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Galileo's Non-Trial (1616), Pre-Trial (1632–1633), and Trial (May 10, 1633): A Review of Procedure, Featuring Routine Violations of the Forum of Conscience

HENRY ANSGAR KELLY

This article examines Galileo's confrontations with the Holy Office of the Roman Inquisition in light of the rules and technicalities of inquisitorial procedure as set forth in the Corpus juris canonici, officially issued in 1582 under the auspices of Pope Gregory XIII. The primary decretal governing inquisition comes from the Fourth Lateran Council of 1215, which also established the regulations of sacramental confession and the seal of secrecy. Inquisition was intended for the prosecution of public crimes, but when it was adapted to pursuing heresy, the rights of suspects were regularly disregarded, and, rather than being charged with public crimes, they were forced to incriminate themselves, even on secret deeds and previously unuttered beliefs. When first summoned in 1616, Galileo was not questioned, but merely warned not to espouse heliocentrism. In 1632, Holy Office investigations resulted in a summons, and when he appeared in April 1633, he was interrogated without being charged. His formal trial took place on May 10, and his guilty plea of favoring heliocentrism without heretical intention triggered an automatic examination of his private beliefs under torture (in his case, threat of torture), a new procedure adopted by the Holy Office around the turn of the seventeenth century.

An earlier version of this paper was presented in a symposium, "The Roman Inquisition in the Time of Galileo," held in the Center for Medieval and Renaissance Studies at UCLA on February 26, 2016, the 400th anniversary of Galileo's encounter with Cardinal Inquisitor Robert Bellarmine; see: http://cmrs.ucla.edu/wp-content/pdfs/conferences/2016feb26_galileo_conference.pdf. The author wishes to thank the other participants for their encouragement: namely, Christopher Black, Francesco Beretta, Maurice Finocchiaro, Paula Findlen, John Heilbron, Thomas Rausch, and Jane Wickersham, with especial gratitude to Professor Finocchiaro for his meticulous corrections and advice. For his own contribution to the symposium, see Maurice A. Finocchiaro, "Galileo's First Confrontation with the Inquisition (1616): Four Orders and Three Issues," *Galilaeana* 13 (2016).

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I. INTRODUCTION

THE trouble that Galileo Galilei had with the Roman Inquisition is famous. Almost everyone knows something about it, but not many know much, or know much accurately, about what went on, and how, and when, and why. An example is Stephen Greenblatt's recent assessment: "Still protected by powerful friends and hence spared torture and execution, the convicted scientist was sentenced to life imprisonment, under house arrest."¹ As will become apparent, Galileo was in no danger of execution, and the reason he escaped torture was probably his frail physical condition. The sentence was to imprisonment at the discretion of the Holy Office, commuted after one day to villa arrest, along with three years of weekly penitential prayer. The aim of the present article is not only to establish what happened, but also to ask how far the actions conformed to the standard procedures of the Holy Office.

In specialized studies on Galileo,² even though interpretations vary about the meanings of events and the motivations behind them, there is a basic sameness to the accounts of the events themselves, because the data are readily available in printed records.³ But for the most part scholars have not approached these

¹Stephen Greenblatt, *The Swerve: How the World Became Modern* (New York: Norton, 2011), 255.

²For instance, Mario Biagioli, *Galileo, Courtier: The Practice of Science in the Culture of Absolutism* (Chicago: University of Chicago Press 1993); Annibale Fantoli, *Galileo: For Copernicanism and for the Church*, trans. George V. Coyne, 3rd ed. (Vatican City: Libreria Editrice Vaticana, 2003); Fantoli, *The Case of Galileo: A Closed Question?* trans. George V. Coyne (Notre Dame: University of Notre Dame Press 2012); Maurice A. Finocchiaro, *Retrying Galileo, 1633–1992* (Berkeley: University of California Press, 2005); Finocchiaro, *Defending Copernicus and Galileo: Critical Reasoning in the Two Affairs* (Dordrecht: Springer, 2010); Richard J. Blackwell, *Behind the Scenes at Galileo's Trial* (Notre Dame: University of Notre Dame Press, 2006); Antonio Beltrán Marí, *Talento y poder: Historia de las relaciones entre Galileo y la Iglesia católica*, 2nd ed. (Pamplona: Laetoli, 2007). See also Dan Hofstadter, *The Earth Moves: Galileo and the Roman Inquisition* (New York: Norton, 2009); J. L. Heilbron, *Galileo* (Oxford: Oxford University Press, 2010); and David Wootton, *Galileo: Watcher of the Skies* (New Haven: Yale University Press, 2010).

³Sergio Pagano, *I documenti Vaticani del processo di Galileo Galilei (1611–1741)*, Collectanea Archivi Vaticani 69 (Vatican City: Archivio Secreto Vaticano, 2009) (hereafter cited as *DV*). Cf. Pagano's earlier collection, *I documenti del processo di Galileo Galilei* (Vatican City: Archivio Vaticano, 1984). Many of the important documents are translated in English in *The Trial of Galileo, 1612–1633*, ed. and trans. Thomas F. Mayer (Toronto: University of Toronto Press, 2012) (hereafter cited as *TofG*); also in Maurice A. Finocchiaro, *The Galileo Affair: A Documentary History* (Berkeley: University of California Press, 1989). An abridged version of Finocchiaro's volume, with some additional documents, is *The Trial of Galileo: Essential Documents* (Indianapolis: Hackett, 2014). In what follows, the translations are all by the present author; *TofG* is referred to only to indicate where Mayer translates the original document cited. Mayer's translations are often "literal to the point of awkwardness," as Geoffrey Eatough says of his own *Frascatore's Syphilis* (Liverpool: Francis Cairns, 1984), viii, but this style can often be helpful in conveying the sense of the originals. Some documents not in *DV* can be found in *Le opere di Galileo Galilei*, ed. Antonio Favaro, 20 vols. (Florence: G. Barbèra, 1890–1909; repr. 1929–1939) (hereafter *OGG*).

