In Veste Devota*,²³ observes this situation. She rightly states that the fact that the Knights could not participate in the court proceedings as extremely humiliating to the extent that the Order began to appeal to the Pope, the Emperor of Germany and the Kings of Spain and Sicily for help. But each time, the Knights failed to receive a satisfactory answer or any support. The Knights qualified the Inquisitor as “*nearly a monarch*” due to the power vested on him by the Papacy. On their part, the Inquisitors began to refuse to go to the Palace of the

19. 3 BONNICI, *supra* 1, at 127.

20. *Id.* at 81.

21. *Id.*

22. *Id.* at 47.

23. GUGLIUZZO, *supra* note 10.

Grand Master to hold audiences there. The Knights reacted by not accepting to attend the court cases in Birgu.²⁴ A status quo was reached. The Grand Master sought to bypass the issue of protocol, by appointing a high ranking member of the Order, usually a Grand Cross, to represent him on the Tribunal.²⁵ Yet, this did not solve matters as even the Grand Crosses began to refuse to attend in Birgu. The reaction of the local Inquisitors was very clear. They began to hold their trials in Birgu without the presence of the Knights.²⁶ This permitted the Inquisitor to continue hearing court cases against the Knights to the extent that by the time of Inquisitor Evangelista Carbonese (1608-1614), the right of the Knights' dignitaries to sit on the Tribunal was considered obsolete.

One has to admit that it was not easy for the Inquisition to proceed against members of the Order; it was always an uphill struggle, primarily, because the Inquisition did not enjoy full legal freedom to proceed against the Knights or their servants.²⁷ The Grand Master's presence meant that the Order had more than a passive say on the proceedings,²⁸ whilst the Knights sitting on the Tribunal tended to favour more the accused Knight rather than the course of Inquisitorial justice.²⁹ The said issue of protocol facilitated matters for the Inquisition to get rid of the incumbent Knights.

From 1670 onwards, an agreement was reached that in cases involving patentees of the Inquisition who were harassed or had harassed members of the Order, the accused would be judged by a combined court made up of the Inquisition and members from the Order of Saint John.³⁰

IV. THE AREAS OF COMPETENCE

The relationship of the Inquisition with the Bishop was also another bone of contention. It was not a rare instance that a Bishop felt that an Inquisitor was interfering in the diocese's internal

24. GUGLIUZZO, *supra* note 10, at 91.

25. 1 BONNICI, *supra* note 1, at 124.

26. GUGLIUZZO, *supra* note 10, at 91.

27. 1 BONNICI, *supra* note 1, at 120.

28. *Id.* at 123.

29. *Id.* at 171.

30. *Id.* at 81.

affairs.³¹ Sometimes, the situation became even more complicated for the Bishop's court did not always see eye to eye with the Grand Master.³² The Knights were sometimes accused of being enemies of the priests.³³ Like the Inquisitor, the Bishop had his own retinue which, besides all the members of the clergy and even individuals taking minor orders, included a number of patentees and lay staff.³⁴ However, there was one cardinal difference. If any one of the Bishop's patentees or ecclesiastical members erred against a principle of Faith or offended the Inquisition he became subject of scrutiny by the Inquisition and not the Bishop. Unlike the Knights of Saint John, the local Bishop was not given the right to judge members of his retinue in partnership with the Inquisitor.³⁵

The right of ecclesiastical immunity became a contentious issue between the local Curia, the Inquisition and the Grand Master. Immunity was a hot issue but in this case, the Bishop had the upper hand. Both the Grand Master and the Inquisition sought to limit the Bishop's rights in this respect. Grand Master Jean De Lascaris Castellar (1636-1657) for example, put pressure on Inquisitor Antonio Pignatelli (1646-1649) to reduce the number of churches that enjoyed ecclesiastical immunity. The Grand Master wanted to reserve this privilege only for parish churches. The strong objection came from the Congregation of Immunity in Rome. Even the Inquisition could not infringe so easily upon such an ecclesiastical immunity. In fact, victims of the Inquisition could seek the protection of this immunity for any crimes they may have committed against the Holy Office and the Inquisition had no right to arrest them unless the guilt was related to heresy. Even escaped convicts of the Inquisition, who sought refuge in churches, could not be arrested by the soldiers of the Holy Office, unless the guilt was not related to heresy.³⁶

The judicial structure of the ecclesiastical world in Malta became even more complicated with the presence of Religious Orders. They enjoyed a certain amount of immunity and

31. *Id.* at 206.

32. GUGLIAZZO, *supra* note 10, at 92.

33. *Id.* (citing 1 BONNICI, *supra* note 1).

34. 1 BONNICI, *supra* note 1, at 124.

35. *Id.* at 120.

