

NOTES FOR A HISTORY OF THE JUDICIARY AT THE TIME OF THE ORDER

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No one has, so far, undertaken an organic study of the history of the legal professions in Malta – a vast subject that still calls for in-depth research. I do not believe the scrutiny of this complex matter has yet reached the required levels of maturity, and only a cursory and very preliminary approach is all that I am prepared to offer at this early stage. What follows should be taken on board simply as bald notes and rather disconnected jottings which may eventually contribute some minute bricks to a structure much wider in breath. It is not impossible that one day I will put my notes on *Uditori*, lawyers and notaries in some order too.

Judges and *Uditori* perched on the highest rungs of the legal establishment. The records rarely mention them, and, sadly, when they do, it is almost invariably to hurl abuse at them. I do not believe I have come across one good word spent in their praise – ignorant, corrupt, conceited, greedy, sadistic and, occasionally, with appalling private lives. Of course, the usual caution applies: the honest, good, hardworking ones rarely make the news. Scoundrels often leave the deepest imprints through the passage of time.

One of the first Maltese judges from the times of the Order is sadly mentioned by name in connection with a thoroughly disgraceful affair. Dr Agostino Cumbo came to the rescue of Grand Master d’Homedes after the fall of Tripoli in 1551. Virtually everyone blamed d’Homedes for that historical debacle – for his flaccid strategies, his lack of foresight and commitment in the defence of that exposed and vulnerable outpost. He had to find scapegoats on whom to shift the blame for that mortifying loss and no more suitable candidates appeared than the battered knights who had barely survived that unseemly ordeal.

He had them all arrested and clamped in iron fetters, charging them with cowardice, desertion and treason, with a view of having them expelled from the Order. Once thrown out, ensuring their execution from the ordinary criminal court presided over by Maltese judges, would be the next easy step.

Louis de Boisgelin gives an extremely detailed account of how D'Homedes found in Cumbo's greed and pliancy the tool he sorely needed to save face with the outraged sovereigns of Europe. Cumbo "a man easily corrupted, being always ready to sacrifice his conscience for his love of money" undertook that, for a substantial bribe in gold, paid in advance, he would convict the disgraced knights and condemn them to death, giving the Grand Master the judicial certificate he sorely needed to justify his ineptitude.

The leading knight Durand de Villegagnion somehow discovered and publicly denounced this backroom horse-trading in all its lurid details, in an unannounced harangue that left D'Homedes speechless, discomfited and disgraced. Cumbo, bribe safely pocketed, and the other Maltese judge, Giovanni Vassallo had, as agreed, already passed sentence of death on the innocent senior knights. Villegagnion's violently detailed *j'accuse* saved their necks; de Valette eventually rehabilitated them in 1557.

Boisgelin does not disclose the source of his information, but I suspect it could be that rare book published by Villegagnion himself in Paris in 1553, *De Bello Melitensi*, later translated into French, which I have not been able to see.¹

During the Great Siege, judge Cumbo had aided the war effort, but not wholly disinterestedly. He placed at the disposal of the defence of Mdina 19 empty wine barrels from his own vineyards. These, probably filled with earth, the defenders placed on the bastions and used as a protective barricade. He later put in a claim for the reimbursement of their cost.²

¹ Louis de Boisgelin, *Ancient and Modern Malta*, London, 1805, Vol. 2, pp. 46 - 55.

² Mario Buhagiar, Stanley Fiorini, *Mdina*, Malta, 1996, p. 472.

Judge Cumbo lived in Mdina together with a household of four,³ quite likely in what is today, to his eternal shame, Villegnion Street. To be fair, the man had suffered persecution by the Inquisition, together with others suspected of Lutheran sympathies. “A number of them underwent torture”⁴ so he must have known first hand what that was about.

Agostino Cumbo belonged to a dynasty of Cumbo judges which seems to have started before the Order of St John settled in Malta in 1530. In fact, the well-known legend of the *Bride of Mosta*, a pillar of Maltese folklore, possibly dates to 1526. Marianna, the unfortunate bride was said to be the daughter of Dr Giulio Cumbo, a renowned legal practitioner from the Cumbo family who later built and rebuilt the impressive Torri Cumbo on the outskirts of Mosta. Judge Agostino survived the shame of the exposure of his corruption, but was removed from office, for reasons unstated, by Grand Master de Valette two years before the Great Siege. On his dismissal, de Valette ordered an official investigation into his *acta et gesta*.⁵

The next Cumbo jurist to find a mention in the records was Pietro, who the Order’s Council under Grand Master de la Sengle in 1556 appointed advocate for the poor.⁶ He too fell foul of the Inquisition under suspicion of Lutheranism – an admirer of the French priest Gesualdo who ended burnt at the stake.⁷

Agostino proved neither the last, nor the most infamous of the Cumbo judges. Another judge, Dr Giulio Cumbo, appears in the late 17th century. Appointed to the bench by Grand Master Perellos in 1698, he died, still serving as a judge, 73 years later, probably over a hundred years old. Besides his Guinness world-record for longevity in judicial service, Cumbo put in valiant efforts to achieve fame with his sadism. He resorted to flogging and assorted torture unsparingly to extract confessions, which he then relied on to condemn suspects to death.