events from the viewpoint of judicial procedure. The same is true even of historians who have treated more globally of the activities of the Roman Inquisition.⁴ Notable exceptions are Francesco Beretta,⁵ Jules Speller,⁶ and Thomas Mayer,⁷ and this study will be following in their footsteps, but with a new emphasis: here the focus will be on the laws of due process in inquisitorial procedure established at the Fourth Lateran Council in 1215, which were still in force in the sixteenth and seventeenth centuries. Various ways in which these requirements were circumvented in heresy prosecutions will be described, with the prosecution against Galileo serving as a case study of such proceedings.

The chief violation of due process in these prosecutions was to deprive suspects of the canonical equivalent of their “Miranda rights” before the formal trial by inquisition took place,⁸ which can be seen in Galileo’s case. What everyone calls “the trial of Galileo” consisted almost entirely of pre-trial maneuvers. The following pages will pinpoint for the first time his actual trial, which must have lasted only an hour or so, on May 10, 1633. The trial was a *contestatio* between the prosecutor, Carlo Sincero, and Galileo before the presiding judge, commissary (deputy inquisitor) Vincenzo Maculano, a Dominican friar (OP), but even Sincero was not present. The

⁴See especially Andrea del Col, *L’Inquisizione in Italia: Dal XII al XXI secolo* (Milan: Mondadori, 2006); del Col, *L’Inquisizione del patriarcato di Aquileia e della diocesi di Concordia: Gli atti processuali, 1557–1823* (Udine: Istituto Pio Paschini, 2009); Christopher F. Black, *The Italian Inquisition* (New Haven: Yale University Press, 2009); Katherine Aron-Beller, *Jews on Trial: The Papal Inquisition in Modena, 1598–1638* (Manchester: Manchester University Press, 2011). However, Jane K. Wickersham, *Rituals of Prosecution: The Roman Inquisition and the Prosecution of Philo-Protestants in Sixteenth-Century Italy* (Toronto: University of Toronto Press, 2012), does have a strong emphasis on procedure.

⁵Francesco Beretta, *Galilée devant le Tribunal de l’Inquisition: Une relecture des sources* (Ph.D. diss., Fribourg, 1998); Beretta, “Le procès de Galilée et les archives du Saint-Office,” *Revue des sciences philosophiques et théologiques* 83, no. 3 (1999): 441–490; Beretta, “L’affaire Galilée et l’impassé apologétique: Réponse à une censure,” *Gregorianum* 84, no. 1 (2003): 169–192. Other articles of Beretta’s will be cited below.

⁶Jules Speller, *Galileo’s Inquisition Trial Revisited* (Frankfurt: Peter Lang, 2008).

⁷Thomas F. Mayer, *The Roman Inquisition: A Papal Bureaucracy and Its Laws in the Age of Galileo* (Philadelphia: University of Pennsylvania, 2013) (hereafter cited as *RI 1*), see especially chap. 5, “Inquisition Procedure: The Holy Office’s Use of *Inquisitio*,” 155–205; Mayer, *The Roman Inquisition: On the Stage of Italy, c. 1590–1640* (Philadelphia: University of Pennsylvania Press, 2014) (hereafter cited as *RI 2*); Mayer, *The Roman Inquisition: Trying Galileo* (Philadelphia: University of Pennsylvania Press, 2015) (hereafter cited as *RI 3*). Regrettably, Mayer died before being able to put the finishing touches on his final volume, which was seen through the publishing process by Kenneth Bartlett. For Mayer’s critique of Beretta, see *RI 3*, pp. 57–58, 254n36, and for his critique of Speller, *RI 3*, pp. 301–303n25.

⁸See Henry Ansgar Kelly, “The Right to Remain Silent: Before and After Joan of Arc,” *Speculum* 68, no. 4 (October 1993): 992–1026, repr. in *Inquisitions and Other Trial Procedures in the Medieval West* (Aldershot: Ashgate, 2001), essay 3. The required rules were eventually followed, once the trial began, but only after they had first been broken (p. 1001). See also Kelly, “Inquisitorial Deviations and Cover-ups: The Trials of Margaret Porete and Guiard de Cressonessart, 1308–1310,” *Speculum* 89, no. 4 (October 2014): 936–973.

only other person in attendance was the official notary.⁹ As was usual in such cases, however, the actual charges and the defendant's plea were not recorded, and they must be conjectured from other data, as must the preliminary role of the prosecutor.

The pertinent stages of the case against Galileo will be laid out simply, without attempting the sort of speculation over personal enmities and friendships that is often aired in other accounts.¹⁰ Against various allegations that Galileo was given unusual treatment, for better or worse, this study will attempt to show that, for the most part, usual procedures were employed. One comparatively new procedure that needs explanation involved a further intrusion into the realm of conscience. It had recently become mandatory that when a suspect or defendant admitted to having committed a heterodox deed but denied heterodox intention, he should be examined under torture to ascertain his true intentions and beliefs on the point.

