

## **A Brief History of the Development of the Criminal Justice System in Malta: from the Carthaginians to the French**

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This study takes an overarching view of the development of criminal justice in the Maltese Islands from circa 480 BC to the 1800s. The concept of policing and prisons are taken in the widest sense possible, where such institutions were created by the state as a method of control over the population. The Maltese Islands have experienced a succession of occupiers during the period and little is known about the criminal justice system during the time. What is known is that the colonisers had as their priority the control of the locals. The Arabs with the laws of the Koran were substituted by the Normans who created the Castellan. The inquisition with its fight against heresy, witchcraft and incest, who together with the Knights of St. John, were responsible for controlling the people and finally the French who were responsible for separating the administrative function from the ruling body.

Keywords: criminal justice, Malta, control, policing, prison, history

## **Introduction**

Ever since human beings started to congregate and form societies a need was felt to regulate their actions. Beccaria (1775:1) maintains that people became tired of living in a society that was full of danger and where actual liberty was ephemeras. Therefore they surrendered part of this liberty and gave the right to the sovereign to legislate in order to protect them. This is what led to the introduction of the criminal justice system. When one speaks of the criminal justice system one is mainly referring to a conglomeration of institutions that create laws, ensure that laws are respected and enforce these laws (Cole, Smith and DeJong, 2012). This paper will mainly focus on the historical development of the police and the correctional system in Malta, from the rudimentary system during the Carthaginians to the French occupation. Both the terms police and corrections are to be understood in the widest sense possible, as the

development of these institutions as they are known today did not emerge before the middle of the 19th Century.

The common aim of the police is that of ‘maintaining order, improving community unity ... and greatly lessening ... violence ...’ (Roberts and Henry, 1996:73). Hobbes’ (1651 cited in Abercrombie, Hill and Turner, 1988:224) social contract theory stipulates that in the primitive ‘state of nature’ individuals lived in total personal liberty (Boucher and Kelly, 1994; Erchel, 2008). This liberty exposed them to numerous dangers so citizens began to partake to a social contract whereby persons surrender a portion of their personal freedom to the state in return for protection and a guarantee of order and stability (Binmore, 1998). However, there may be citizens who infringe this contract for personal gain at the expense of others (Skyrms, 1996). Consequently, society needs the services of persons who are responsible for keeping guard against such threats: policing officers ... or police officers as they are now referred to (Bowling and Sheptycki, 2012). Therefore, although denominations, uniforms and policing styles may have changed over time, the actual post of police officer is perhaps as old as crime itself. Parallel with the guards to keep control, society needed to create an institution where those members who did not want to conform to the rules are forced to do so (Pollock, 2011).

Giving an account of the history of prisons is a new phenomenon. It was only in the seventies that the first pioneer studies began to take shape. Probably this occurred at a time where legitimate institutions, such as marriage and the church, were facing a crisis (Morris and Rothman, 1998: VII). The history of prisons helps one to understand the development of other social institutions in the countries. Furthermore these types of studies show how the government of the era maintained social order. Arguments for imprisonment range from the point of view that locking up criminals would protect

society to using prisons as a punishment of last resort (Morris and Rothman, 1998: IX). Prisons and other correctional institutions justify their existence, therefore their role in society, according to the prevailing ideas on what prisons should achieve. These are incapacitation, deterrence, retribution, rehabilitation and just deserts. Incapacitation was probably the first justification of punishment in the form of imprisonment. In more modern times the evolution of the ideal of deterrence, retribution, rehabilitation and just deserts came into being. Plato (circa 525 BC), in 'Gorgias', comments through Socrates, on the deterrent and rehabilitative ideal of punishment:

Now the proper office of all punishment is twofold: he who is rightly punished ought either to become better and profit by it [rehabilitation], or he ought to be made an example to his fellows, that they might see what he suffers, and fear to suffer the like, and become better [general deterrence].

(quoted in Peters, 1998:5)

Unfortunately, little attention has been given to the development of the criminal justice prior to the 1800s (Newburn, 1995:1), however this paper will attempt to trace the developments of the criminal justice in Malta, starting from the Carthaginians period until the French occupation.

### **From the Carthaginians to the Arabs**

The Maltese archipelago has passed from one foreign rule to another. They have been occupied and colonized by the Carthaginians, the Romans, the Byzantines, the Arabs, the Normans, the Anjevins, the Aragonese, the Knights of St. John, the French and finally, the British (Malta remained officially a British colony until the 21st of September 1964 when it was finally granted independence. The last British troops left Malta on the 31st of March 1979). Order-maintenance occupies a prominent position on every state's priority list for various reasons, including the ever-rising incidence of

crime, the various mutations of crime, the reactions of governments to public outcries, and the advantage taken by rival political parties on this issue. However, the prime reason for holding order-maintenance high on the political agenda remains that 'If order is not maintained, the process of nation-building will be based on only incomplete and insecure foundations' (Brewer, Guelke, Hume, Moxon-Browne and Wilford, 1996:1). In fact, Brewer et al. (1996) underlines the importance of policing by referring to police officers as protectors of civil society. Therefore, one would expect some form of policing to have existed well before the British took over Malta.

The earliest forms of public punishment, documented in Western tradition are those that originated in the Greek city-states (Peters 1998:4). Malta under the Carthaginians was governed by five councilors chosen from the citizens. This was a similar system to the Greek city states (Castagna, 1890). Although Plato argued rehabilitation and deterrence, it is more likely that the city-state adopted vengeance and deterrence. In the city states imprisonment was possible for people in remand, for those so punished or for those who had to pay debts or fines. However these did not play a large role in punishment, as most offenders were executed, banished or fined (Peters 1998:5-6).

