

An Unusual Privilege of Early Modern Roman Confraternities

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The pardoning of justly condemned criminals was, alongside the execution of bloody sentences, an essential part of early modern justice everywhere in Europe. While grace was considered a specific quality of the Christian ruler, the pardoning of criminals was also understood to be a necessary counterbalance to the well-known shortcomings of a justice system which relied on torture and did not provide for a regular defence before the judge. The way this pardoning functioned within the framework of the judicial systems of the Italian states is a relatively new field of research. In the case of the pope's temporal justice, one finds a surprising variety of ways a convict could be pardoned and released without doing too much harm to the principles of law.¹ One method, and quite a strange one, is hidden behind the word *condonatio* or *condono*, a term which occurs quite frequently in the pardon books of high officials of the Roman law courts.² The term *condonatio* meant the release of a convict on behalf of a religious confraternity which held a papal privilege enabling it to do so.

The technical means of obtaining the release of a prisoner from one of the Roman jails or from the galleys was relatively simple. The privileged confraternity, of which there were nineteen in the year 1600, addressed an informal petition to the pope or in rare cases to its cardinal protector, citing at a minimum the names and the crimes of the prisoners to be released.³ Such petitions could free condemned prisoners, even those with death sentences. However, the liberation privileges excluded the perpetrators of crimes labelled by contemporary legal scholars as *crimina atrocia* (*haeresis, falsae monetae, falsificationis litterarum, supplicationum, et aliarum gratiarum apostolicarum, laesae maiestatis, assassiniij, et propinati veneni* [heresy, falsification of coins, of papal letters, supplications and other graces, lèse majesté, willful murder and poisoning], after 1584

1 Blastenbrei, "Clemenza und equità" pp. 412–426.

2 E.g. the pardon book of the *governatori di Roma* Ferdinando Taverna and Benedetto Ala from May 1604 to March 1607 (Archivio di Stato di Roma, [henceforth ASR] Fondo Tribunale criminale del Governatore, Processi del secolo XVII, Registro 24, f. 81r–270v) contains 269 releases of condemned criminals, 91 of which (33.8 percent) are on behalf of Roman confraternities. Unfortunately this is the only complete pardon book we know of at the moment. On the other hand there are numerous surviving petitions for the liberation of prisoners by confraternities preserved in the Roman archives.

3 Most of them are preserved in the ASR, Fondo Camerale III.

expanded to include *incendij ecclesiarum, ac aliorum piorum locorum* or *sacrilegij* [arson of churches and other ecclesiastical buildings, sacrilege]).⁴ The only other requirement for releasing prisoners by a petition was the *pace* (peace), a formal settlement with the relatives of the victim of a violent crime by which they gave up their interest in further criminal prosecution.⁵ For a short time under Gregory XIII there were also restrictions concerning the regional origins of the prisoners, i.e. a confraternity with a certain regional or local background only could free compatriots.⁶ The confraternities took the trouble to prove in their petitions that all necessary requirements of the prisoners had been implemented, including a detailed account of the crime itself. Extracts from the records were also often included to show that the prisoners in question benefited from the common mitigating circumstances recognized by contemporary justice. Some petitions from the early seventeenth century give a list of two or three prisoners from which the authorities were to choose the one to be freed.⁷

The origin and early development of these privileges are still unknown. The oldest privilege of this type with a known date (1540) is the one of the confraternity S. Giovanni Decollato, the confraternity with the closest ties to the sphere of criminal justice.⁸ There is, however, one older privilege for the confraternity of S. Salvatore ad Sancta Sanctorum, which was issued by Pope Leo X around 1520 after the miraculous healing of a blind man.⁹ The only confraternities granted this privilege before 1572 were these two and S. Lucia (1550/1583), SS. Crocefisso in S. Marcello (1554) and S. Rocco (1560).¹⁰ Pope Gregory XIII (1572–1585), whose favourable attitude towards confraternities is well known,¹¹ issued privi-

4 Contemporary views of the meaning of the term *crimina atrocia* are given by Lacchè, *Latrocinium*, pp. 141–147.

5 Niccoli, “Rinuncia, pace, perdono,” pp. 219–261; Bellabarba, “Pace pubblica e pace privata,” pp. 189–213.

6 Archivio Segreto Vaticano, [henceforth ASV] Secreteria dei Brevi, Registro 38, p. 632; Registro 63, fol. 532v; Mombelli Castracane, *La confraternita di S. Giovanni de’ Genovesi*, pp. 46 and 82–83 n.4 and 6.

7 ASR, Fondo Camerale III, busta 1962, filza 7, fol. 16r–21v and 62r–63r; filza 12, fol. 1r; filza 13, fol. 245r; busta 1971, filza 5, fol. 1r and 3r; busta 1981, filza 9, petition of 1611.

8 Chiabò, “L’Arciconfraternita di S. Maria dell’Orazione e della Morte,” p. 293.

9 ΕΥΣΕΒΟΛΟΓΙΟΝ Eusevologio Romano, 1:338.