36. *Id.* at 296.

irregularities within the community could only be judged by their Superior General.³⁷ However, sometimes, the line of separation was not always clear and there were cases which led to contestation between the Religious Orders and the Inquisition over which of the two had the right to judge an erring brother.³⁸

The cause of contention, with the Knights first and with the Bishop and Religious Orders afterwards, derived from the fact that the Inquisition was given the upper hand by Rome in any issue that regarded matters of Faith. This explains why a number of Maltese, including ecclesiastics began to seek the political coverage of this office by becoming associated with the Inquisition. They began to recognize in this institution a powerful body that could offer them protection.

Gugliazzo rightly observes that a number of ecclesiastics, priests and friars, did their utmost to obtain positions with the Tribunal of the Inquisition, in particular as consultants to the Inquisitor. Collaboration with the Inquisition gave them the right to be exempted from both the jurisdiction of the Grand Master as well as the Bishop's. Even lay people sought to get such an exemption by becoming "*patentati*" of the Inquisitor. One way of becoming a "*patentato*" was by donating a piece of land to the Inquisition, but this donation was subject to two conditions: that from that donation they got an annual income and that they were appointed or included amongst the protégés of the Inquisition.³⁹

The Order of Saint John also had a section to which members from Maltese society were admitted. Adult male members were allowed to become priests within the ranks of Conventual Chaplains. Consequently, they enjoyed the right of exemption from being judged by other bodies such as the Inquisition and the Bishop and could only be prosecuted by the internal tribunal of the Order, represented by the Hospitaller's Grand Council. The Inquisitor had difficulty prosecuting them, as they came under a special criminal code which made it problematic for the Inquisition to charge them since they enjoyed the same legal immunity as the Knights.

37. GUGLIAZZO, *supra* 10, at 83.

38. I BONNICI, *supra* note 1, at 165.

39. GUGLIAZZO, *supra* note 10, at 76-77.

Due to these complicated legal structures, it was often thought that the Maltese suffered most as a result of a hostility that was so profoundly rooted amidst these three Authorities. If the Bishop or the Inquisitor decided to take a Maltese under his protection making him one of his patentees they risked persecution from the Civil Authorities. The Grand Master greatly resented seeing most of the able-bodied Maltese escape his jurisdiction to pass over to the other authorities on the Island.⁴⁰

Yet, in reading the historical documentation and Inquisitorial proceedings, a different situation emerges. Such a fragmental judicial system turned out to be beneficial for the Maltese since it gave them the chance to seek protection in case they wanted to oppose one of these institutions. The office of the Inquisitor was the strongest. That of the Bishop was politically slightly weaker, even if in theory, the Bishop was the second most important person in Malta after the Grand Master. The Grand Master came third. First of all, no lay member was admitted within the ranks of the Order even if the Order sought to retaliate by creating a new noble class on the Island which owes the origins of its titles to the Knights.

Thus, it was through the office of the Inquisitor that the Maltese began to voice the first signs of protest, expressing disagreement in writing against the Order's rule.⁴¹ It should be noted that at this period, such literature was punishable by death. Yet there were good reasons for protest. The behaviour of the Knights towards the Maltese was not at all exemplary. One particular traveller wrote: "These people are extremely devout. If only we could say the same things about the Knights."⁴²

Once, two Knights assaulted a Maltese who formed part of the Inquisitor's staff and died as a result of the attack. One may rest assured that had this assault been carried out in a different context, the Maltese victim would not have found any form of solidarity or justice but, being under the umbrella of the

40. *Id.* at 83.

41. Godfrey Wettinger, *Early Maltese Popular Attitudes to the Government of the Order of St. John*, 6 *MELITA HISTORICA* 255-278 (1974).

42. GUGLIAZZO, *supra* note 10, at 89.

Inquisition, the murder could not pass unnoticed. The two Knights were arrested, prosecuted and both were condemned to death.⁴³

However, the Inquisition's power to use the death penalty was already being curtailed in the seventeenth century. Many decades before, such a position was proposed by the Neapolitan jurist Pietro Giannone. By 1670, the power of the Inquisitor in criminal cases, in particular his power to condemn people to death, was diminished by Pope Clement X.⁴⁴

Therefore, the affirmation that the Inquisition in Malta had instilled an atmosphere of fear, or to be exact, created a climate that Bartolomé Bennassar called the *pédagogie de la peur* should be considered as historically unproven. The local population supported the system and a proof of this is that a negative collective memory towards this Tribunal does not exist in Malta. The conclusion made that there was in Malta such "pedagogy of fear" came as a result of the number of accusations and auto-accusations made to this Tribunal.⁴⁵