³ *Ibid.*, p. 511.

⁴ *Ibid.*, p. 505.

⁵ AOM 91, f. 109v.

⁶ AOM 89, f. 94v.

⁷ Alexander Bonnici, *Medieval and Roman Inquisition in Malta*, Malta, 1998, p. 13.

Cumbo kept count of all the death sentences he had passed, and this tallied at 120 wretches who had gratified with their agonies a lust for enjoying the pain of others which sometimes went by the name of justice. To say that we still commemorate with indignation ‘Hanging’ Judge Jeffries who, together with five other judges sitting in separate courts, had condemned 300 to death, and have forgotten all about our far more industrious and productive ‘Hanging’ Judge Cumbo. Jeffries, one satirist said, had the greatest concern for the salvation of the souls of those he sent to their deaths. He made sure he only executed the innocent.

Cumbo mostly presided over the criminal court, but occasionally took a break in between one torment here and a gallows there, to administer his peculiar brand of justice in the civil court. The torture bench (with a sharp inverted V-shaped ridge running through its length, on which the suspect was dropped astride with his or her legs apart) in Malta lost its original Italian name of *cavalletto squarciapalle* and became popularly known as *iz-ziemel ta’ Cumbo*. In other countries this device earned itself the nickname of Judas’s chair, and I don’t see much of a difference there.

Grand Master Pinto held Cumbo in the highest esteem, and, before becoming head of the Order, took private lessons from him in law, sealing his admiration by allowing the doddering sadist to remain on the bench till his very last breath. When still an adolescent Cumbo contracted marriage with a wealthy old spinster who left him all her abundant wealth on condition he would not remarry after her death – another proof of how easy it is for wierdos to find each other irresistible.

He died in harness in court on August 20, 1761, preparing a case he was to try the following day. No children survived him and his conspicuous estate fell on his niece, the widow of the lawyer Dr Ellul. Never belying a raw religious sensitivity, he willed a large number of pious legacies and is buried in the church of St Domenic in Valletta.⁸

The Italian jurist Giandonato Rogadeo, in Malta shortly later, recounts the funeral procession of a judge. Enraged bystanders stoned the coffin all the way to its

⁸ Lib. Ms 13, f. 609.

resting place. Rogadeo does not mention the judge's name, but I would not be amazed if that was Giulio Cumbo's fair rite of passage on his way to meet the Risen Lord.⁹ Another judge, according to the Italian jurist, died in a fit of terror. An indignant population had seen to it that he lived in constant fear.

A third Cumbo judge made a gory name for himself in Malta during the days of the Order. Dr Giuseppe Cumbo was one of the three judges who shifted into overdrive when the serious conspiracy of the slaves fell apart in 1749. The other two were the *Castellano* judge Giacomo Nataleo and Pietro de Franchis. Pinto's orders left little to the imagination: to proceed *more militari* to torture all the suspects.¹⁰

Cumbo and the two others read in this an invitation they could not refuse. They meted out the most indescribable tortures on the suspects during interrogations followed by harrowing torments on the gallows. In all they executed about 38 miscreants amid prolonged, stomach-churning agonies in stage-managed public spectacles.

Such was the sadism flaunted by the three judges that a detailed account of the plot and the torments, published shortly later in Italy had to be placed on the papal *Index of Prohibited Books*, to spare readers the shock and revulsion as to how far the charity of a good Christian prince could stretch. And this in an age immune to cruelty and virtually unshockable by inhumanity, however extreme.¹¹

Cumbo's partner in this tsunami of sadism, Judge Nataleo again hit the chronicles with a thoroughly unsavoury incident in 1758. On his way out of court on an afternoon, he crossed a peasant from Zejtun who failed to raise his cap at the passage of his august majesty. Oppressed by an inconspicuous sense of self, judge Nataleo kicked him violently, calling him *cornuto fottuto*, terms of endearment I would rather not translate. The countryman, opposing decorum to the judge's

⁹ Giovanni Bonello, *Histories of Malta*. Vol. 1, Malta 2000, p. 158.

¹⁰ Lib. Ms 428, entry January 7, 1749.

¹¹ For a less than detailed account of these torments see Carmel Testa, *The Life and Times of Grand Master Pinto*, Malta, 1989, pp. 120 – 127, and Godfrey Wettinger, *Slavery*, Malta, 2002, pp. 145 - 151, 162 – 167.

intemperance, had the temerity to answer back that those words became no one, let alone a gentleman. The farmer then went on other business to the Bishop's curia.

Judge Nataleo, outraged by the grossness of this contempt of court, discreetly surrounded the curia with his *sbirri*, to arrest the disrespectful oaf when he left the premises. The Vicar-General got wind of the siege, and ordered some officials who enjoyed immunity from the criminal court to escort the farmer to a church in Zejtun where, *cornuto* or not, he was exempt from arrest. The Vicar-General reported the happening to Pinto, who ordered the *sbirri* to lay off and placed the farmer under his personal protection.¹² Judge Nataleo's honour, sadly stayed unvindicated.