All (or most) scholars agree that one feature of Galileo's trial was most unusual, namely, that his sentence and abjuration were widely published, by order of the pope. The sentence itself has often been misinterpreted. It is true that the cardinal inquisitors concluded that he had violated the precept he had been given in 1616 not to promote heliocentrism, but they did not convict him of this disobedience. Rather, they convicted him of the offense of strong suspicion of heresy, for giving the appearance of favoring the heresy of heliocentrism, and for arguing that a condemned theory was probably true.

The approach here will be, first, to summarize canon-law requirements for an *inquisitio specialis*, that is, a trial against a designated defendant using inquisitorial procedure; then, to detail some of the ways in which heresy inquisitors violated these rules, especially by invading the forum of private conscience; and finally, to trace the relevant matters in the Galileo case.

II. VIOLATION BY HERESY INQUISITORS OF CANON LAW PROTECTING PRIVACY

The relegation of secret matters to the forum of conscience is summed up in the adage, *Ecclesia de occultis non judicat* (The Church makes no judgment about

⁹The illustration that appears on the dust jacket of Mayer's three volumes, called "The Table of Inquisition," from the 1692 edition of Philippus van Limborch's *Historia Inquisitionis*, conveys the reality perfectly: the inquisitor sitting stiffly at one end of the table, facing the defendant, seated on a bench, with (on the back side of the dust jacket) the notary at the far end of the table.

¹⁰For example, Mayer's frequent assessments of character, based on his prosopological approach to history. Another instance is Mario Biagioli's suggestion that the Holy Office's investigation of Galileo "was not the result of the pope's friendly gesture towards Galileo but was concerned with framing Galileo as carefully as possible so that nobody else would be implicated" (*Galileo, Courtier*, 354).

secret matters),¹¹ which was repeated at the Council of Trent in 1563,¹² and the canonical privilege against self-incrimination is expressed in the principle, *Nemo tenetur prodere seipsum* (No one is obliged to betray himself).¹³

The method of criminal procedure known as *inquisitio* was perfected with required procedures by Pope Innocent III (1198–1216). As set forth at the Fourth Lateran Council in 1215,¹⁴ it was designed for the prosecution of crimes other than heresy,¹⁵ and when it began to be used against heresy suspects shortly afterwards, the judges were obliged to follow the Lateran rules, which have not always been well understood. For instance, it is not true that the defendant was automatically considered guilty until proven innocent.¹⁶ A suspect was not to be charged unless there was widespread belief in his guilt of a particular public crime (or, eventually, unless the action was “promoted” by an aggrieved person, or brought to the judge’s

¹¹This principle is expressed by Innocent III in his decretals, *Sicut et Tua nos, Decretales Gregorii IX*; or, *Liber Extra* (hereafter cited as *X*); Emil Friedberg, ed., *Corpus iuris canonici*, 2 vols. (Leipzig, 1879–1881) (hereafter cited as *CIC*), bk. 5, title 3, chaps. 33–34; vol. 2, cols. 762–763. See Stephan Kuttner, “Ecclesia de occultis non iudicat: Problemata ex doctrina poenali decretistarum et decretalistarum a Gratiano usque ad Gregorium PP. IX,” *Acta Congressus iuridici internationalis: 7. saeculo a decretalibus Gregorii 9. et 14. a Codice Iustiniano promulgatis, Romae 12–17 novembris 1934*, 5 vols. (Rome: Pontificale Institutum Utriusque Iuris, 1935–1937), 3:225–246: “Ecclesia de occultis non iudicat.” For canonist terminology and abbreviations, see James A. Brundage, *Medieval Canon Law* (London: Routledge, 1995). Citations of the text of Latin and Italian documents are edited to modern English standards of punctuation and capitalization, especially in removing superfluous commas before *quod/che* (“that”) for restrictive clauses, and before *et/e/&* (“and”) for mere additives, and before *sive/aut/ò* (“or”) for noncontrastive cases. For instance, *tenuto, e creduto* is rendered as *tenuto e creduto* (“held and believed”).

¹²In the decree *Tametsi*, doing away with clandestine marriages, “cui malo, cum ab Ecclesia, quae de occultis non iudicat, succurri non possit, nisi efficacius aliquod remedium adhibeatur, idcirco sacri Lateranensis Concilii sub Innocentii III celebrati vestigiis inhaerendo praecipit” (the evil of which the Church, which does not judge concerning hidden matters, cannot help unless some remedy be efficaciously applied, therefore, following in the footsteps of the Lateran Council celebrated under Innocent III, [this holy Synod] commands). Quoted in *Enchiridion symbolorum, definitionum, et declarationum*, ed. Heinrich Denzinger, rev. Adolf Schönmetzer, 32nd ed. (Barcelona: Herder, 1963), p. 418, no. 1814.

¹³Ordinary Gloss to *X*.2.20.37 *Cum causam*, s.v. *de causis*, *Corpus iuris canonici*, 3 vols. (Rome, 1582) (hereafter cited as *CJC*), 2:736, <http://digital.library.ucla.edu/canonlaw/index.html>. See R. H. Helmholz, “Origins of the Privilege against Self-Incrimination: The Role of the European *Ius commune*,” *New York University Law Review* 65, no. 4 (October 1990): 962–990.