However, the institution that truly carried a grudge and was afraid of the Inquisition was the Order of Saint John. Its members were those who really hated it as it was the only power in Malta that could exercise pressure and in some way restrain it. It was for this reason, according to Inquisitor Ludovico Gaultiero Gaultieri (1739-1743), that the Knights of Saint John always sought to demean the tribunal of the Inquisition.⁴⁶ Gaultieri was not the sole Inquisitor to express such views. Manciforte had a similar opinion. "This is only tribunal of the Inquisition that . . . helps the poor Maltese, subject greatly suppressed by the Order."⁴⁷ On their part, it was not rare that the Roman Inquisition in Malta performed acts of charity. In 1684, it distributed money to the poor of the Island.⁴⁸ Acquaviva asked his superiors to allow him to use money of the Tribunal to help poor and persons in need.⁴⁹

43. 1 BONNICI, *supra* note 1, at 187-188.

44. *Id.* at 188.

45. GUGLIAZZO, *supra* note 10, at 86.

46. 3 BONNICI, *supra* note 1, at 146.

47. *Id.* at 360.

48. 2 BONNICI, *supra* note 1, at 228.

49. *Id.* at 258.

V. THE PROCEDURE

The method of procedure at the Inquisitors' court was different from the rest of the courts present in Malta at the time. Foremost, the Inquisitor had the right to renounce to hear or preside over a sitting because he did not approve of, or had reservations about, the case. This was mostly relevant in relation to civil cases. In these cases, he was obliged first to consult his superiors.⁵⁰ Then, any pending cases, both civil and criminal, were continued by succeeding appointees.⁵¹

Definitely, the presence of this Tribunal introduced a new method as to how criminal justice was to be administered. Prosecution only began after presentation of a denunciation or report. In other words, somebody needed to make a report before inquisitorial procedures could begin. In this area, the system was not much different from the procedures used in the Lay Courts. In these courts too, proceedings began only if someone had lodged a report against someone else for some type of criminal offence or other. However, here lay the first major difference. In the Lay Courts, any person lodging a report first needed to have proof in hand as to the accusations he or she was making. The Inquisition's system was different. Anyone could report somebody even on mere supposition or suspicion. It was then the duty of the Inquisitor to establish whether the report was true or not. The individual making the accusation was protected by anonymity. Therefore, the accused would never get to know who betrayed him. Even the witnesses were kept secret. The accused would not know who the witnesses testifying against him were. Then, there was a second aspect. The accused had the right to take the witness stand. The fact that the accused could take the witness stand brought about changes in the question of anonymity of the accusers. The Inquisitor could reveal the persons testifying against an accused should the need arise and confront the accused with those testifying against him. This had its positive and negative aspects as in the Secular Criminal Courts; the accused had no right to give

50. 3 BONNICI, *supra* note 1, at 124.

51. 2 BONNICI, *supra* note 1, at 202.

testimony until 1909.⁵² The Inquisition avoided direct confrontation. Only in rare instances did such confrontation take place,⁵³ and only if, in giving evidence, the discrepancy was so great as to be unable to establish who was saying the truth.

The reason for discouraging such a procedure was very simple. It was aimed at helping and encouraging people, even from the lower classes of society, to come forward and denounce their superiors. There was the real risk that a person, socially inferior, would feel threatened and extremely uncomfortable if he was to be asked to testify against his superiors or confront someone who was his peer.⁵⁴ The system worked. Instances exist where slaves reported their masters to the Inquisition such as when Turkish slaves did so because they were denied the prescribed liberty they were entitled to.⁵⁵

Yet, this system too had its risks. For this reason, even in this area, protective measures began to be taken to avoid the beginning of proceedings against somebody on the simple pretext of suspicion, in particular in the area of solicitation during Confession. This turned out to be one of the most contentious issues of the Inquisition. Typically, accusations were launched by women who felt that they had been sexually harassed by priests during Confession. Touching the shoulder or hand of a woman at this period was tantamount to harassment. Thus, to avoid cases where accusations were lodged more out of revenge than for any other motive, proceedings only began if the Inquisition received more than one report against the priest.⁵⁶ The second innovative aspect of this Court was the praxis to accept and encourage auto-denunciations. Such a concept was also present in the Secular Courts. The Inquisition expected that if a person made a mistake, that same person would appear voluntarily before it to auto-confess.⁵⁷

52. Albert Ganado, *Book Printed in Malta on the Sicilian Revolution of 1848*, in MALTA AND MAZZINI, PROCEEDINGS OF HISTORY WEEK 2005 192 (Simon Mercieca ed., 2007).

53. 1 BONNICI, *supra* note 1, at 68.

54. *Id.* at 75.

55. *Id.* at 212.

56. *Id.* at 236.

57. *Id.* at 68.