The first mention of prison dates back to 2050 BC in Egypt. The Pharaohs had the duty to preserve public order (Peters 1998:8). The Law of Hammurabi (1792-1750 BC), in Mesopotamia, was aimed at maintaining justice. The Torah (the first five books of the Bible: Genesis, Exodus, Leviticus, Numbers and Deuteronomy), the Law book of Israel, together with the rest of the biblical writings gives us an idea of the system of punishment before and during the life of Christ. Deuteronomy, does not mention imprisonment as punishment, therefore it is likely that this form of punishment was later adopted by the Israelites from their neighbours. In later times, especially,

during the times of the Kings, one finds the use of prisons in numerous examples (1 Esdras 7:26, Jeremiah 20: 2-3, and 4 Kings 17:4). The practice of imprisonment seems to have survived Jewish practice through the Acts of the Apostles (e.g. when Saul imprisoned a number of Christians in the Acts of the Apostles 8:3 and 9:2). What is known about the above cultures relies heavily on philosophical and traditional history legacies, however none of these civilizations seem to address the problem of jurisprudence.

During its peak, the Roman Empire was comprised of sizeable cities that had schools, libraries, factories and organized corporations of skilled workers. Naturally, such a developed civilization had to have an equally developed administration to lead and maintain order in its complex society. In these times, it is assumed that order maintenance was the responsibility of the Roman military forces (Rutland, 1986:18-19): there was the legatus – a high ranker who was responsible for a legion of around 5,000 men; legions were divided into groups and centuries which were led by centurions. There were also cavalymen and slingers. These soldiers would patrol the territory to defend it and to crush any uprising.

The Maltese archipelago was conquered by the Romans in the first Punic War when, around the year 257 BC, the Roman army attacked the Maltese islands, and left them in ruins (Vella, 1974:37). From the limited documents that are available from the Roman period, it remains uncertain whether the Romans had temporarily lost the Maltese islands to the Carthaginians and then regained them. It was during the second Punic War, in the year 218 BC that, after defeating the King of Siracuse (King Hiero) and his fleet, that the Romans crossed the Mediterranean Sea and took over Malta from the Carthaginians. It was at this point that Malta became part of the Roman Empire that was staunchly set on its intent to conquer the whole of the Mediterranean. Vella

(1974:38-40) insists that, although evidence indicates that the Maltese were treated well under the Romans, this privileged treatment did not materialize before the first hundred years of Roman dominion. Vella (1974:40) explains that the Romans' respect for the Maltese and the promotion of Malta to *Foederata Civitas* (a member state) – together with the attached privileges (as for example, the right for Malta to rule itself and have its own laws) – only came about after Verres (who had been responsible for Malta) was accused and found guilty not only of stealing Maltese property but even of pilfering from the temple of Juno (something that not even pirates had dared to do). It is not known whether Verres was punished or not. What is known is that, after his crimes were brought to the attention of the Roman authorities, Malta was declared *civitas sine foedere libera* (i.e. a free and autonomous island).

It was only in 451BC, with the advent of the 'Twelve Tables', when the first written Roman Law was published, that the problem of jurisdiction started being addressed (Peters, 1998:14). The 'Twelve Tables' dealt primarily with civil law (i.e. cases by and against private individuals), although some offences against the state were also given predominance. Although the possibility of compensation existed, most offences were dealt with through capital punishment. Debts were the only offence that could be punished by imprisonment according to the 'Twelve Tables'. Debtors could be confined for 60 days, after which, if their debt was still outstanding, they could be executed. Moreover, each head of the family had the possibility to keep a cell (*ergastulum*) in his household. This was used to discipline members of the household or slaves (Peters 1998:12). Prisons are sporadically mentioned in Roman Literature. They were found both inside Rome and in other places of the Roman Empire. It seems that prison cells were rooms below ground level. It is unlikely that these cells, bearing in mind their atrocious conditions, were meant for long term prisoners. However, above



these underground chambers, there usually was another room. This room could house long term prisoners, although these were extremely rare, as the preferred mode of punishment seemed to have been execution (Peters 1998:17-18).

The early fourth century saw the publishing of the 'Theodosian Code' (320 AD). This code, together with other edicts and books, written during the era, provide us with a picture of the prison system during the time. It seems that the prisons were divided into sections. There was at least an inner section where people sentenced for hideous crimes were kept. This part of the prison was dark and damp. Prisoners never saw the sunlight and were tightly chained to the walls. The outer section was more humane. The prisoner enjoyed good health and exercise. Furthermore, during the day they were loosely chained to the wall (Peters 1998: 19).

Abela (1999:65) explains that by the fourth century AD, Emperor Constantine had made Christianity the official creed of his novel Byzantine Empire. The power shifted from Rome to Greek Constantinople and an entirely new culture and style of government were born. Malta and Gozo were transferred to the Byzantines. Accounts of prison life during the later part of the Roman Empire can be found in the Acts of the Apostles and the 'Acts of the Christian Martyrs'. These, together with the Justinian Code and Digest contributed to help us understand prison policy until the twelfth century. The latter was responsible for the shaping of the laws while the former influenced the morality of punishment.