¹⁴Innocent III (Fourth Lateran Council, 1215, const. 8), *Qualiter et quando no. 2*, *X* 5.1.24, *CIC* 2:745–747. On inquisitorial procedure see Kelly, *Inquisitions and Other Trial Procedures in the Medieval West*, especially essay 1: “Inquisition and the Prosecution of Heresy: Misconceptions and Abuses,” repr. of *Church History* 58, no. 4 (December 1989): 439–451.

¹⁵The method had been used for heresy cases in the diocese of Auxerre, however, beginning in 1198. See Jessalyn Bird, “The Wheat and the Tares: Peter the Chanter’s Circle and the *Fama*-Based Inquest Against Heresy and Criminal Sins, c. 1198–c. 1235,” in *Proceedings of the Twelfth International Congress of Medieval Canon Law (Washington, DC, August 1–7, 2004)*, ed. Uta-Renate Blumenthal, Kenneth Pennington, and Atria A. Larson, *Monumenta iuris canonici*, series C: *Subsidia*, vol. 13 (Vatican City: Biblioteca Apostolica Vaticana, 2008), 763–856, esp. 806–807.

¹⁶As even Mayer says, *ToFG*, p. 7.

attention by the denunciation of concerned persons); and, after investigation, the suspect was to be summoned and charged immediately with that specific crime; then, if he denied guilt, he was to be given a chance to defend himself against testimony or other proofs presented by the judge (inquisitor).

The earliest and most important violation of due process committed by heresy inquisitors was to interrogate suspects as if they were witnesses, and force them to take an oath to tell the truth to questions not only concerning others, but also concerning themselves. The original motivation may have been laudable, in that it allowed a person to volunteer past wrong-doing and receive a salutary penance, as an example to others. But the proper forum for such admissions was private confession to one's priest, which was made mandatory at Lateran IV, with strong cautions to confessors not to reveal any confessed sins (what was later called violating "the seal of confession").¹⁷ Requiring suspects to testify about themselves easily gave rise to enforced self-incrimination, depending on the scrupulousness or unscrupulosity of the inquisitor. That is, a suspect could be asked about a specific public crime and forced to confess guilt, thereby obviating the need to prove his guilt, or he could be required to reveal other crimes committed by him not yet in evidence or known to the public, or even required to explain his understanding or belief on points of Christian doctrine, and any wrong statement could be taken as an instant crime of heresy or error and charged against him.

Such pre-trial interrogations became a standard procedure of heresy interrogators, though supported by no justification in canon law; thus, it is described and prescribed in Bernard Guy's manual for heresy prosecutors (1324). Usually Guy was meticulous in citing the canonical basis for all procedures, but in this case he did not offer any.¹⁸ The practice was further developed a half century later by Nicholas Eymeric in his *Directorium* (1376). It was discussed two centuries later by Eymeric's editor in 1578, namely, Francisco Peña (circa 1540–1612), the most authoritative jurist in Rome at the turn of the seventeenth century.¹⁹ Peña admits that there is

¹⁷X 5.38.12 *Omnis utriusque sexus* (Fourth Lateran Council, 1215, const. 21), *CIC* 2:887–888.

¹⁸Bernard Guy (Bernardus Guidonis), *Practica inquisitionis heretice pravitatis*, ed. Cèlestin Douais (Paris: Alphonse Picard, 1886). A partial edition and French translation is given by Guillaume Mollat with G. Drioux, *Manuel de l'inquisiteur*, 2 vols. (Paris, 1926–1927), containing most of Part 5. Part 5 is also translated in Walter L. Wakefield and Austin P. Evans, "Bernard Gui's Description of Heresies," in *Heresies of the High Middle Ages: Selected Sources Translated and Annotated* (New York: Columbia University Press, 1969), 373–445. See the beginning of Part 5 (ed. Douais, 235–237; ed. Mollat, 1:2–9).

¹⁹Nicholas Eymeric, *Directorium inquisitorum* (1376), ed. Francisco Peña, 2 vols. (Rome: Populus Romanus, 1578); Eymeric's text is given in vol. 1, and Peña's scholia are in vol. 2, separately paginated. One of Peña's consultants for this edition was the current assessor and commissary general of the Holy Office, and he was able to use its archive (Mayer, *RI* 1, p. 159).

nothing specific laid down in law about this practice, which is left to the prudence of the judges and local custom.²⁰

Mayer claims that some authorities of the time were aware of the shaky legal grounds of the procedure, and that they cautioned against the use of “leading questions.”²¹ He cites one, Prospero Farinacci (1544–1618),²² as warning “that judges had to be careful not to ‘extort’ a confession when accusing a suspect of lying, since that would render his confession null.”²³ However, Mayer is mistaken on this point: the interrogators definitely did ask leading questions. What Farinacci was warning against was telling outright lies to the suspect; the term used is *suggestio*, meaning *suggestio falsi*. Farinacci’s statement is a comment added to Peña’s later work, *Praxis inquisitorum* (1605),²⁴ at a point where Peña warns that it is not allowed to elicit the truth by telling a lie.²⁵ Farinacci says, “Judges are to guard against seeking to extort confessions from defendants by a lie or false assertion. For, apart from

Peña published an expanded version of his edition in 1585, consulted here in the reprint of Venice: Zalterius, 1595, in which his scholia, now called commenta, are incorporated into Eymeric’s text. See Agostino Borromeo, “A proposito del *Directorium inquisitorum* di Nicholas Eymeric e delle sue edizioni cinquecentesche,” *Critica Storica* 20, no. 4 (1983): 499–547, esp. 523; see also Edward M. Peters, “Editing Inquisitors’ Manuals in the Sixteenth Century: Francisco Peña and the *Directorium inquisitorum* of Nicholas Eymeric,” *The Library Chronicle* 40 (Winter 1974): 95–107.