Judges in the various courts of Malta did not receive a fixed salary. For a living they had to rely on 'fees' they levied on the litigants on a percentage basis on the value at stake in civil lawsuits. That, to our way of thinking was bad enough. What appears definitely worse was the slice they kept to themselves out of the fines they inflicted in criminal matters – a measure ideal to fertilize abuse and suspicion of abuse. The Council expressly authorized Mdina judges to chip into criminal fines by an early decree of Grand Master Verdalle in 1582.¹³

The whole system conspired to denude judges of any independence from the executive – in fact it was designed to ensure they remained soft putty in the hands of the rulers. The Grand Master generally appointed judges for two years, every other August¹⁴ He enjoyed absolute discretion whether to reappoint them or not – it all depended on whether they had succeeded in preserving the Grand Master's benevolence during their short term of office.

One can well conjure the image of a judge deciding a politically sensitive civil or criminal case: could he help not factoring in his anxiety to be reconfirmed in the lucrative post come next August?

¹² Lib. Ms 12, f. 329.

¹³ AOM 96, f. 66v.

¹⁴ Montalto, *op. cit.*, p. 110.

A major manifestation of this judicial dependency on the Grand Master's goodwill is evident in connection with the Order's inability to inflict the death penalty on knights guilty of the worst felonies. The statutes prohibited a sentence of death on a knight – while he was still a knight. So what the Council did was to expel the delinquent knight from the membership of the Order, and then hand him over to the lay (Maltese) courts for trial – an unequivocal signal from the Grand Master that the penalties available on the Order's book were inadequate for the guilt of that knight and that he was to be executed.

Although the statutes provided clearly that the expelled knight had to be re-tried *ex novo*, disregarding any finding of guilt by the *sguardio* of the Council, I have found no instances in which the pliant Maltese judges did not meekly follow the mute directives from the Grand Master. Was it this servile status that made Inquisitor Caracciolo remark that *tra gentihuomini benestanti s'è dimesso l'esercitio della legge*.¹⁵

Judge Giovanni Vassallo, the one who had aided and abetted Judge Cumbo in the phoney frame-up of the Tripoli survivors, had been the subject of an assault when judge of the *Castellania* in 1547. The knight Fra Dominic de Sbach had stridently insulted him *conviciis ac injuriis*.¹⁶ The Council fired Vassallo from the judiciary in 1561 and de Valette ordered a commission to investigate his behaviour.¹⁷ Just after the Great Siege the Council somewhat rehabilitated him, appointing him to the position of advocate for the poor – actually *procurator pauperum, viduarum et pupillorum* – the indigent, widows and orphans.¹⁸ His namesake, Dr Giovanni Vassallo, was elected Judge of the *Castellania*, together with Dr Pietro Muscat, in 1595.¹⁹

Two other Maltese judges of the *cinquecento* whose names the records preserve were Dr Melchiorre Cagliares and Dr Valerio Micallef. Unfortunately what

¹⁵ Montalto, *op. cit.*, p. 111.

¹⁶ AOM 87, f. 129v.

¹⁷ AOM 91, f. 25, 26.

¹⁸ AOM 91, f. 178.

¹⁹ AOM 99, f. 41.

they became renowned for leaning more to the side of public scandal than legal erudition.

Dr Melchiorre Cagliares (also Cagliarese – from Cagliari? - probably the father of the only Maltese bishop in the times of the Order, Baldassare, consecrated in 1614) carved out a good legal career in the island, starting as advocate for the poor, widows and orphans in 1573,²⁰ progressing to rapporteur²¹ and to assessor judge in a particularly high-profile case in 1584, when the Council ordered the arrest of the knight Fra Francesco Sommaia on his return from a corsairing expedition in the Levant²² charged with a dozen crimes, including stealing the booty captured from the Turks, personally murdering a soldier on his galley, and, most unforgivable of all, serving the poorest of dinners to the knights on board – *facendo loro una tavola sordidissima che era un' indecenza da non tollerarsi*.²³ The Council ordered Cagliares to investigate and prosecute.

Cagliares, besides his legal career, cultivated engrossing hobbies too. Did not everyone know that he slept concurrently with Caterina, with her sister Marietta and with Marietta's daughter too, a committed believer in keeping it all in the family? The state paid him for protecting widows and orphans after all, didn't it?

In a colourful conflict between bishop Gargallo and the Grand Master, Cagliares had called the bishop *vigliacco* to his face. For his outspokenness and his resourceful lust, Gargallo excommunicated him. On one occasion, Cagliares felt slighted by Don Antonio Inguanez, Rector of St Paul's church in Valletta, who apparently cut him dead when they met in the street. Cagliares threatened him in Maltese '*Le tibzax, hecde kif fixkilt lohrayn, infixkil lilik*'.²⁴

²⁰ AOM 93, f. 101.

²¹ AOM 93, f. 156v.

²² AOM 96, f. 294.

²³ Bartolomeo dal Pozzo, *Historia*, Verona, 1703, Vol. 1, p. 248.