10 ASV, Secreteria dei Brevi, Registro 63, fol. 343v; Registro 72, p.659–663; Chiabò, “L’Arciconfraternita di S. Maria dell’Orazione e della Morte,” pp. 275 and 369; Pagano, *L’archivio dell’Arciconfraternita del Gonfalone*, pp. 29, 56 n.17, 57 n. 20 and 59 nn. 45–46.

11 Biblioteca Apostolica Vaticana, [henceforth BAV] Fondo Boncompagni Ludovisi, volume D 5, fol. 134r (the pope called the confraternities “repubbliche spirituali”, spiritual republics).

leges for the liberation of prisoners for seven other confraternities: S. Ambrogio dei Lombardi (1573), SS. Trinità dei Pellegrini (1573/1582), S. Giovanni Battista dei Genovesi (1576), S. Spirito dei Napoletani (1576), Corpus Domini in S. Trifone Martire (1580), S. Eligio dei Ferrai (1580) and SS. Sacramento in S. Pietro in Vaticano (1584).¹² In addition, he allowed the *Confraternita del Gonfalone* to liberate two prisoners instead of one for its annual festival.¹³

The subsequent development of these privileges shows clearly that this phenomenon was not a result of the personal attitude of individual popes, but of the general spirit of Catholic Reform. Gregory's XIII successor Sixtus V (r. 1585–1590) privileged three more confraternities in his much shorter pontificate,¹⁴ and Clement VIII privileged four confraternities in the 1590s.¹⁵ Finally the Jubilee of 1600 brought a real high tide of such privileges. Between 1601 and 1610 different popes issued not less than 17 new liberation privileges for Roman confraternities.¹⁶ In February 1609 we find the first privilege for a confraternity outside of Rome (Confraternita di S. Maria in Acume e SS. Crocefisso in Rimini).¹⁷ In the following years the granting of privileges to confraternities in provincial towns in the Papal States became quite normal: the year 1609 saw three more privileges for confraternities in Ancona, Arignano and Ravenna, 1610 privileges for confraternities in Carpineto, Fano and Ferrara, and 1611 privileges for confraternities in Ferentillo, Fermo, Ferrara, Loreto, Viterbo, etc.¹⁸

Such dates provide a chronology for the development of the liberation of prisoners by Roman confraternities. But one has to stress that the privileges themselves were often only the judicial formalization of an already existing situation. At the beginning of the seventeenth century the confraternity of SS. Sacramento in S. Eustacchio let the authorities know that they had no formal privilege but had liberated convicts at various occasions in the previous years.¹⁹

12 ASV, Secreteria dei Brevi, Registro 38, pp. 630–635; Registro 47, fol. 346r–v; Registro 48, fol. 251r–252v; Registro 59, fol. 428r–429v and 432r; Registro 63, fol. 343r–344v and fol. 532v–533v; Mombelli Castracane, *La confraternita di S. Giovanni de' Genovesi*, pp. 46 and 82–83 n.4 and 6.

13 ASV, Secreteria dei Brevi, Registro 72, pp. 659–663.

14 ASR, Fondo Camerale III, busta 1966, filza 4, n.1; Chiabò “L’Arciconfraternita di S. Maria dell’Orazione e della Morte,” p. 243; Paglia, *La “Pietà dei Carcerati,”* p. 206 n. 196.

15 ASV, Secreteria dei Brevi, Registro 188, fol. 422r–v; Registro 234, fol. 26r–v and 29r; Chiabò, “L’Arciconfraternita di S. Maria dell’Orazione e della Morte,” pp. 252 and 341.

16 Blastenbrei, “Clemenza und equità,” p. 429.

17 ASV, Secreteria dei brevi, Registro 440, fol. 240r–v.

18 ASV, Secreteria dei Brevi, Registri 441 and following. In October 1614 pope Paul V even privileged an orphan asylum at Tivoli: ASV, Secreteria dei Brevi, Registro 512, fol. 347r–v.

The confraternity of Madonna di Loreto, privileged in 1603, had already freed a murderer in September 1580 through the personal intervention of its cardinal protector with the pope.²⁰ SS. Crocefisso in S. Marcello, privileged in 1554, freed a prisoner for the first time in 1552,²¹ and S. Maria dell'Orazione e della Morte, privileged 1610, first freed a prisoner in 1584.²²