²⁰Peña commenting on Eymeric, part 3, title *De modo interrogandi reum accusatum*, l:286; scholium 19, 2:130: “Quamvis in his quae ad praxim attinent nihil sit nominatim a jure cautum —ea enim iudicum prudentiae reliqui solent, et plurimum in his etiam consuetudo singularum inquisitionum sibi vendicat—nihilominus tamen . . . quo ordine . . . haec sint gerenda . . . breviter indicabimus” (Even though in these matters that pertain to practice there is nothing specifically laid down by law—for they are usually left to the prudence of the judges, and also for the most part the custom of individual inquisitorial centers holds sway—nevertheless, we will briefly indicate the order in which they are to be done).

²¹Mayer, *RI* 1, pp. 181–184.

²²Prospero Farinacci, *Tractatus de haeresi* (Lyons, 1650), title 185, no. 139, p. 148. For Farinacci, who was the secular fiscal procurator (prosecutor) in Rome, see Niccolò Del Re, “Prospero Farinacci, giureconsulto romano (1544–1618),” *Archivio della Società Romana di Storia Patria* 98 (1975): 135–220; cf. Mayer, *RI* 1, pp. 159–160 and 333–334nn33–37, and Wickersham, *Rituals*, 16–17. This treatise, finished in 1614 and first printed in 1616 (Del Re, “Prospero Farinacci,” 172–184), was the last part (title 18) of Farinacci’s vast work, *Praxis et theoria criminalis* (or *Variae quaestiones et communes opiniones criminales*).

²³Mayer, *RI* 1, p. 182.

²⁴Peña, *Introductio sive Praxis inquisitorum* (hereafter cited as *Praxis inquisitorum*), submitted to the Holy Office for review in 1605, but not printed in Peña’s lifetime; see Borromeo, “A proposito,” 518. It was eventually published in a later edition of Cesare Carena’s *Tractatus de Officio Sanctissimae Inquisitionis* (1636): according to Borromeo, it first appeared in the 5th edition, Cremona, 1655, but Peters, “Editing,” 106n17, says it is in the edition of Cremona, 1641. Farinacci’s annotations appear in a manuscript version of Peña’s *Praxis inquisitorum*, Vatican Barb. Lat. 1367, which is the version of the work cited here (following Mayer).

²⁵Peña, *Praxis inquisitorum*, bk. 2, chap. 17, fol. 124v: “Et non dicatur nisi quod in denunciatione et depositionibus testium continetur, quia non licet dicere mendacium ad veritatem eruendam” (And he is not to tell anything except what is in the denunciation and the depositions of witnesses, because it is not allowed to tell a lie in order to draw out the truth).

the fact that the judges do wrong in so acting, such confessions extorted through false suggestion do not harm the persons who make the confessions."²⁶ Less conscientious judges, however, might well follow the rule of law that anything witnessed by the court was "notorious," and in need of no further proof.²⁷ Mayer observes that the frequent repetition of the ban on leading questions (read now: "lies") "probably indicates that the rule was more honored in the breach."²⁸

Intrusion upon the confessional forum had reached such a point in the sixteenth century that in 1559 under Pope Paul IV the Congregation of the Holy Office (the Roman Inquisition) ordered confessors to refuse absolution to penitents involved with heresy until they first admitted their offense publicly to a heresy inquisitor or their bishop.²⁹ According to the popular handbook of the heresy inquisitor of Genoa, Eliseo Masini, *Sacro arsenale*, first published in 1621, neither inquisitor nor bishop can absolve a heretic solely in the forum of conscience, in spite of the decree of the Council of Trent, because of new decrees of the Holy See and the Holy Office.³⁰ However, Masini later takes it for granted that a heretic's confessor can absolve him without further ado, but cautions that if he is accused publicly for the same offense, he can be prosecuted in the external forum.³¹

The example that Mayer gives of a breach of the alleged ban on leading questions, namely, the interrogation of Galileo's pupil Giannozzo Attavanti, in 1615 (part of the dossier on Galileo that was being assembled), is not apropos, since Attavanti was questioned only as a witness concerning

²⁶Note by Farinacci to Peña, *Praxis inquisitorum*, 2.17, fol. 124v: "Caveant iudices sub mendacio et falsa assertione querere a reis extorquere confessiones. Nam, ultra quod male faciunt, confessiones hujusmodi tanquam per suggestionem ex[t]ortae confitentibus non nocent." Adriano Prosperi, *Tribunali della coscienza: Inquisitori, confessori, missionarii* (Turin: Einaudi, 1996), 207, makes a mistake similar to Mayer's when speaking of the *periculum suggestionis*, taking it to mean that the inquisitor was not to suggest answers from the suspect.