²⁴ Carmel Cassar in *Hypen*, 1986, Vol. 4, No. 6; same author, *Society, Culture and the Inquisition*, Malta 2000, p. 161.

Not everything was deplorable about Cagliares. Promiscuity or not, he donated a painting showing the Crucifixion, acquired in Rome, to the parish church of St Paul in Rabat, which I believe now hangs in the Wignacourt museum.²⁵

Dr Valerio Micallef too climbed through an attractive legal career. I found him first mentioned in 1579 when the Order appointed him to represent it before the Dominican friar Fra Damiano Taliana, conservator of the Order's privileges.²⁶ When a number of knights ran amok in Messina, the Council chose Micallef as assessor²⁷ and again in 1592 and 1594.²⁸

He finally became judge – *judex castellaniae* – with Ludovico Platamone in 1595.²⁹

In his private life Judge Micallef adamantly refused to be ungenerous with gossips. He frequented assiduously the brothel in Haz-Zebbug run in the house of the high-class pimp Nardu Mamo, an upright man who provided horizontal services. For a fat fee elite customers, principally Judge Micallef and knights labouring under tons of gilt-edged nobility, there steadfastly disposed of what money they could in the upkeep of Mamo's whores.³⁰

The records of the Order prove consistently poor with information about the Maltese judiciary and the legal professions in general. I do not believe that a list of Maltese judges exists or that anyone has attempted to draw one up. Without claiming that the names I have come across and copied are in any way exhaustive, I believe it is useful to report other judges I found mentioned in the *cinquecento* records. Apart from those already listed, I have noted references to the following.

The very first 'Maltese' judge created by the Grand Master when the Order settled in Malta was Giovanni Calava, who had apparently acted as L'Isle Adam's

²⁵ Achille Ferres, *Descrizione Storica*, Malta, 1866, p. 103.

²⁶ AOM 95, p. 143.

²⁷ AOM 97, f. 91v

²⁸ AOM 98, f. 98, f. 178v.

²⁹ AOM 99, f. 34.

³⁰ Cassar, *Hypen*, *ibid.*

legal adviser in the long and arduous negotiations for the cession of Malta to the Knights of St John. If he had a hand in drafting that highly sophisticated 1530 deed of donation, his legal credentials seem to have been quite in order. L'Isle Adam also conferred on Calava the first title of nobility by the new rulers of Malta in 1531, with a grant of lands at Ghajn Qajjet. In fact, he seems to have been the only nobleman to have been appointed judge at the time of the knights.³¹ He married twice: to Paolo Laureri Segona first and later to Giovanna Caxaro Inguanez.

The second judge recorded by name is Nicola d'Agatha, who, in 1546 petitioned the Council of the Order to regulate his investigation into crimes attributed to Giovanni from Salonica.³² D'Agatha, also referred to as Dagathis, was a Sicilian notary from Mazara del Vallo who had settled in Malta with his wife Isolde. Very likely they were the parents of Luigi d'Agatha, the earliest known Maltese to be ordained Jesuit, in 1557.³³

Dr Francesco Mego appears as judge shortly later, in 1552, to dispose of all the civil and criminal cases pending.³⁴ Mego continued to enjoy the favour of Grand Masters, who actually broke the rules to accommodate him. Dr Mego from Rhodes, had been made *Uditore* by de Valette, notwithstanding that L'Isle Adam had previously decreed that only professed knights could occupy that office.³⁵

Mego's career flourished: judge in 1552, *Uditore* in 1557, commissioner of enquiry the following year and in 1562, Vice-Chancellor in 1560 and regent of the Chancery in 1563.³⁶ King Philip I of Naples acknowledged him baron of Castel Cicciano in 1560, after he had purchased that parvenu warrant of nobility for 1500 ducats from Cristoforo Grimaldi, the title-holder.³⁷ Grand Master Perellos finally recognised that title in 1702. His daughter Paola married Gregorio Scerri, judge and assessor. Their son, in turn, married Imperia Surdo related to judges Ascanio Surdo and Giacinto Cassia – an almost hereditary judiciary.

³¹ John Montalto, *The Nobles of Malta*, Malta, 1979, p. 28, 30, 32, 110.

³² AOM 87, f. 82v.

³³ Ed. Lino Bugeja *et, Birgu*, Malta 1993, p. 235.

³⁴ AOM 88, f. 120v

³⁵ Giacomo Bosio, *Istoria*, Rome, 1602, p. 797.

³⁶ AOM 89, f. 120v ; AOM 90 f. 18v, 126; AOM 91, f. 61, 87v.

³⁷ Montalto, *op. cit.*, p. 260.