During the Dark Ages (5th to 12th Century), Europe was invaded by the barbaric tribes of the North. These tribes had few laws. The tribes kept the laws that were in place before their invasion, therefore a citizen of Rome would be punished according the Roman Law while a citizen of Gaul would be punished according to the laws of the Gauls. Abela (1999:65) narrates how the Maltese islands experienced a

stressful period when the Vandals and Goths were plundering the Mediterranean. However, Abela (1999:66) claims that although one would have expected Malta to follow Sicily's fate and fall prey to the Vandals and Goths, this remains 'in the realm of conjecture'. Luckily for Malta, the Byzantines restrained these invaders and ruled the Mediterranean for a very long time and stayed in Malta for about four hundred years. According to Abela (1999:66), Malta was used by the Byzantines as a sort of headquarters for their policing manoeuvres against the Vandals and Goths in the Mediterranean. Although possibly overshadowed by its older and much bigger sisters in the regional subdivision (i.e. Sicily, Basilicata, Calabria and Puglia), it is believed that the Maltese islands had the same Code of Laws as the rest of the Byzantine Empire: the Justinian Code (AD 429), which incorporated the Theodosian Code. This code dictated that a region fell under the responsibility of the Praetor (i.e. Civil Governor). Abela (1999:66) explicates that a Dux (a kind of Garrison Chief) represented the Empire in Malta and Gozo and was responsible for the defence of the islands. The Dux was accountable to the Head of the Army of the East.

It was precisely from the east that a new power was rising: the Arabs. They were spreading rapidly and engulfing, not only the surrounding lands but also much of southern Europe. This was not solely a military force, because after the warriors came the scholars who, for a period of time, managed to rekindle the light that had been extinguished with the fall of the Roman Empire (Perry, 2011). Before the inception of Islam (and therefore monotheism in the Arab lands) most Arabs were Bedouins however their new religion, Islam must have motivated them to look beyond, to venture, conquer and spread their Muslim creed. Abela (1999:73) explains how wherever the Arabs went, they instituted their style of government and their religion. 'Islam believed in a theocratic state where the State religion provided the State Law (Islamic shari'a).

Wettinger (1986), explicates that the Maltese were not forced to abandon their Christian faith and embrace Islam because the very Koran (Islam's holy book) stipulates that Moslems were not to hinder the religion of those considered as followers of a holy book religion like, for example, the Jews or the Christians. However, Abela (1999:74) reminds his readers that, although they did not force the Maltese to convert to Islam, the Arabs made it very clear that 'converts to ... Islam ... would receive preferential treatment'. Under the Arabs, the conquered country was ruled by various officials: the 'qa'di/qa'id' was responsible for the routine running of affairs; the 'mazalun' passed appeals sentences (and others that were beyond the competence of the 'qa'di/qa'id' ; the 'duwana' collected taxes; the 'ri'asa' acted as arbiters between the officials and the community, while the 'sahib el-xurta', acted as the police. One would suppose that punishment was also governed by the Islamic shari'a whose main aim is to achieve justice and mercy (Powers, 2006: 127). Punishments are taken from the Holy Koran which indicates the punishment should follow the formula of a 'Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal for equal'. Therefore imprisonment during this time was non-existent. Punishment took the form of executions or the payment of fines. The Koran allows for the injured to show mercy. Therefore a punishment could be transformed into compensation (or Diya).

### **From the Normans to the Knights of St. John**

Wettinger (1986) describes how, in around the year 1090, Count Roger took over the Maltese islands, how the 'qa'di/qa'id' humbled himself and negotiated with the Count, reaching an agreement whereby the Maltese islands fell under the Normans but the Arabs were allowed to stay on as care-takers, provided they adhered to a list of conditions. Thus socially, culturally and religiously there was little or no change in Malta. The real change came about in 1127 when Count Roger II completely took over

the Maltese islands and although the Arabs were not chased out of the islands, Christianity was restored. Even the Normans had to impose order so they created their own set of positions: the 'castellan' who was the person in command of the Birgu (one of the Three Cities of Cottonera - Malta) castle. In those times, the biggest two zones in Malta were Mdina and the Birgu castle. The position of head of the castle was entrusted to family de Nava and remained their inherited responsibility until the advent of the Knights of St John. Besides creating other important positions, Count Roger II entrusted a Norman 'emir' with the task of administering Malta. He also left officials in charge of: the people's health, collecting taxes and distributing lands (Abela, 1999:91). Other important roles included: the port captain and the justice captain – which were both policing positions. Indeed, in Abela's (1999:91) words, the Normans left 'a garrison of military personnel to help keep law and order by force where persuasion failed'. Therefore, even in Norman times, policing was left in the hands of the military.