By using their right to release condemned prisoners from the jails, the Roman confraternities were the true upholders of the ideal of Christian grace, which had such an importance within the framework of Papal legal administration.²³ Confraternities took advantage of the liberation of their annual prisoner to make a kind of grand demonstration of faith and devotion, celebrated by all available means. We know from descriptions from the middle of the seventeenth century that in those ceremonies the members of a confraternity formed a solemn procession to the prison, where they fitted the convict with a penitential robe and a wreath of olive branches and escorted him back through the Roman streets to their church. Here they all together attended a solemn thanksgiving mass before the prisoner was finally set free.²⁴ The great French traveller and philosopher Michel de Montaigne participated in such a thanksgiving mass on Palm Sunday 1581, when a fifteen-year-old murderer was solemnly released *assis au côté de l'autel sur une chaise, vêtu d'une grande robe de taffetas bleu, neuve, la tête nue, avec une couronne de branches d'olivier, tenant à la main une torche de cire blanche allumée* [sitting at the side of the altar on a chair, clad in a new wide robe of blue taffeta, with a wreath of olive branches on his uncovered head and holding a burning torch of white wax in his hand].²⁵ The purpose of this “theatre of grace”²⁶ “*ut xristifidelium numerus, et eorum, qui in dicta Archiconfraternitate conscripti erunt, devotio augeatur* [in order to magnify the number of faithful Christians and to augment the devotion of the members of the said archiconfraternity]”²⁷ was self-evident for the members of the confraternity as well as for the onlookers.

19 ASR, Fondo Camerale III, busta 1971, filza 4.

20 ASR, Tribunale criminale del Governatore, Registrazione d'atti 77, fol. 9v.

21 Delumeau, “Une confrérie romaine,” p. 286.

22 Chiabò, “L'Arciconfraternita di S. Maria dell'Orazione e della Morte,” p. 111.

23 Blastenbrei, “Clemenza and equità,” pp. 435–440.

24 Paglia, *La “Pietà dei Carcerati.”*, p. 297–299. Short remarks on the ceremonies observed at such occasions are also to be found in earlier sources: ASV, Secreteria dei Brevi, Registro 234, fol. 26v; BAV, Codice Urbinate latino 1047, fol. 175r.

25 Montaigne, *Journal de Voyage*, p. 221.

26 Parallel to the term “theatre of fear”, describing the bloody spectacle early-modern justice provided to the public, coined by the German historian Richard van Dülmen with the title of his book *Theater des Schreckens*.

27 From the privilege for the confraternity of S. Spirito dei Napoletani in 1576: ASV, Secreteria dei Brevi, Registro 38, p. 633.

But was this the sole motive behind the liberation of condemned criminals? The wording of the Papal breves does not help here because either no motive at all is given, or they speak in fairly vague terms about the fostering of Christian devotion. Fortunately, the preserved petitions themselves are more outspoken. The bulk of the petitions from the early seventeenth century provides a financial motive alongside devotion, i.e. the hope for a donation from the released prisoners or his relatives.²⁸ This financial motivation is certainly the most questionable part of the liberation privileges. With the diffusion of the confraternity ideal during the Catholic Reform the importance of such a motive must have grown. There were well-endowed great old confraternities like SS. Trinità dei Pellegrini or Gonfalone, which regularly counted the French king among its members. For them the liberation of a prisoner in exchange for a more or less generous donation was a little extra income. For the numerous new and relatively poor confraternities which came into being in those years²⁹ the regular *pregione* (prisoner) was often enough the only way to survive as a corporation and to comply with their self-imposed spiritual and charitable duties. If one considers how many of these newly founded and alms-dependent confraternities had to manage with annual budgets of 200 *scudi* or less it seems clear why the liberation of a convict who promised a donation of 50 *scudi* was so attractive.³⁰ So, the material needs of many confraternities seem to have been an incentive behind the wave of liberation privileges after 1600.

Clearly, the liberation of convicts affected more than just lay devotion or the financial necessities of the confraternities. The requirements of the regular functioning of criminal justice were also at stake. Pope Pius V, who never granted pardoning privileges to a confraternity, prohibited the liberation of murderers by confraternities on 29 June 1568,³¹ a prohibition which was no longer observed after his death in 1572. Pope Innocent X (r. 1644–1655) abolished all liberation privileges at an unknown date, for the explicit reason that such privileges stood in the way of the regular functioning of justice.³² However, there were some new

28 Blastenbrei, “Clemenza und *equità*,” p. 432–433.

29 The precarious financial situation of so many lay confraternities was brought to light by a papal commission inspecting 53 Roman confraternities in 1624; *Problemi dei beni ecclesiastici nella società preindustriale*, pp. 150–151 table 11 and pp. 174–175 table 15. A random check in the material from another inspection of the confraternities’ finances in 1661 brought similar results: ASR, Fondo Camerale III, busta 1966, filza 5, n.2; busta 1971, filze 5–8 and 11.

30 According to a petition of the Confraternita della Dottrina Cristiana from 1606: ASR, Fondo Camerale III, busta 1962, filza 12, fol. 1r.

31 Paglia, *op. cit.*, p. 201 note 197.

32 ΕΥΣΕΒΟΛΟΓΙΟΝ Eusevologio Romano, *op. cit.*, vol. I, pp. 347 and 359.

privileges in the early eighteenth century (excluding theft and murder) before Pope Pius VII finally abolished the liberation of condemned criminals with his constitution *Post diuturnas* of 30 October 1800.³³

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33 Chiabò, "L'Arciconfraternita di S. Maria dell'Orazione e della Morte," p. 112.

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