As de Valette's *Uditore*, Mego issued a proclamation shortly before the Great Siege to all noblemen and feudatories, whether present in Malta or abroad, to provide armed men and horses as obliged by their bond of fealty *contro l'armata torchesca*.³⁸

Judge Mego turns out to be a great benefactor of the Dominicans in Birgu. In 1546 he commissioned the Sicilian painter Girolamo Spagnuolo from Syracuse but living in Birgu to paint for 30 large gold ducats a triptych of St Mary Magdalen, flanked by St Joseph and St Francis for the Dominican church of the Annunciation of the Virgin in Birgu.³⁹

In 1556 he and his sister Dionisia, wife of the treasury clerk Gaspare Santa Maura, paid for the building of a refectory for the same convent and walled an inscription in it, now lost, to record their generosity.⁴⁰ The painting seems to be untraceable and the Luftwaffe saw to the destruction of the refectory during WW2. Francesco and Dionisia also built and endowed a family chapel dedicated to the Magdalen in the same church in 1547, as appeared from a marble inscription they placed there.⁴¹ He left three children: Giovanni Antonio, Agostino and Dionisia.⁴² He drew up his will in September 1572⁴³ and is believed to have died soon after; he and his sister received burial in the family chapel.

Grand Master Martin Garzes appointed Dr Giovanni Calli (sometimes Cali) judge in 1597, late in his life.⁴⁴ Calli had already been noticed in 1574 when Grand Master La Cassière wanted him syndic (auditor) of various public offices and institutions, though he had to be removed shortly later on suspicion of bias.⁴⁵ Not long after, Calli got the nasty job of investigating Fra Onofrio Accaioli, the Order's receiver in Messina and Sicily, charged with having abused his authority. The Council

³⁸ *Ibid.*, p. 109.

³⁹ Mikiel Fsadni, *Id-Dumnikani fir-Rabat u fil-Birgu*, Malta, 1974, p. 91.

⁴⁰ *Ibid.* p. 110.

⁴¹ Lib. Ms 428, entry January 1747.

⁴² Fsadni, *ibid.*

⁴³ *Ibid.*, p. 92.

⁴⁴ AOM 100, f. 20.

⁴⁵ AOM 94 f. 29, 35.

found Accaioli guilty and expelled him from the Order but the Grand Master, predictably, suspended the execution of the sentence for one month.⁴⁶

Calli met his comeuppance shortly later, when the enraged knight Fra Alberto Arrigo wounded him seriously. Apparently Arrigo had been involved in court litigation, as, immediately after, Dr Francesco Turrensi replaced Dr Paolo Vassallo *in causa contra Fra Albertum Arrigo*. For wounding Calli, the hot-tempered knight ended imprisoned in the tower for one year.⁴⁷

Recovering from the attempt on his life, Calli proceeded in his legal career: syndic in 1578.⁴⁸ There must have been bad blood between Calli and the other two legal luminaries Giovanni Vassallo and Paolo Vella, as they challenged Calli's impartiality in a case, but the Council found their suspicions to be unfounded.⁴⁹ In fact in 1589 we come across Calli as assessor in cases instituted against knights.⁵⁰

Inquisitor Federico Cefalotto in 1582 succumbed to an alarming interest in Calli. He summoned the judge to give evidence before the Roman tribunal. Alessandro Faenza, Calli's brother-in-law, had been found in possession of a prohibited book. The lawyer Dr Galeazzo Cademusto had secretly written a work about divination through communication with the dead. This passed in the hands of a Neapolitan school teacher in Malta, Alfonso di Tommaso, who eventually had to serve a term on the galleys for some criminal offence. Before embarking, he slipped the condemned manuscript to Faenza and the Inquisition became ever so keen to find out more about this threat to the faith.⁵¹

Count GiovanBattista Ciantar, always on the lookout for eminent Maltese whose praises to sing, includes Giovanni Calli with his *uomini illustri di Malta*.⁵² He probably would qualify as *di Malta*, but he was not Maltese. A petition by him has

⁴⁶ AOM 94, f. 58, 63r.

⁴⁷ AOM 95, f. 37, 52v.

⁴⁸ AOM 95, f. 95v, 151, 160v.

⁴⁹ AOM 95, f. 162.

⁵⁰ AOM 97, f. 181, AOM 99, f. 107.

⁵¹ AIM Crim. 6C, f. 1037.

⁵² GiovanAntonio Ciantar, *Malta Illustrata*, Vol. 2, Malta, 1780, p. 566.

come to light asking Grand Master La Cassiére to appoint Giovan Paolo Mizzi as his substitute to try minor civil cases on the ground that Mizzi knew Maltese much better than he did.⁵³ Ciantar adds the interesting observation that Calli's written *consulti*, bound together in three manuscript volumes, were still quoted by lawyers in his day.

Calli, as I said, was finally promoted judge in 1597, and to the appeal court in 1601.⁵⁴ This is the last I hear of him.