The Normans took Malta into the Middle Ages ... a period rife with instability in Europe, in which spirituality was put aside even by the highest Christian authorities who became more interested in generating wealth and leading crusades to the Holy Land to suppress the 'infidels'. Love for adventure and chivalry and material ambitions took over (Abela, 1999:92). Evidently, the conversion of Moslems must have been just an excuse for quite a number of kings and nobles that embarked on the crusades. Abela (1999:100) claims that 'treason, betrayal, poisonings, hypocrisy and murder were the order of the day ...very often the normal administration of justice was non-existent.' The will of the strongest prevailed: might was right. Abela (1999:100) explains how 'baronial conspiracies germinated ... to set the stage for what later was to develop into the omerta' type of justice that came to be popularly known as mafia.' Piracy flourished in the Mediterranean Sea ... and many were lured into engaging in it,

creating their own private fleets (Abela, 1999:100). Brutality was the order of the day in the Middle Ages ... a period in which it must have been customary to take justice into one's own hands rather than appeal to any force. It was during this time that the feudal system emerged. Through this system, pieces of valued lands – or islands, such as in the case of the Maltese archipelago – were handed over to nobles and the inhabitants of these territories had to work the land and pay, often hefty taxes. These taxes enhanced the revenue of the nobles and, in turn, that of the king. It was not rare for these nobles to further divide their land and distribute it to their loyal subjects. The higher the rank of the noblemen, the greater was their privileges. The poor, tax-ridden farmers were little more than slaves. The noblemen were like mini-kings. Nobody interfered in their affairs – not even the king. They could deal with their subjects as they deemed fit. Thus, justice and order maintenance was in their hands. Consequently, they policed – and punished – their people themselves.

During these times the Maltese archipelago 'was nothing more than a fiefdom appendage of Sicily' (Abela, 1999:101) and this is how it was handed over to the Anjevins. The Anjevin reign was a cruel one. Abela (1999:101) explains that Malta's remoteness might have saved the Maltese from the full brunt of Anjevin brutality however, the Sicilians were not so lucky. They reacted in the only way they possibly could have reacted: by 'vengeful sabotage with the consequent cohesive bond of solidarity and the pledge of silence among the perpetrators' (Abela, 1999:101). Under the Anjevins, the mode of government remained the same in Malta. It was presided over by a governor – the king's lieutenant – who acted also as administrator and commandant and supervisor of the fortifications. He was responsible for the general administration of Malta and this included: tax collection, the routine repairs of the fortifications and protecting Malta from the pirates that swarmed the Mediterranean

Sea. Thus, the governor's role also covered the policing of the Maltese islands. Abela (1999:102 ) narrates that eventually (in 1273), 'Charles I of Anjou decreed that his representative in Malta would retain the duty of Castellan while the other duties, like Administrator, Procurator and Commander would be distributed among other gentlemen.'

In these turbulent times, the Anjevins were soon being confronted by the Aragonese who sought superiority in the Mediterranean Sea. The Aragonese were assisted by the disgruntled Sicilians, particularly by a nobleman referred to as John of [the island of] Prochyta, the Genoans and the Venetians. Vella (1974:111-113) narrates how this conspiracy was originated in Malta and was nicknamed: 'I Vespri Siciliani' because the bloody revolt commenced during the vespers (the evening Church service) of Easter Tuesday of 1282. This is how the Anjevins were expelled from Sicily and replaced by the Aragonese under king Pedro III of Aragon and later under Frederic III of Sicily, his son. However, the Maltese had to endure Anjevin rule until July of 1283 when the Aragonese confronted them and drove them out also from Malta. However, this certainly did not mark the start of a rosy and stable period for the Maltese. Abela (1999:111) describes how 'the feudal system based on bartering and selling off to the highest bidder or to the best proponent ... brought about a lack of overall trust and credibility' and thus, a lack of stability. Although they were constantly promised loyalty by their monarchs, the islands of Sicily and Malta passed from one hand to another. As if the rulers' treachery was not enough, Frederic IV king of Aragon visited the islands in 1372 and conned the Maltese nobility into donating much of their wealth to finance his attack on the Anjevins in Naples. They were promised the prosperity that should have resulted from the removal of the nearby Anjevins. Instead, what resulted was anarchy (Abela, 1999:113) and a web of conspiracies that led to the further division

of Sicily and confusion in Malta. To add insult to injury, the Maltese even shouldered additional taxes towards the wedding gift of the king's son, Martin – who eventually ruled over Malta and treated it no better. The same can be said of all his successors. The pattern remained the same: betrayal of the Maltese subjects. However, order maintenance remained a priority for the rulers of Malta ... and perhaps, the discontent of the Maltese made it even more necessary. Abela (1999:115) explains that evidently, in Malta, there were two governing bodies: the parliamentary assembly or 'Comune' and the 'Consiglio Particolare' or 'Universita'. The former took decisions on: taxes, privileges, customs and sacred traditions while the latter 'proposed laws and made recommendations to the Feudal Lords who ... usually granted them without too much hassle.' Punishment was in the hands of the overlords who could decide over the lives and future of the lower castes, who were little better than staves. The Aragonese acknowledged the need to defend the vulnerable Maltese islands and had the locals set up the Dejma corp (Vella, 1974:139) – which initially was constituted of volunteers whose duty was to oversee and protect the islands. All citizens had to contribute in some way towards the Dejma, according to their means and position in society. It was the duty of Maltese heads of families to have, in their possessions weapons that could be used to defend themselves and their families. In addition, Vella (1974:139-140) explains that captains (who had the power to administer justice) assigned strategic points to the different families, making them responsible for safeguarding these vulnerable areas. So, if during this time, when many Maltese were pirates themselves (Vella, 1974:152), the islands' defences was left in the hands of the locals, it could well be that policing was very much a do-it-yourself job... vigilantes style.