Thirdly, there was the possibility of appealing a sentence to an external authority based in Rome. At the same time, the Roman Church Authorities sought to check and counter-check the work of the Inquisitor. For this reason, Rome requested the local Inquisitor to gather as much information as possible. In case of missing information, Rome reserved the right to ask for such information before proceeding to pronounce itself on the case. Fourthly, the Inquisitor was also given the right to consult with Rome during the compilation of evidence to seek advice about procedure and practice.

Denunciation followed an established protocol. It was made in front of the Inquisitor, his assistant or assessor. The person who made the denunciation had to take an oath that he or she was denouncing somebody not out of hatred but as a result of religious duty. He or she also had to give the exact circumstances of the case, the place where the crime had occurred, its context and time. If these were not clear, questions were put by the Inquisition to establish these facts. The Inquisition had to ask whether there were others who knew about the fact. The accuser had to be asked whether he had any reason to hate the person that he was accusing.⁵⁸

A. *Secrecy*

The person who made the denunciation was then bound by an oath of secrecy. The principle of secrecy was paramount. No one could speak out, not even the Inquisitor. Even the files were secret and were kept in a special place under lock and key.

Once a report was received, irrespective of whether it was an auto-denunciation or not, the procedure was the same. In cases where there was no suspicion of guilt, the case would stop there. No one would get to know. The outcome was different when the accusation held water. The accused would be informed and asked to appear in front of the Inquisition. The first question the accused would be asked was to list the persons whom he or she thought hated him. It was after having done so that he or she was informed

58. *Id.* at 214.

about the substance of the accusation. Then, the Inquisition had the right to start questioning.

Afterwards, it would be the witnesses' turn to appear before the Inquisition. They were not called by the accused but were only asked to appear at the behest of the Inquisitor. Even the Inquisitor could not name witnesses arbitrarily. The Inquisitor could only ask those individuals whose names were listed by the accuser or were mentioned by the accused when listing down his enemies or during investigation. In turn, if the witnesses mentioned other names that were related to the investigation, these too could be asked to appear in front of the Inquisition. Therefore the gathering of witnesses took time and was not conditioned by the collation of evidence by the prosecution or the response of the defense advocate. There was no such division. The Tribunal and all the convoked witnesses were expected to remain silent and maintain secrecy on any denunciation made.

In cases of auto-denunciation, the procedure was shortened. Witnesses were not called and the case was normally closed with the usual admonition and penitence. If the person making the auto-denunciation mentioned third parties, then the case protracted as the Inquisitor would begin investigating. When auto-denunciation was pronounced by a Knight, proceedings were even quicker as the Inquisitor had no need to call other members of the Order or the Grand Crosses to attend the hearing.⁵⁹

Secrecy protected the accused and, if innocent, he or she was being spared adverse exposure. Today, we are witnessing in our system public prosecution judgment by the media. Then, there was the constant fear of mistakes, but this was in part counterbalanced by giving the accused the faculty to initiate proceedings against the members of the Tribunal in case of wrong doing.⁶⁰

For this reason, through its history, the Inquisition resisted all efforts from ruling Grand Masters to reveal the names of the witnesses. In 1677, such type of pressure was extremely strong but

59. *Id.* at 214.

60. *Id.* at 128.

Inquisitor Visconti objected and considered such a request and procedure as a means to diminish freedom in court proceedings.⁶¹

B. Torture

While the role and importance of the Tribunal was underestimated due to the use of torture to obtain confessions, this was a minor feature in the whole procedure. First of all, it should be remembered that torture was not an exclusivity of the Inquisition. It was used by the inquiring judges, including by the Secular Courts. Perhaps, as Henry Kamen noted,⁶² the use of torture by the Inquisition was more a cause of controversy after this office was abolished than when it was in operation.

First of all, as thoroughly bad and inhuman as it was, torture was regulated and could not be arbitrarily applied by the Inquisitor. It was only his absolute right, or that of the Assessor to use torture in cases when there was strong suspicion that the accused was lying to the court. Moreover, it was meant to be used only in those proceedings arising from reports. Torture was not supposed to be applied to those who appeared of their own free will to make an auto-denunciation.⁶³

An Inquisitor could apply torture against anybody who was being accused in front of him, irrespective of his rank or social status. Ecclesiastics, for example, were tortured.⁶⁴ What he had to ensure was that, when torture was applied, no extreme cruelty was used. It was not considered a sign of good behavior by the Holy Office in Rome.⁶⁵ In fact, the use of torture began to come under the scrutiny of Rome.

Once the hearing of evidence ended, the Inquisition went on to pass sentence. The accused had to listen to the sentence on his knees with a lighted candle in his hand. However, only in cases

61. 2 BONNICI, *supra* note 1, at 181.

62. KAMEN, *supra* note 4.188-192.

63. *Id.* at 159.