Other Maltese judges appear in the Order's records in the latter part of the 16th century. In 1597, together with Giovanni Calli raised to the court of appeal, the Council appointed Antonio Mahnuq and Ascanio Surdo judges in ordinary at the *Castellania*.⁵⁵ – very young, as he is said to have been born c. 1580 and died in 1663. Shortly later Surdo went to the court of appeal, Francesco Garibo replaced him in the civil court and Giovan Domenico Vella presided over the criminal court.⁵⁶ In 1601, the Council shifts Surdo to try criminal cases, and appointed Dr Bartolomeo Tabone to determine civil lawsuits.⁵⁷ At the request of the jurats, Dr Surdo replaced Dr Mahnuq.⁵⁸ But soon afterwards Dr Mahnuq took over the civil court.⁵⁹

These early records mention that in 1603 the Council reappointed Dr Paolo Cassar as judge of the *Castellania*, and Dr Francesco Garibo judge of the civil court.⁶⁰ A judge for Gozo is also recorded: Dr Giovanni Maria Mamo who had embroiled himself in litigation with Bartolomeo Abela.⁶¹

Maltese judges occasionally make an appearance in other manuscript records, like Don Gaetano Reboul's diary. He noted how on April 3, 1739, Dr Damiano Cassar, known to all as *Cassarino*, who had been a judge, passed away. Reboul is often lavish with praise for those who no longer needed it, but in this case makes no comments – *de mortuis nil*. Judge Cassar's widow was murdered in 1745 by Pietro

⁵³ Carmel Cassar, *Society, Culture and Identity*, Malta, 2000, p. 161.

⁵⁴ AOM 100, f. 196v.

⁵⁵ AOM 100, f. 20.

⁵⁶ AOM 100, f. 121v.

⁵⁷ AOM 100, f. 196v.

⁵⁸ AOM 100, f. 258.

⁵⁹ AOM 100, f. 249v.

⁶⁰ AOM 100, f. 292, AOM 101 f. 71v.

⁶¹ AOM 100, f. 130v, 155.

Vella, a young surgeon-apprentice (*barberotto*) from Floriana who lived close by – a robbery which ended in homicide. It took the court all of three weeks to investigate, try and hang Vella.⁶²

Reboul also mentions judge Dr Pietro de Franchis, one of the troika who had gone on a Pol Phot spree after the disclosure of the conspiracy of the slaves. De Franchis, together with Cumbo and Dr Caldcedonio Monpalao the chief justice (*Castellano*) had hit the headlines when they condemned to death baron Isodoro Viani for embezzlement of around 50,000 scudi of public funds and fraudulent bankruptcy. All Viani's assets, houses, furniture, jewellery and silver had been seized and on June 7, 1734, the death penalty followed. His neck was spared at the very last moment by his sons who guaranteed his debts, but not before their father made over to them all his entailed immoveable property (*fideicommissa*).⁶³ Mompalao, when acting as judge in Mdina, passed away on November 20, 1740.

Reboul notes the death of another judge, Dr Gian Giuseppe Cassar who had been married, and on becoming a widower, entered the priesthood – *prio sacerdote*⁶⁴ and refers to the death of judge Dr Battista Gucciardi, formerly of the court of appeal,⁶⁵ apparently a big gun if Rogadeo is to be believed. The Italian jurist often wondered at the bizarre turns that case-law had taken in Malta, usually to pervert the course of justice. “When Rogadeo pressed for the foundation of the local interpretation through which the fair application of the law was evaded, he found no other than the dubious one that Judge Cumbo and Judge Gucciardi used to understand it that way. Judges make the present corruption depend on the corruption and ignorance of their predecessors, equally animated by the urge to dispense injustice”.⁶⁶

The stealthy spirit of corruption did not stop at the judges' bench – it extended to private entertainments too. By 1723 the custom had been established that judges and other legal officers were entitled as of right to attend for free any comedy, drama or opera staged in Malta. That year the impertinent impresario of the current opera

⁶² Lib. Ms 428, entries April 13, 1739, January 20, February 13, 1745.

⁶³ *Ibid*, entries June 7, July 15, 1734.

⁶⁴ *Ibid*, entry September 10, 1740.

⁶⁵ *Ibid*, entry October 4, 1733.

⁶⁶ Bonello, *op. cit.*, p. 175.

season decided that enough was enough and the leeching had to stop. He did not distribute the customary free *bulletini* among the chief justice, the *Uditori*, the judges of the civil and criminal court, the prosecutor-general and the head of police.

The scandal and uproar this caused! What novel abuses were these that judges actually had to pay for attending spectacles! In an indignant panic they signed a joint petition to the Grand Master stressing the vital importance *che non si introduchino nuovi abusi*. Thankfully Grand Master Vilhena treated the application with just about what disdain it deserved.⁶⁷

It seems that over the years some sort of custom developed about ceremonials to be observed after particularly high-profile public executions. In 1759, for instance, the Mdina authorities removed eight prisoners from the local jail because of overcrowding and transferred them to Fort St Elmo. They were there painstakingly tortured for thirteen days, at times for twelve hours at a stretch (the sources give these figures) under the personal direction of Baron MarcAntonio Inguanez.

The prisoners, surprise surprise, finally confessed their guilt, and the judges then sentenced them to hang with a clear conscience. As the Bishop's field where public executions usually took place in Rabat was under cultivation, to avoid damage to cabbage and sprout the life of the six *rei confessi* was snuffed out on Saqqaja in the presence of an impressive crowd. The spectacle over, Grand Master Pinto treated the judges to a lavish lunch.⁶⁸ Six judicial murders in one go had whetted their appetite better than any aperitif. Six judicial murders had whetted their appetite more than any aperitif.