Castagna (1890:145) narrates that in 1523 a pirate ship brought the bubonic plague in Malta for the second time (The first time the epidemic broke out was in 1675

when 11,000 people perished out of a population of 70,000. The plague re-emerged in 1813 when about 4,500 people died out of a population of 96,400 [[http://www.emergency-management.net/malta\\_di.htm](http://www.emergency-management.net/malta_di.htm) accessed on the 6th of July, 2007]). The port captain notified Mdina immediately and the Council promptly decided that the sick had to be quarantined and treated and that their ship had to be burned down – cargo and all. Alternatively, they had to leave and sail back to their place of origin (referred to by Castagna as Barbaria). Apparently, the unfortunate passengers of that ship resisted the idea of being quarantined and losing their ship and freight however, their opinion was ignored and the University immediately ordered that the ship be set on fire and that its infected passengers be quarantined. Since Birgu had been tainted with the plague, it was cordoned and the University sent guards to stop people from exiting or entering it. Castagna (1890:145) recounts how the people of Birgu (about 5,000 of them) reacted negatively to this situation, revolting and how the Castellan of Birgu (vice admiral Alvaro Nava) arrested the noble Gerardo Inguanez who had been sent by the University as a commissioner to enforce the quarantine. The people of Mdina and Birgu did not see eye to eye and their leaders – Nava and Inguanez – were always enemies. The Castellani did not depend on the University and they were constantly at loggerheads with the Captani Ballii – chiefs of the main city. Luckily, the plague did not come out of Birgu however it did take long and consequently, it caused the demise of several people. After this outbreak of the plague, precautionary new measures were taken: quarantine regulations, penalties for dealing with infected or potentially infected ships and the recruitment of port guardians who enforced the new laws. Therefore, in this case, policing was left to the hands of the port guardians.

Castagna (1890:146) argues that during those times, the Maltese were particularly anxious ... not only in the face of death but in that of life. This fear of life



was kindled by the news that king Charles was about to hand over the Maltese islands to the Knights of the Order of Saint John after they had been expelled from Rhodes.

Castagna (1890:146) stresses that this news was very badly received by the Maltese who, in 1427, had been formally promised by king Alfonse that neither he nor his successors would ever again cede the islands of Malta and Gozo to someone else.

However, in spite of the defiant stance taken by the Maltese University, the Maltese had to yield to the king's order to cordially accept eight representatives of the Order of the Knights of Saint John – eight knights – and to take them round Malta and to show them whatever they wanted to see. The captain of arms had to be a member of this

welcoming party. In May 1530, Charles V passed Malta and Gozo to the Order of Saint John. In return, the knights pledged to protect Christianity in the region and to give a falcon to the king every year as well as to give him the right to nominate the bishop of Malta (Castagna, 1890:167). Under the knights, Malta was governed by four different councils: the Complete, the Ordinary, the Secret and the Criminal. Abela (1999:137) explains that 'the Supreme Authority within the Order was vested in ... the complete council, presided over by the Grand Master or his Lieutenant'. He explicates that the 'Ordinary Venerable Council of the Sixteen met with the Grand Master to discuss and decide all the daily matters dealing with the running of the Order', and that the 'Secret Council ... dealt with sensitive matters of State'. Of particular interest to this write-up is the fourth council: the Criminal Council. This council dealt with all issues associated with the Order's domestic discipline. It even had the authority to send to jail any knight who was so sentenced. Several members (even grandmasters like de la Cassiere) were sent to prison. Duelling was also a crime carrying a jail sentence when the law breakers were apprehended and brought to court (Abela, 1999:138). Thus, besides maintaining

order in Malta through the 'Gran Visconte', the knights had the faculty to police their own.

During the reign of the order of the knights of St. John there were different prisons for different people – the knights, the government, and the inquisition all had their own prison. Sometimes people processed by one court ended in the prison of another jurisdiction. The knights has the guva – which was an underground prison in Fort St. Angelo usually used to imprison slaves or knights found guilty of grievous crimes such a murders or extreme violent behaviour, and in rare cases those awaiting trial. Another three guva's were found on the island of Gozo, although there is no indication where these were. From the prison sentences reviewed it seems that Gozo was the place of choice to incarcerate murders and serious offenders. The knights did not only deal with offenders through prison sentences. Other prisons existed in the Forts. There is mention of prisons in Fort St. Angelo, Fort St. Elmo and Fort St. Michael (a fort which today no longer exists). These prisons were mainly reserved for those found guilty of breaking the vows of chastity, debtors, minor crimes, those awaiting trial and to encourage confessions (Bonello, 2003).

Wayward knights could be confined to house arrest, be prohibited from leaving Malta or be exiled from Malta. Some were sent to Gozo, either in the Gozo guva or to reside their (as the isolation of Gozo was considered to be a punishment in itself), while others were sent back to their families. Offenders could also be locked up in their bedrooms either for 40 days (quarantena) or for seven days (settena) – with or without being flogged or be condemned to rowing the galleys. Compensation was also possible under the rule of the knights, as it is attested in one of the cases where a knight was condemned to give 50 sucudi to a Maltese for having grievously injured him (AOM

88,f.75). For escaping from prison Knights could be defrocked (AOM 95, f.32, 84). It was the prerogative of the grand master to issue pardons (Bonello, 2003).

The Knights of St. John founded the Magna Curia Castellania Melitensis (the Maltese Grand Court of the Castellania). This court was introduced by Grandmaster L'Ile Adam to administer Malta. It dealt with both civil and criminal law cases. When the court moved from Birgu to Valletta in 1572, Grandmaster La Cassiere ordered that lawyers were to submit their warrants to the court, that the Gran Visconte (what today one would consider to be the Commissioner of Police) was to go every morning to the court to report to the Castellano (a knight who had the function to see that justice was fairly administered) and the judge any criminal acts that happened during the night (Cassar, 1988: 21).