64. *Id.* at 193.

65. *Id.* at 288.

of being condemned was a sentence pronounced. Witnesses could also be present for sentencing.⁶⁶ Otherwise the accused was set free without any need of issuing a sentence. In case of guilt, there was always a sentence of a spiritual nature which normally included the obligation to go to Confession and receive Holy Communion on at least the four principal feasts of the Church: Christmas, Easter, Ascension of Christ and the Assumption of the Virgin. There could also be corporal punishments, which could include public flogging, sentencing to the galleys and, in extreme cases, the death penalty. Corporal punishment was normally executed by the Civil Justice.⁶⁷ In theory, the Holy Office in Rome was against pecuniary punishment. Pecuniary punishments were considered by Rome dangerous as they could give a bad name to the Inquisition. Any pecuniary punishment needed first the approval of Rome.⁶⁸

By the eighteenth century, public punishments fell out of use and the execution of corporal punishment was done in private, in the Inquisitorial prison and without disclosing it to the public.⁶⁹

C. Appeal

The Inquisition's judgment was not final. Once a sentence was pronounced the Inquisitor did not have the power to change it. However, mechanisms of appeal were created which first of all permitted the Inquisitor himself to change a sentence given by one of his predecessors' or even by himself, by first seeking consent from his superiors in Rome.⁷⁰ More importantly, the accused enjoyed the same right of appeal which he could file in two ways.

First, anyone who was condemned by the Inquisition in Malta had the right to appeal to Rome to ask for a revision of the sentence or request clemency.⁷¹ This was an expensive procedure, which only the rich could afford. This explains why this sort of appeal was rare.

66. *Id.* at 228.

67. *Id.* at 225.

68. *Id.* at 196.

69. 2 BONNICI, *supra* note 1, at 380.

70. 1 BONNICI, *supra* note 1, at 259.

71. *Id.* at 157.

The second procedure was simpler and within the reach of everybody. The condemned had only to wait for the appointment of a new Inquisitor. There were a number of possibilities. The new Inquisitor would be asked to re-open the case or make a plea for a revision of the sentence to Rome or ask for clemency.⁷² When one considers that the length of service of an Inquisitor in Malta was short—on average, he stayed on the Island for two and half years—an appeal was extremely feasible. In all cases, the Inquisitor would write to Rome. Rome's reply was always the same irrespective of whether the plea came directly from the accused or the Inquisitor. The Holy Office in Rome considered the case on its own merits and if there was a reason for a change in the sentence, the Inquisitor would be informed accordingly and he would be given the possibility to change the sentence. However, the final decision was normally left to the Inquisitor's discretion.⁷³ There were cases when it was decided to absolve the accused or else the sentence was commuted to a lighter one.⁷⁴ For example, the parish priest of the village of Chircop was sent to prison in 1659 by the Inquisition. He appealed to Rome, and Rome took his side and wrote to the Inquisitor in Malta, Gerolomo Casanate (1658-1663), giving him the faculty to commute the sentence.⁷⁵

The intervention of Rome was not just sought for the revision of a sentence but also to supervise that the sentence was being correctly executed. For example, sometimes prisoners sentenced to the galleys continued to be kept at the oars despite the fact that their term had expired. Thus, the prisoners used to appeal to Rome to be liberated. For this reason, the local Inquisition received warnings from Rome to monitor that the sentences handed down by the Inquisition were properly executed by the State within the terms of the sentence.⁷⁶

The procedure could take two different forms. The abuser could be denounced directly to Rome or else, whenever the presumed offended party did not possess such power, he had to

72. *Id.* at 52.

73. *Id.* at 83.

74. *Id.* at 193.

75. 2 BONNICI, *supra* note 1, at 52.

76. 1 BONNICI, *supra* note 1, at 156.

wait for a new Inquisitor to be appointed before making a report.⁷⁷ Once, a jailer denounced an Inquisitor taking the opportunity of doing so when there was a change in office and when the new Inquisitor, Giovanni Ludovico Dell'Armi (1592-1595), arrived.

The Supreme Sacred Congregation of the Roman and Universal Inquisition looked positively at the possibility of appeal as it argued that appeal increased rather than decreased the good name of the Inquisition.⁷⁸

D. Internal Mechanisms

The Inquisition's system had a number of internal mechanisms to auto-regulate itself to ensure that all was working well. The idea that people in authority were immune by the mere virtue of their position ceased to hold ground in the late sixteenth century. The Inquisitor himself could be liable to investigation following accusations made by his subalterns.