²⁷See Boniface VIII's decree, *Postquam, Liber Sextus* (1298) 5.1.1 (*CIC*, 2:1069), and the Ordinary Gloss to it by John Andrew (*CJC* 3:1:609–610), and also the commentary by Archdeacon Guy of Baisio (ca. 1306), given in Henry Ansgar Kelly, "Inquisition, Public Fame, and Confession: General Rules and English Practice," in *The Culture of Inquisition in Medieval England*, ed. Mary Flannery and Katie Walter (Woodbridge: D. S. Brewer, 2013), 8–29, esp. 12.

²⁸Mayer, *RI* 1, p. 183.

²⁹Black, *Italian Inquisition*, 73.

³⁰Eliseo Masini, *Sacro Arsenale; ovvero, Pratica dell'Officio della Santa Inquisizione* (Genoa: Pavoni, 1621), part 9 (advice for inquisitors), question 108, pp. 294–295.

³¹*Ibid.*, q. 153, p. 306; cited and translated by Black, *Italian Inquisition*, 75. Note that when Black speaks of the allowability of breaking "confessional secrecy" (62, 74, cf. 73), the secrecy meant refers not to a penitent's own confessed and repented sins, but to sins of others that the penitent reported, which fell outside the sacramental seal. On confession, see also Prosperi, *Tribunali della coscienza*; Elena Brambilla, *Alle origini del Sant'Ufficio: penitente, confessione, e giustizia spirituali del Medioevo al 16 secolo* (Bologna: Il Mulino, 2000); Brambilla, *Giustizia intollerante: Inquisizione e tribunali confessionali in Europa (secoli IV–XVIII)* (Rome: Carocci, 2006).

another person: he was required to testify to what he knew about specific opinions held by Galileo.³² The Attavanti interrogation does, however, provide an excellent introduction to the Roman Inquisition's procedure, since *suspects* are also treated as witnesses at this point (before grounds of suspicion are revealed and charges leveled). The formula for the oath administered to the witness is abbreviated to "telling the truth" (*juramentum veritatis dicendae*).³³ Attavanti was summoned only to give information (*ad informandum*), and yet he was asked the same question as suspects: "Does he know the cause of his summoning?"³⁴

If a summoned party were told he was a suspect, or treated as a suspect, and were knowledgeable in the law, he could demand that charges be made known to him and the basis of suspicion be established; and if the inquisitor refused to comply, he could claim a grievance and enter a formal appeal, which the inquisitor would be obliged to respond to formally; but it was within his discretion to reject the appeal. Whether, or how often, such appeals were made, is not known. Most defendants, of course, did not know the law, and advocates were normally not appointed or allowed to suspects at this point in the proceedings—if at all. Joan of Arc is an example of someone who had an instinctual knowledge of proper procedure, who insisted on knowing what the questions were to be; but to no avail. And her appeals to the pope were rejected.³⁵

Coercing suspects to testify against themselves had become so routine by Joan's time that it was not even raised as one of the manifold objections lodged against the trial in the papally-mandated review two decades later. It was also long agreed that suspects who refused to answer at this preliminary stage could be tortured.³⁶ Masini in *Sacro arsenale* says that, if suspects insisted on first "being given their defenses" (that is, formally tried, with the charges leveled and explained beforehand), they were told that it was not to be done in such circumstances.³⁷ In so doing, the Holy Office went against

³²Mayer, *RI* 1, p. 183, citing DV, no. 17, pp. 95–98; cf. *TofG*, no. 16, pp. 81–84.

³³I will discuss the full text below.

³⁴*An sciat causam vocationis?*

³⁵Kelly, "Inquisition, Public Fame, and Confession," 11–13.

³⁶Guy, *Practica*, bk. 5, title 4, chap. 8 (ed. Douais, 284; ed. Mollat, 1:182); Eymeric, part 3, title *cautela*, no. 6, 1:292, approved by Peña, *Praxis inquisitorum*, bk. 2, chap. 21, fol. 142v, and other contemporary commentators. See Henry Ansgar Kelly, "Torture in Canon Law and Church Tribunals: From Gratian to Galileo," *Catholic Historical Review* 101, no. 4 (Autumn 2015): 754–793, esp. 787.

³⁷Masini, *Sacro Arsenale*, part 6 (torture), 146–147: "Del modo di dar la corda al reo che ricusa di rispondere, ò non vuole precisamente rispondere in giudicio" (Of the way to give the rope to a suspect who refuses to respond, or respond precisely, in court). If he says to the judges, "Se voi me volete dar la corda, datemi prima le mie difese, e poi fate quei che vi pare" (If you wish to give me the cord, first give me my defenses, and then do what you will), tell him "quod in hujusmodi casibus copiae non dantur, nec defensiones" (that in such cases a copy [of the

its own revered principles regarding torture, which Masini praises.³⁸ If such a suspect were to enter a formal appeal on the matter, one could readily assume that the inquisitor (who himself was the arbiter of whether to accept or reject appeals) would turn it down.