The punishments inflicted by the Castellania Court included the pillory where the offender was sat on a donkey and flogged, while being ridiculed and walked through the streets of Valletta. The Castellania Court was also used as a prison (Attard, 2000). People held in prison could be under arrest, sentenced for a criminal offence or debtors held in prison on request of their debtors. People sentenced to death were also held in the Castellania. They would spend their final three days in prayer. At the end of these days the offender was taken to the gallows outside Valletta (Cassar, 1988: 35-7).

At the end of the 12th Century the Roman Catholic Church began to interest itself in the plight of prisoners. This would later inspire the Canon Law of the Latin Christian Church. Bishops had the duty and authority to discipline and correct wrong doers. The idea that was emerging from the church was that penitentiaries were places where discipline, correction and mercy could reform a sinner. The church did not condone prisons that resulted in death or torture. Since the advent of the Normans the Pope considered himself as the overlord of the islands. The first pro-inquisitor sent

from Palermo (Sicily) was Fra Matteo da Malta in 1433. The Pope's influence on the island was not only a spiritual one but also a temporal one (Vella: 1974: 8).

The revival of the prisons in medieval times occurred through monasteries. Monasteries had a disciplinary cell, a revival of the Roman 'ergastulum', where abbots could imprison for disciplinary reasons. This type of imprisonment was usually used with other disciplinary methods such as fasting and flogging. During the 12th century, bishops were not only given the power to judge and imprison criminal members of the clergy but were also expected to have a prison. In 1298, Pope Boniface VIII, in his book 'Liber Sextus' was the first ruler of the western world to make the proviso of imprisonment as punishment. Bishops could imprison offenders for a period of time or for life (Peters 1998:27). The eighth and ninth century church also had some jurisdiction on lay people in matters pertaining to the most grievous 'criminal sins', such as heresy, incest and magic. For these crimes canon law prescribed imprisonment – 'carcer'. Canon law continued to evolve and develop. Until the 12th Century, criminal procedure relied heavily on the accusatorial system, whereby a person or a ruling body accuses another person with a crime. This century saw the re-enactment, by Pope Innocent III of an old Roman tradition, the inquisitorial system, whereby the tribunal would investigate a crime. This system was used on both clergymen and lay people (Peters 1998).

Abela (1999:142) explains that 'the Inquisition was a judicial tribunal and was institute by the Popes in Rome to foster the teachings of the Catholic Church and safeguard and protect same from any ... distortion or error by unorthodox believers.' There were three kinds of Inquisition: the Medieval, the Spanish and the Roman. Malta had the Roman Inquisition which was set up in 1542 by Pope Paul III via the bull referred to as 'Licet ab Initio'. This was the earliest official confrontation of Luther's

1517 Protestant Reformation – a stand that strengthened the Catholic dogma and placed the Church in a stronger offensive position. War was declared on ‘heretical practices, including blasphemy, apostasy to Islam, bigamy, perusing of prohibited books, and a myriad of magical beliefs’ (Gambin, 2004:6). Gambin (2004:6) narrates that the Roman Inquisition was official established in Malta in 1574. Of the three types of Inquisition, the Roman is believed to be the mildest and although still harsh, torture ‘was used rarely, and was mild when compared to that used by contemporary secular governments’ (Gambin, 2004:6). The Inquisitorial system was based on secrecy thus, inquisitors ‘and their ministers were bound by very strict oaths of secrecy’ (Gambin, 2004:6). Breaking these oaths led to excommunication from the Church. Thus, the Inquisition could be considered as a kind of policing wherein the inquisitor could be seen as an investigator vigorously interrogating suspects and his cursores (messengers), the subordinates that would bring the accused to him

(<http://www.newadvent.org/cathen/08061a.htm> accessed on the 8th December 2012).

The Inquisitor’s Palace at Birgu, had not been planned to house a prison. This led to an inadequate place to keep prisoners. It was only in 1605, that Inquisitor Ettore Diotallevi, felt it necessary to repair the prison. Various inquisitors continued repairing and trying to increase the prison space but it was Inquisitor Gio. Battista Gori Pannellini who in the mid-17th Century purchased a house adjacent to the palace. He constructed three large cells overlooking the street (pubbliche) and four small cells overlooking the garden (segrete). The latter cells were for those undergoing a prison sentence, while the former were for those under arrest (Gambin, 2004: 12). The inquisitors tried to use the prison as little as possible in order to reduce the money needed for the maintenance of the prisoners. Prison sentences were rare, often sentences took the form of confinement in the offender’s house/village, having to pray, or sent to another prison

such as the slaves prison (if you were a slave) or in the guva, an underground pit used to discipline the knights (Gambin 2004:28).

According to Vella (1974: 41), the Maltese Inquisition in Malta was different than that found elsewhere in Europe. Although one still finds abuses, especially in the hands of the guards, the Maltese felt that the Tribunal was a means of checking the Grandmaster from imposing unfair laws and takes as well as an appellate court that could be used to overthrow judgements from the civil court or the bishop's tribunal.