An Inquisitor could also risk censorship from Rome in particular if he carried out an illegal arrest on an individual who did not fall under his jurisdiction or the crime committed was not within the competence of the Inquisition. Therefore, the Inquisitor was also liable to be accused of abuse of power.⁷⁹

However, at the same time, in theory, he had power to investigate both the Grand Master, who was the ultimate ruler of Malta, and the Bishop. Such power was exercised in the sixteenth century but would become ineffective in the following centuries. During the time of Inquisitor Federico Cefalloto (1580-1583), both the Grand Master and the Bishop were suspended from office. The Grand Master was censored by his own Council but the Bishop, Tommaso Gargallo (1578-1614) was first censored by Inquisitor Cefallato after he refused to pay tithes to the Inquisitor. Cefallato's successor, Inquisitor Pier Francesco Costa (1583-1585) would again suspend Gargallo after the latter performed acts of barbarity in executing a warrant of arrest which led to the demise of two Monsignors of the Cathedral and protected persons who

77. *Id.* at 137.

78. 2 BONNICI, *supra* note 1, at 193.

79. 1 BONNICI, *supra* note 1, at 194.

assaulted the Assessor of the Inquisition. This was not the last time that the Inquisition ended up investigating the actions of the local Bishop. In the seventeenth century, Inquisitor Giulio Degli Oddi (1655-1658) received instructions to be vigilant on Bishop Miguel Jean Balaguer Camarasa (1635-1663) and on the local clergy.⁸⁰ Inquisitors were warned to scrupulously observe the rules of the Inquisition unless they did not wish to be removed from office⁸¹ and they had to defend all the Tribunal's privileges.⁸² They were also warned by Rome not to gather information about cases which did not fall under their jurisdiction.⁸³ The Inquisitors were asked to follow the same praxis as their predecessors. Rome strongly advised the Inquisition not to go back on decisions and decrees issued in the past.⁸⁴

Each time an Inquisitor was appointed, a period of grace was announced. The period could vary from 12 up to even 30 days⁸⁵ wherein the faithful were asked to denounce their wrongdoings and having done so would be exempted from any punishment from the Inquisition.⁸⁶ All the decrees of the Inquisition, including the ones issued to announce the appointment of a new Inquisitor, were to be read out in all the churches.⁸⁷ Finally, he enjoyed the faculty to issue a general pardon.⁸⁸

VI. THE STRUCTURE OF THE OFFICE OF THE INQUISITION

The office of the Church's Inquisitor was a pyramidal structure. The Inquisitor was always answerable to his superiors. Up to 1575, the post of Inquisitor was filled by the local Bishop, thus the Church continued to follow the medieval structure, but after this date, this post was always occupied by a foreigner, often of noble birth, who was appointed by Rome. The choice of a noble person came naturally for Malta when one considers that Malta

80. 2 BONNICI, *supra* note 1, at 35.

81. 1 BONNICI, *supra* note 1, at 163.

82. *Id.* at 253.

83. *Id.* at 163.

84. *Id.* at 192.

85. *Id.* at 212.

86. *Id.* at 162.

87. *Id.* at 313.

88. 2 BONNICI, *supra* note 1, at 80.

was run by an aristocratic Order. Besides, being an Inquisitor, the person in this position was also appointed Apostolic Delegate. This last appointment was only given to Inquisitors from 1575 onwards. When this post was also linked to that of Bishop, he did not have such a role. It became a normal praxis for Rome to give three briefs to the person nominated Inquisitor in Malta, and before he received them from the Secretary of State, he could not leave for Malta. The first brief was that of Inquisitor, the second of Apostolic Delegate and the third the right to judge criminal cases. Once in Malta, he had to present these briefs to his staff as well as to the Grand Master and the Bishop.

The history of the Malta's Inquisition shows that the persons appointed by Rome as Inquisitors always held a University degree in Civil and Ecclesiastical law. Finally, all Inquisitors were ecclesiastics but not necessarily priests. Some were simple clerics, others were just priests and in one particular case, the Inquisitor was consecrated Bishop in Malta. Eventually, this Inquisitor, by the name of Fabio Chigi (1634-1639), became Pope Alexander VII. When the office was held by a Bishop, the Bishop remained an Inquisitor for life. When his appointment began to be made directly by Rome, the term of office was definite. Young ecclesiastics, sometimes in their early thirties, began to be appointed Inquisitors and were normally kept in office for a few years - on average two years - after which they would ask for a transfer and obtained a promotion within the church hierarchy.