III. GALILEO'S NON-TRIAL OF 1616

On the basis of depositions gathered against him in 1615 and 1616 in connection with the theory of heliocentrism, the Holy Office could have proceeded against Galileo in the usual way, by citing him and interrogating him on these points as a witness, and then, eventually, starting an inquisitorial trial by formally charging him; but it did not. One obvious reason was that the heretical or erroneous nature of heliocentrism had not yet been established, and he could hardly have been convicted of a serious offense for defending it. So what the Holy Office did was to appoint a board of theologians to pass judgment on it. It found, on February 24, 1616, the proposition of the sun's stability to be formally heretical, since it was against scripture and common doctrine, while the corollary proposition of the earth's movement was declared to be "at least erroneous in faith."³⁹ According to Léon Garzend, writing in 1913, the Holy Office had a much broader concept of heresy than did theologians of the time or later, which included holding an opinion found contrary to scripture. Garzend's ultimate purpose was to argue that, even though the pope himself agreed to such declarations of heresy, it was a juridical matter, not an infallible pronouncement affecting the Catholic faith.⁴⁰ But Beretta rejects Garzend's

charges and testimony] is not given, nor are defenses). Torture of non-responsive suspects in pre-trial interrogations is approved by Bernard Guy, *Practica*, bk. 5, title 4, chap. 8 (ed. Douais, 284; ed. Mollat, 1:182), and also by Farinacci, *Tractatus de haeresi*, title 185, no. 139, p. 148, and the authorities he cites.

³⁸Masini, *Sacro Arsenal*, part 4 (dealing with the "repetitive" and defensive aspects of the trial), pp. 97–98; he says here that defenses are always given before any torture is inflicted. Perhaps it was from this statement that Italo Mereu, *Storia dell'intolleranza in Europa*, 6th ed. (Milan: Bompiani, 2000), 301 concluded that if the inquisitor wished to move from a preliminary examination to a rigorous examination under torture, he would issue an interlocutory sentence offering the suspect a chance to defend himself. (Rather, he should say, the inquisitor would begin the trial by leveling charges and "giving defenses.")

³⁹Censure of 24 February 1616, *DV*, no. 19, pp. 42–44; *ToFG*, no. 22, pp. 91–92.

⁴⁰Léon Garzend, *L'Inquisition et l'Hérésie: Distinction de l'Hérésie Théologique et de l'Hérésie Inquisitoriale: a Propos de l'Affaire Galilée* (imprimatur 30 December 1912; Paris:Desclée, 1913), as is evident in his title. He first establishes the narrow view of heresy in nineteenth-century theologians (chap. 4), next the broad inquisitorial view (chaps. 5–7), then the narrow view among theologians of the sixteenth and seventeenth centuries (chap. 8), and he concludes that the sentence against Galileo as a heretic, even though the pope therein condemned Copernicanism as heresy, did not establish it as a "real" heresy against the Catholic faith (chap. 9, esp. pp. 478–479). Cf. Finocchiaro, *Retrying Galileo*, 272–274.

claim that there was any such distinction in the operation of the Roman Inquisition in the seventeenth century.⁴¹

Two days later, on February 26, Galileo was warned by cardinal inquisitor Robert Bellarmine about the error of heliocentrism and admonished to abandon it, and immediately thereafter Galileo was given a “precept” by the commissary (deputy inquisitor) of the Holy Office not to defend the theory in any way.⁴² The events of this day have been very controversial in historical accounts of Galileo. Mayer has shown, against those who maintain that the issuance of precepts was a rare event for the Holy Office, that it was a routine practice, and he also maintains that admonitions (*monitiones*) functioned in the same way.⁴³ The idea that the precept was a later forgery, still held by some, is generally discounted.⁴⁴ What is important for our purposes here is that when Galileo actually came to trial in 1633, he was effectively acquitted of any charges stemming from his violation of the precept. However, the final sentence delivered against Galileo on June 22, 1633, in its historical account of events leading up to the trial, gives an accurate summary of the events surrounding the precept. It recalls that the proposition of the stable sun had been declared heretical by the consultor theologians of the Supreme Inquisition and that of the mobile earth at least “erroneous in faith”; that Cardinal Bellarmine was to order him to “relinquish the said false opinion,” and that if he refused, the commissary of the Holy Office was to give him a precept to leave the doctrine and forbid him to teach or defend or treat of it; and that, subsequently, after being advised and warned by the cardinal, the commissary gave him a precept to relinquish the doctrine and not to hold, defend, or teach it in any way.⁴⁵

Another important event took place a week later, on March 5, 1616. The Congregation of the Index in its decree *Cum ab aliquo tempore* announced that two works that taught “the false Pythagorean doctrine, completely contrary to Divine Scripture,” of the mobility of the earth and immobility of the sun, namely, Copernicus’s work and Diego Zuñiga’s book on Job, were to be suspended until corrected, and another work, by Paolo Antonio Foscarini, was to be condemned altogether; but no publication or other writing by Galileo was

⁴¹Beretta, “L’affaire Galilée,” 173.

⁴²Monition and precept, 26 February 1616, *DV*, no. 21, pp. 45–46; *TofG*, no. 24, pp. 93–94.

⁴³Mayer, *RI* 3, chap. 3 “The Precept of 26 February 1616,” pp. 53–79; chap. 4 “The Legal Meaning of 1616: The Jurisprudence and Use of Admonitions and Precepts,” pp. 80–120.

⁴⁴See Annibale Fantoli, “The Disputed Injunction and Its Role in Galileo’s Trial,” in *The Church and Galileo*, ed. Ernan McMullin (Notre Dame: University of Notre Dame Press, 2005), 117–149, arguing especially (122–124) against Beretta, “Le process de Galilée,” 476–480, and Beretta, “Le Siège Apostolique et l’affaire Galilée: Relectures romaines d’une condamnation célèbre,” *Roma Moderna e Contemporanea* 7, no. 3 (September–December 1999): 421–461. See also Mayer, *RI* 3, pp. 58–59.