As a prime example of corruption of the coarsest kind linked with the Maltese judiciary, *Carasi* in 1790 refers to the judicial misadventures of Guglielmo Lorenzi, renowned sea-captain and corsair who died fearlessly facing a French firing squad when his armed conspiracy against Napoleon's occupation was discovered. Lorenzi was fighting a lawsuit on an important matter against a local baron. Right leaned heavily on Lorenzi's side, but all the same he remained very worried about the

⁶⁷ Lib. Ms I8, f. 461.

⁶⁸ Lib. Ms 13, ff. 56, 58, 64 – 65, 77, 88, 92.

outcome –what with the wealth and rank of his opponent, the protection given by the Order to the local nobility and his own less than virginal reputation as a pirate on the high seas?

Somehow Lorenzi came to find out that the baron had paid a large sum of money to the *Castellano* (chief justice) to win his case. This judge, whose dishonesty was only surpassed by his stupidity, wrote a letter of thanks to the baron, acknowledging receipt of the bribe and guaranteeing a successful outcome of the court case.

Lorenzi, pistol pointed at the baron's throat, seized this letter from his possession, but all the same, allowed the court to deliver judgement which, as expected, went massively against him. The corsair had made it quite clear he would assassinate the baron should he reveal to the court the discovery of the plot for the miscarriage of justice.

After the judgement was pronounced, Lorenzi, armed with his cast-iron evidence, thundered against the judges and lodged a complaint with the Grand Master. At first de Rohan received him with marked hostility, foreshadowing distressing punishments for his temerity in accusing a tribunal of corruption, particularly as the Castellan was a knight *Commendatore*.

When, however, Lorenzi whipped out the letter, the knights' conceit turned to indignation. The Council of the Order convened and condemned the chief justice to life imprisonment and locked the (Maltese) judges in dungeons prior to establishing their guilt through proper process of law. The blame was then shifted to the baron who was sentenced to a hefty fine. The Grand Master reinstated Lorenzi in all his rights.

Carasi concludes by stating how the Castellan was later amnestied and his punishment commuted to exile in his native Spain. As for the Maltese judges, one was condemned to death by hanging. The sentence was however changed and he was

allowed to end his days in prison. The others too were amnestied and obtained their freedom.⁶⁹

How cynical the people had become at the realization that money could fix almost everything is exemplified by the story of an infamous corsair from Majorca based in Malta, a certain Magrin. Around 1716 the *sbirri* finally apprehended him for his excesses against Greek Christian shipping, in theory exempted from the Maltese corsairing licence. All the same Magrin, flying the Order's flag, found the Greeks easy prey. When he captured their ships, to extort money or information as to where money or valuables were hidden, Magrin used to sow crew members alive in sacks and throw them overboard, or crush their necks so relentlessly that sometimes the head just popped away from the body.

On his return to Malta from one of his pilgrimages to evil, the authorities arrested Magrin; they tried and condemned him to the gallows. But here his money started talking. The death penalty was mysteriously commuted to rowing in the galleys for life, but not before a public kissing of the gallows, of course. More monies changed hands, and this turned into life imprisonment, and then, with further grease falling on the right cogs, to three years serving on a galley. When Giacomo Capello wrote about this incident, people betted heavily that one year waiting on the galleys would be the maximum Magrin would pay for his serial homicides; that is, not counting the 2000 gold sequins he had already disbursed.⁷⁰

The only work I know of which systematically analyses – and savages – the legal professions in Malta was published by Giandonato Rogadeo in 1780.⁷¹ Grand Master de Rohan, bent on improving Maltese laws, the judiciary and legal systems, had invited Rogadeo, a reputable Italian jurist, to pilot his reforms. Rogadeo's stay in Malta only served to fortify his contempt for the island and all things Maltese. He encountered overt and stealthy opposition to his proposals for change from a conservative legal establishment which also had substantial vested interests to defend.

⁶⁹ Carasi, *L'Ordine de Malthe dévoilé*, Lyons, 1790, Vol. 2, pp. 141 *et seq.*

⁷⁰ Victor Mallia-Milanes, *Descrittione di Malta*, Malta, 1988, p. 95.

⁷¹ Giandonato Rogadeo, *Ragionamenti*, Lucca, 1780, Naples, 1783.

In total disillusionment Rogadeo left Malta and consigned to print his less-than-flattering impressions of Malta and the local legal classes in particular.⁷²

Judges and *Uditori* naturally raised Rogadeo's hackles highest, and he does little to hide the contempt he so persistently nurtured towards them. He brands them ignorant, dull, scheming, corrupt, biased, bent only on enriching themselves and consolidating their careers.

Not surprising. The Maltese are generally *tristi* – mean and evil – the higher they rise in office, the further their evil is projected “because the most wicked of them have always become judges, as this is the highest rank a Maltese can reach (under the Order)”. Through this position, their arts and their deceptions, they milk dry the purses of the people to the detriment of the law and of public order.

The judges and the *Uditori*, Rogadeo affirms, show no shame in openly relieving criminals of their responsibilities, by shifting the blame for criminal offences on absentees, Turks and foreigners. It is not only greed that motivates them, but also a compulsion to acquit of any culpability those accused if they happen to be Maltese. Protecting the guilty the judges also make sure that their own financial rewards are sufficiently substantial.