The second important person at the office of the Inquisition was the Assessor. He acted as Vice-Inquisitor and could take over the administration of the office in lieu of the Inquisitor, especially during the transition period between the departure of one Inquisitor and the appointment of the next.⁸⁹

In the early days of the Inquisition, the post of the Assessor was not considered of great importance within the Tribunal. He had the passive role of serving as a substitute to the Inquisitor whenever the latter was unavailable. However, from 1610, the Assessor began to have a more active role. He began to sit next to

89. *Id.* at 131.

the Inquisitor and share with him the responsibility of the Tribunal.⁹⁰

The Assessor was practically always a Maltese. He could be either an ecclesiastic or a lay person. The major academic qualification for this post was a degree in jurisprudence. For this reason, the choice originally fell on a lay advocate but later, for practical purposes, an ecclesiastic began to be preferred for the simple reason that when the Inquisitor left, he could run the office. According to Canon Law, an Assessor could only run the Tribunal office if he was an ecclesiastic. The person held this office practically for life.⁹¹

The Tribunal included the figure of the *Promotore Fiscale*. He was the public prosecutor⁹² and this post was always occupied by a Maltese.⁹³ He gathered the denunciations and presented them to the Inquisition. He led the prosecution and asked for the condemnation of the accused according to the laws of the Church. His assistant was known as *sotto-Fiscale*. This office was further complemented with the post of the “*istruttore*.” He was responsible to search for any missing evidence in the investigation of the case. To a certain extent, he did the work that is nowadays carried out by the police. These posts too were occupied by Maltese.

The Prosecutor’s office was counter-balanced by the post of the Defense Advocate. He was known as the Advocate of the Poor, as his services were used only by those who could not afford a defense lawyer. Yet, unlike today, the presence of the Defense Advocate was only required in those cases where a trial would be held and could lead to the accused being condemned. In case of an auto-denunciation, his presence was not requested. In these cases, the sentence inflicted was always one of a spiritual nature and for this reason his presence was not felt necessary.⁹⁴

Then, there were the Consultants. They were appointed to give advice to the Inquisitor.⁹⁵ These were either local ecclesiastics, that is, priests, friars or lay advocates. Even members

90. *Id.* at 170.

91. *Id.* at 179.

92. *Id.* at 70.

93. *Id.* at 207.

94. *Id.* at 180.

95. *Id.* at 170.

of the Order, including Knights or Conventual Chaplains could be enrolled in this post.⁹⁶ Their number was never less than four and never more than eight. They were appointed for life and removed only in case of incompetence in performing their duties, though they could be asked to resign due to health reasons. The role of the Consultant was a passive one as his main function in the Tribunal was to give authoritative advice. As their counsel carried heavy weight, in extreme situations, their role could switch to an active one. The Inquisitorial procedures allowed them to participate whenever the Inquisitor asked them to cast their vote in cases where agreement about a case was not reached. Yet, their role remained that of enlightened jurors.⁹⁷

The last authority of the Tribunal was the Chancellor. His post was similar to that of the Registrar of the Court. This post was occupied by a person who was authorized to work as a public notary in Malta. He was responsible for safe-guarding the court records, including each and every court case.⁹⁸ He was assisted by clerks who sat in the court taking down the minutes and recording the testimony given in court. The clerks could act as or be flanked by interpreters.

The above constituted the core staff of the Inquisition. For this reason, they had to take the oath of loyalty each time a new Inquisitor was appointed. For this ceremony, the Vicar-General was also invited to attend and he, too, took the oath of allegiance.⁹⁹ The Tribunal had the support of a full administrative staff. At the head was the *Depositario* whose position was equivalent to the present day Director of the Courts. He was the Accountant of the Tribunal. He took care of all the payments, including the Inquisitor's salary.¹⁰⁰ There was also the *spenditore*. He was always Maltese¹⁰¹ and his role was that of a servant at the service of the Inquisition acting as a sort of a court messenger with the

96. *Id.* at 205.

97. *Id.* at 181.

98. *Id.* at 180.

99. *Id.* at 310. The other members of the tribunal who took this oath, were the chancellor, the assessor, the advocate of the poor, and the consultants of the Inquisition.

100. *Id.* at 180.

101. 2 BONNICI, *supra* note 1, at 73.

added responsibility to take care of the Inquisitor's personal affairs.

The Tribunal availed itself of the services of a medical doctor, a jailor and a Captain to oversee the small force at the service of the Holy Office. The doctor was needed first of all to oversee the administration of torture to obtain a confession. Secondly, the prison was within the same Tribunal and office of the Inquisition. The Inquisitor lived in the same palace together with his prisoners. Thus, a doctor could be needed for medical tests and assistance to both the Inquisitor and his prisoners. The presence of a prison within the palace walls brought the obvious need for a jailor. The Inquisition had its own police or soldiers. They fell under the command of the Captain of the Holy Office. Unlike the Commissioner of Police in today's society, he could only act under the strict instructions of the Inquisitor. He could not make arrests on mere suspicion. He had to have clear orders from the Inquisitor. In other words, he could not act arbitrarily. Vestiges of this system have remained in our present system, as in particular instances, police inspectors have to request the permission of the courts to make an arrest. Therefore, the authority of the Captain of the Inquisition was only to execute a sentence.¹⁰² On his part, as was the custom at the time, he wore a chain of office or carried a rod as a sign of authority.¹⁰³ The Inquisition's officials were limited to 15¹⁰⁴ and had its own messengers.¹⁰⁵ The last position in the palace of the Inquisition was that of the butler. Each and every Inquisitor had a butler who took care of all the work related to the administration of his palace and the household chores.¹⁰⁶