From the secular side one finds that between the sixth and the twelfth century, Europe saw the revival of the Latin Law being amalgamated with the laws used by the common people. The study of legislation became of major importance during the end of this period. The building of the Tower of London in late twelfth century Anglo-Saxon England, was the first official state prison. Although the most common punishments were death, mutilation, exile or compensation, imprisonment was used for theft and witchcraft. From the twelfth century onwards one sees an increase in both the number of prisons and of offences punishable by imprisonment in England. It was also the custom for rich noble men to keep their own prisons. These could either be some rooms, a tower in the castle or an entire castle. Not all prisoners were kept at the same level of comfort. Rich prisoners could afford to pay for their comfort, however those who could not afford to pay were often kept in dire conditions (Peter 1998:31). This is also reflected in Malta. The old prison in Gozo is a clear example of this. The poor were kept in a communal cell, while the prisoners who could afford to pay were kept in single cells, some of which also had a private toilet.

Medieval prisons seemed to have been the sight of unmentionable torture, however their development led legislators to create amendments to the law whereby a death sentence could be commuted into life imprisonment. This was preferable,

because if proof of the person's innocence was forthcoming subsequent to the trial, a life sentence could be changed while a death sentence could not. The 13th century could be considered as the turning point in prison history. From this point onwards prisons began to resemble, more and more what later were to become the modern prison and less the ancient prisons.

### **The Final Chapter: The French in Malta**

Imprisonment and prisons of twelfth century France was similar to those of England during that period. With aristocrats and those that had the means to pay being treated in a better way than the destitute. The only systematic prisons in France were those of Paris, and the castles that could house royal prisoners until they could be transferred to the capital city. Prisons were periodically inspected. Moreover prisoners were classified according to their gender, type of offence and social class. After the French revolution (1789) there was a myriad of revolutionary penal reforms, the most important being that prisons were to be used for confinement and not for punishment. This led to numerous reforms that were later to influence the whole of Europe (Peters 1998:36).

The Knights Hospitallers of St John remained in Malta for 268 years. In a way, it was the French Revolution in 1789 that brought about the end of their stay in Malta. It was the French revolutionaries that impounded the Commanderies of the three langues (Provence, Auvergne and France) and disbanded the Order of St John in France. In addition, the free masons living in Malta – in other words the ex-Templar knights that had been disbanded thanks to the efforts of the Hospitallers – sought revenge for their loss of status and property to the Hospitallers. Furthermore, the Maltese had grown tired of the knight's arrogance and disrespect. The University (the ruling body of nobles) in Mdina grew increasingly irritated at the way the knights never consulted them on matters regarding the government of their own country, especially with regards

to tax issues. Consequently, they were anxious to find a way of getting rid of their aristocratic masters and little cared how. All these factors made Napoleon's attempt to take over Malta easier ... and successful (Vella, 1979:215-226; Abela, 1999:165-164). However, if the Maltese were expecting a better life under the French, they were mistaken. In fact, it could be said that they fell from the frying pan into the fire. The French were anxious to remove from Malta, any reminder of the Hospitallers so they ravaged and plundered as much as they could (Vella, 1979:226-230).

Vella (1979:219-223) explains that in the six days that Napoleon Bonaparte spent in Malta, he managed to completely change the governing system of the Maltese archipelago which was divided in twelve municipalities and ruled by a commission. Every municipality had a 900-men battalion which together made up the uniformed National Guard. Those that had been previously employed with the Order of Saint John joined four specialized combat companies (two of which were sent on missions to Corfu). In addition, four defence companies of bombardiers were established to guard the coast and men were encouraged to join the 100-men company of paid hunters who could be deployed to Alexandria to assist the sizeable French army. Napoleon even imposed regulations on people's attire, removed honorary titles and declared that all citizens were equal in front of the law. Moreover, he ordered that all the coats of arms of the different nations (that composed the Order of the Knights of Saint John) be replaced by the coats of arms of the French republic. He also imposed numerous restrictions on the Church and clergy in Malta. More pertinent to this write-up however, is Napoleon's contribution to policing in Malta: He ordered that the high commander of the police be responsible for all that happens in and around the Maltese islands (in Malta's territorial waters). The police high commander was also in charge of the civil, judicial and administrative organization. This extensive task involved the



compilation of an inventory of all the assets in Malta. If necessary, land and buildings were to be sold to amass the sum of 150,000 francs but this could only be ordered by the police high commander (Vella, 1979:221).

Indeed, the Maltese had found themselves flung into the fire. Those they welcomed as heroes turned out to be even more arrogant than the Knights of St John (Abela, 1999:170). Although some of Napoleon's new policies could have been beneficial to the Maltese, the Maltese resented the fact that they were all imposed. Ironically, the French did not practise their famous French Revolution slogan of 'Fraternite, Egalite, Liberte'' in Malta (Abela, 1999:171). Instead, they were despotic. The new taxes, Napoleon's interference in religious matters and the continuous pilfering of Maltese treasures must have enraged the Maltese to a point that, 'Word spread among the populace, especially by means of the members of the Dejma ...' (Abela, 1999:170), the Maltese organized themselves and revolted. Luckily for them, the English Lord Horatio Nelson happened to be in the vicinity of the islands and interceded against the French. This started a new era in Malta: the era of British occupation...

## **Conclusion**

This study sought to scope the lifespan of the Maltese criminal justice as influenced by its various conquerors – the Carthaginians, the Romans, the Arabs, the Normans right through to the French period. Each conqueror brought with them their system of control, not because they were particularly interested in the wellbeing of the Maltese but in order to control the population. From these rudimentary beginnings emerged the birth of the Maltese Criminal Justice, a system influenced by the Roman Civil Law and the English Common Law. The system currently in place owns its birth to the British Empire, whose influence was beyond the scope of this discussion the foundation of the Maltese criminal justice system comes mainly from the Roman civil system as

implemented by the Romans, the Normans and the French during their occupation. Had Malta not been tossed from one conqueror to the next the development of its criminal justice would have probably been fundamentally Civil, however with the British occupation one sees a hybrid mix model where the civil and the common law traditions work hand in hand.