Rogadeo appears shattered by the ignorance of the judges and *Uditori*. He solemnly swears that a mere clerk in a foreign tribunal knows law better than any of them. Their legal science is limited to the acquaintance of a few formulas inherited from barbarian times that can be twisted around to suit their caprice. They had picked up a few *dottrinelle* from Carusi, some badly-digested decisions from the Roman *Rota*, and that about summed it all. Loaded with such crass ignorance, they still believed they could contradict the world's most accredited interpreters of law.

The Italian jurist remarked about the apparently universal religiosity of the Maltese – and how this religious piety goes out of sight whenever there is a chance of furthering their own advancement. True religion, Rogadeo observed, is at one with the

⁷² Giovanni Bonello, *Histories of Malta*, Vol. I, pp. 155 – 160.

observance of virtue and justice. Otherwise religion turns into mere superstition, placed at the service of wrongdoing, yet hiding behind the powerful shield of faith. When, corrupted by bribes, judges dispense injustice, they usually blame it on religion, protesting all the while that it is only the scruples of their conscience that force them to act in a way they would rather not. “Every time judges justify themselves through religion, it is an infallible sign they have been corrupted”.

The only religion he found in the Maltese legal professions was that of thieves who recite prayers for the success of their robberies. He gives numerous examples of the scandalous abuse by the criminal courts of the expedient of ecclesiastical immunity – a favourite tool of corrupt judges to acquit heinous criminals who have lined the judges’ pockets – always under the pretext of respecting the restrictions imposed by religious immunity.⁷³

This is the judiciary the British found when they took over Malta. They were appalled by the situation and put in a genuine effort to improve matters. Whether their catastrophic jeremiads fully corresponded to the realities of the administration of justice, or whether British political self-interest helped to colour the sorry state of the courts even more sinisterly, cannot be ascertained. The early British documents certainly have the merit of being the only organic assessment of the Maltese judiciary at the time of the Order that has reached us, with the exception of Rogadeo’s blistering denouncement, a bitter book which has anyway to be taken with a pinch of sugar.

Sir Charles Cameron, Civil Commissioner in 1801, was the first to tackle the anomaly inherent in the remuneration of the Order’s judiciary which could give rise to serious abuse. Judges had not been paid regular salaries, but received fees levied from the litigants in each case they decided - and this easily gave rise to arbitrariness and scandal. As a palliative, Cameron ordered that large tables be hung in prominent places in each courtroom, in English and Italian, specifying in detail what those judges’ fees ought to be.⁷⁴

⁷³ *Ibid.*

⁷⁴ Hugh W. Harding, *Maltese Legal History under British Rule*, Malta, 1980, p. 8.

Sir Thomas ‘King Tom’ Maitland noted in 1813 that “the greatest vice existing in the administration of the Island seemed to consist in the dilatory and corrupt administration of the laws” according to the Order’s old system. He believed that paying judges fixed salaries instead of expecting them to survive on snatch and grab from the parties to a lawsuit, and appointing them for life instead of for short periods renewable at the pleasure of the sovereign would “add most materially to the respectability and independence of the judges”. Tenure of office for life would not be absolute “judges acting corruptly were to be dismissed from their office”.

Where hesitation existed was about the ultimate power of the sovereign to reverse the decisions of the courts – a power already stridently stigmatised by Rogadeo. “On the presumption that corruption did exist”, Maitland entertained doubts whether removing the power of the sovereign to scrutinize and reverse the judgements of the courts was such a bad thing after all.⁷⁵

He proposed to camouflage the old tribunal of the *Segnatura* (the legal advisors of the Grand Master on the reversal of court judgements), by a new High Court of Appeal, of which he would be president himself, and to limit the jurisdiction of the new tribunal “to cases of such gross and palpable venality (corruption) or error of judgement as had led to an obviously false decision”. Maitland believed in himself “being an Englishman, unbiased by any prejudice and unconnected with any of the parties”.⁷⁶ I purchased the impressive brass seal of this court from a scrap-metal dealer on the *Monti* for all of one shilling.

Maitland also factored in the smallness of the island, the way everyone was connected with everyone else, the nature and character of the inhabitants. He realized “how very difficult it would be to select judges who, even if independent of positive corruption, could be supposed to be free from all bias, feeling and prejudice”.⁷⁷

King Tom prepared an important confidential report on the administration of justice in 1814. He found the laws left by the Order “were by no means deficient in

⁷⁵ *Ibid.*, p. 79.

⁷⁶ *Ibid.*, p. 81.

⁷⁷ *Ibid.*, p. 80.

most of the essential points, but the practice of the Courts was totally and completely subversive to those laws” – again, echoes of Rogadeo. He returned to the power of the sovereign to reverse decisions of the courts branding it as “neither more nor less than the consummation of judicial tyranny”.⁷⁸

c. Giovanni Bonello, 2007

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⁷⁸ *Ibid.*, pp. 94 – 95.