Other services engaged by the Tribunal of the Inquisition were those of professional translators. Malta was extremely cosmopolitan at the time, and people of different nationalities appeared in front of the Inquisition. The official language of the Inquisition was Latin and Italian but the accused could speak in his own language, in which case there were interpreters who translated everything into Italian. Even evidence given by the Maltese were

102. 1 BONNICI, *supra* note 1, at 180.

103. *Id.* at 181.

104. *Id.* at 149.

105. *Id.* at 181.

106. *Id.* at 311.

translated into Italian.¹⁰⁷ In most cases, the post of interpreter was occupied by friars.¹⁰⁸

At the turn of the seventeenth century a new figure was introduced in the Tribunal. This was that of the Catechist whose purpose was to guide sinners back onto the right Christian track. In other words, they were appointed to teach Christian Doctrine to those who were considered to have fallen into heresy.¹⁰⁹ These Catechists were friars, and in most cases, they were either foreign or locals trained in foreign languages so that they could be in a position to teach foreigners who also had lapsed and needed to be brought back into the Catholic fold.¹¹⁰ Perhaps their position would be equivalent today to that of a social worker, aimed at helping social diverters to turn away from their devious social habits.

The choice of staff was not to be conditioned by any sort of recommendation. The Inquisitors were specifically instructed not to accept recommendations or references from anybody.¹¹¹ Thus, any letters of recommendation for any of the above posts was not even considered.¹¹² For the same reason the Inquisitor was to refuse any offer of gifts. More important, he had to lead an exemplary life and be a guiding force to all his staff.¹¹³

The Inquisitor had the right to create his own entourage known as *familiari* of patentees of the Inquisition, and all were lay people.¹¹⁴ The number of *familiari* was fixed at 20.¹¹⁵ Though there were always attempts by the Inquisition to increase this number, these requests were always turned down by Rome.¹¹⁶ A person who was a patentee of the Inquisition was literally in possession of a document in which it was attested that only the Inquisitor had judicial rights over him.¹¹⁷ He had the right to show it to any Authority on the Island in case of need, which practically

107. *Id.* at 180.

108. *Id.* at 298.

109. *Id.* at 182.

110. *Id.* at 298.

111. *Id.* at 163.

112. *Id.* at 271.

113. *Id.* at 59.

114. *Id.* at 206.

115. *Id.* at 149.

116. *Id.* at 163.

117. *Id.* at 100.

meant when confronted with an arrest warrant. Married patentees tried to extend this jurisdiction to the rest of the members of their immediate family, that is, wife and unmarried children.

Finally, the Inquisition in Malta owned arable land which was tilled by a number of peasants. The peasants working in the Inquisitor's fields began to be considered as part of the *familiari* of the Inquisition¹¹⁸ and ended up being given similar rights as the *patentati*,¹¹⁹ that is, they were excluded from prosecution by the other judicial authorities present in Malta. The applicants for these posts came from the best Maltese families.¹²⁰ At the same time, to safeguard the integrity of this Tribunal, the respective officials employed with the Inquisition had to be independent and not be involved with any other Tribunal in Malta.

VII. CONCLUSION

Inquisitors were continuously reminded by Rome to carry out their duties with a sense of charity and friendship and should not feel that they were judges even if this was being asked of them.¹²¹ For this reason, Rome insisted repeatedly that the plaintiff brought in before the Court had to be treated with charity and justice.¹²² At the same time, if somebody was condemned by the Inquisition, such a sentence did not signify automatic social exclusion and definitely it did not hinder social advancement or promotion.¹²³ For these reasons, one can rightly conclude that the Maltese, in general, were convinced that this Tribunal offered them a sense of fair justice and it was, by far, more serious than the other Tribunals operated by the State at that time.¹²⁴

118. *Id.* at 172.

119. *Id.* at 229.

120. *Id.* at 181.

121. *Id.* at 299.

122. *Id.* at 237.

123. *Id.* at 186. For example, Baldassare Cagliaris was condemned by the Inquisition for showing lack of respect to the Inquisitor's *familiari* when he was still Conventual Chaplain. This conviction did not stop him from making it to the highest post in Malta, that of Archbishop of the Diocese.

124. *Id.* at 84.