### **Bibliography**

Abela, J.S. 1999. Malta: A Panoramic History. Malta: Publishers Enterprises Group Ltd.

Abercrombie, N. Hill, S. and Turner, B.S. (Eds.). 1988. Dictionary of sociology.

London: Penguin Books.

Attard, E. (2000. Il-habs: L-istroja tal habsijiet f' Malta mill-1800. Malta: Palprint Press.

Bonello, G. (2003. Histories of Malta: Convicts and conjectures Vol.IV. Valletta:

Patrimonju Publishing.

Beccaria, C. 1764. On crimes and punishment. Translated from 'Dei delitti e delle pene'. Second edition 1992. International pocket library: Boston, USA.

Bowling, B. and Sheptycki, J. (2012. Global Policing. London: Sage Publications Inc.

Binmore, K.G. 1998. Game theory and the social contract: Just playing. USA:

Massachusetts Institute of Technology.

Boucher, D. and Kelly, P.J. 1994. The social contract from Hobbes to Rawls. London:

Routledge

Brewer, J. D., Guelke, A., Hume, I., Moxon-Browne, E. and Wilford, R. 1996) The police, public order and the state: Policing in Great Britain, Northern Ireland, the Irish Republic, the USA, Israel, South Africa and China, (2nd ed.), UK:

MacMillan Press.

Castagna, P.P. 1890. Storia ta Malta Bil Gzejjer Tahha: Storia Politica. (2nd Ed. Malta: Stamperija C. Busuttil.

Cassar, C. 1988. Everyday life in Malta in the nineteenth and twentieth centuries. In V. Mallia Milanese (Ed.). The British Colonial Experience 1800-1964: The Impact on Maltese Society. (pp.91-126. Malta: Mireva Publications.

Cole, G.F., Smith, C.E., and DeJong, C. (2012) The American system of Criminal Justice. 13th ed.. Belmont, CA.: Wadsworth, Cengage Learning

- Erckel, S. (2008). Classical social contract theory. Germany: GRIN Verlag.
- Gambin, K.(2004). The Inquisitor's Palace Vittoriosa. Malta: Midsea Books.
- Lee, H.I. 1964. British policy towards religion, ancient laws and customs in Malta.  
Malta: Melita
- Morris, N. and Rothman, D.J. 1998. Introduction. In N. Morris and D.J. Rothman  
(Eds.). The Oxford history of the prison: The practice of punishment in western  
society. (pp.VII-XIV. Oxford: Oxford University Press.
- National Archives of Malta, Curia Gubernatoriali (Courts of Law), No. 88, folio 75
- National Archives of Malta, Curia Gubernatorale (Courts of Law), No. 95, folio 32
- National Archives of Malta, Curia Gubernatorale (Courts of Law), No. 95, folio 84
- O'Connell, J.P. (Ed.). 1959. The holy family bible. UK: Harwin Press.
- Perry, M. (2011). Western Civilization: A Brief History, Volume 1: to 1789, 7th Edition.  
Belmont, CA.: Wadsworth, Cengage Learning
- Peters, E.M. 1998. Prison before the prison: The ancient and medieval worlds. In N.  
Morris and D.J. Rothman (Eds.). The Oxford history of the prison: The practice  
of punishment in western society. (pp. 3-43. Oxford: Oxford University Press.
- Pollock, J.M. (2011). (7th ed.. Ethical dilemmas and decisions in criminal justice.  
Belmont, CA.: Wadsworth, Cengage Learning
- Powers, P.R. (2006). Intent in Islamic Law: Motive and meaning in medieval sunni fiqh.  
Leiden, The Netherlands: Koninklijke Brill NV.,
- Roberts, A.R. and Henry, V.E. 1996), Police response to domestic violence complaints.  
In R. Muraskin and A.R. Roberts (Eds.), Visions for change: Crime and justice  
in the twenty-first century. (pp. 73-95. New Jersey: Prentice Hall.
- Rutland, J. 1986. See Inside a Roman Town. London: Kingfisher Books.
- Skyrms, B. 1996. Evolution of the social contract.UK: Cambridge University Press.
- Vella, A.P. 1974. Storja ta' Malta. (Vol.I. Malta: Edizijoni Klabb Kotba Maltin.
- Vella, A.P. 1979. Storja ta' Malta. (Vol.II. Malta: Edizijoni Klabb Kotba Maltin.
- Vella, E., Borg, M. and Bonanno, A. 1974. L'Arkeologija ta' Malta. Malta: Pieta'  
Publika Indipendenza.
- Wettinger, G. 1986. The Arabs in Malta. Malta: Studies of its heritage and history,  
Mid-Med Bank: Malta, pp. 87-104. , URL (last checked 31 January 2012)  
<http://melitensiawth.com/incoming/Index/The%20Arabs%20in%20Malta/198601.pdf>

**Internet sites**

[http://www.emergency-management.net/malta\\_di.htm](http://www.emergency-management.net/malta_di.htm) accessed on the 8th December 2012

<http://www.newadvent.org/cathen/08061a.htm> accessed on the 8th December 2012