⁴⁵Sentence of 22 June 1633, *DV*, no. 114, pp. 161–162; *TofG*, no. 81, pp. 190–191.

named.⁴⁶ Here the final sentence is less accurate when it sums up this decree, in saying that it prohibited books that treat (*che trattano*) of this doctrine, which was declared to be false and altogether contrary to scripture.⁴⁷ This seems to indicate that the cardinal inquisitors considered Copernicus's book to be still prohibited, even though the required corrections had been issued in 1620.⁴⁸

Clearly, Galileo had not been subjected to a trial at the hands of the Holy Office. According to Mayer, "Galileo's enemies had tried to have him condemned for heresy and failed."⁴⁹ But since everything that the Holy Office did was cloaked in secrecy, perhaps his enemies thought they had succeeded. At any rate, a rumor began to circulate that Galileo had abjured at the hands of Cardinal Bellarmine and been subjected to punishment. That is, that he had been tried in an inquisition and convicted of holding a doctrine contrary to the faith and been forced to abjure it and been sentenced to penance. At Galileo's request, Bellarmine composed a statement denying any such abjuration and punishment, and stating that the only action taken was that Galileo was notified of the declaration of the pope and the Congregation of the Index that the doctrine of Copernicus was contrary to Holy Scripture and therefore could not be defended or held.⁵⁰ Bellarmine said nothing here about a command having been given to Galileo not to defend it. It is noteworthy that he asserted that the pope himself had made the declaration of conflict with scripture, which the Index subsequently announced.

IV. GALILEO INVESTIGATED BY THE HOLY OFFICE, 1632–1633

It was only many years later that the Holy Office proceeded against Galileo on suspicion of defending heliocentrism. The cause was the publication in 1532 of his *Dialogue* on the Ptolemaic and Copernican systems. The pope, Urban VIII, immediately ordered a report to be made on it, and an ad hoc committee (special congregation) was appointed, which presented its findings to the pope sometime in late August or early September of 1632.⁵¹ Whether Urban had seen the report before September 5th, when he gave an audience to Francesco Niccolini, the Tuscan ambassador, is not clear. Niccolini feared that the members of the committee were ill-disposed towards Galileo, and he asked that Galileo be given the opportunity to defend himself. To this Urban replied, in effect, that this would go counter to the usual methods of the

⁴⁶Decree of the Index, 5 March 1616, *DV*, no. 22, pp. 46–47; *ToFG*, no. 28, pp. 98–100; Finocchiaro, *Galileo Affair*, 148–150.

⁴⁷Sentence, *DV*, p. 162; *ToFG*, p. 191.

⁴⁸Finocchiaro, *Galileo Affair*, 200–202, gives the decree of 15 May 1620 correcting Copernicus and allowing its publication. See Speller, *Galileo's Inquisition Trial*, 112–113.

⁴⁹Mayer, *RI* 3, p. 219.

⁵⁰Bellarmino to Galileo, 26 May 1616, *DV*, no. 41, p. 76; *ToFG*, no. 31, pp. 103–104.

⁵¹Mayer, *ToFG*, no. 38, p. 118.

Holy Office: “In such matters the Holy Office did nothing other than declare a censure, and then issue a summons to recant.”⁵² Niccolini asked if the pope did not think that Galileo should be given advance knowledge of the difficulties and oppositions or censures being made concerning his work and what it was that offended the Holy Office.⁵³ Urban responded violently that the Holy Office did not do such things and did not operate in this manner: these things were never given beforehand to anyone; it was not the custom.⁵⁴ He went on to say that Galileo knew very well what the difficulties were, since he himself had discussed them with him.⁵⁵ As will become apparent, Galileo would have to continue to surmise what the exact objections to his book were when he finally made his appearance before the Holy Office, still during the pre-trial investigative phase of the proceedings.

In sum, the pope here testily justified the Holy Office’s refusal to reveal the bases of suspicion to a suspect simply because it was customary procedure. Francisco Peña says that the right to defend oneself against charges is a matter of natural law, citing Clement V in the Council of Vienne as well as Roman law, and he insists that defenses must be given to defendants even when they have confessed.⁵⁶ One can interpret this to mean that even after a person’s rights have been undermined by forced self-incrimination, he must be given a chance to defend himself against his own forced admission.

On the basis of the committee’s report,⁵⁷ the pope ordered (*mandavit*) the inquisitor of Florence to be told to signify (*ut significet*) to Galileo that he should appear (*ut . . . compareat*) before the commissary of the Holy Office in Rome, receiving from Galileo a promise of obeying this precept (*hoc praeceptum*), which he was to impart to him before witnesses.⁵⁸ The same

⁵²Niccolini to the Florentine secretary of state, 5 September 1632, *OGG*, 14:383–385: “In queste materie del Santo Uffizio non si faceva altro che censurare, e poi chiamare a disdirsi.” The letter is translated by Finocchiaro, *Galileo Affair*, 229–232. See Mayer, *RI* 3, pp. 150–151.

⁵³*Ibid.*, “Non par dunque a V. Santità che egli habbia a sapere antecedentemente le difficoltà e le opposizioni o le censure che si fanno alla sua opera, e quel che dà fastidio al Santo Uffizio?”

⁵⁴*Ibid.*, “Il Santo Uffizio . . . non fa queste cose et non camina per questa via, nè si danno mai a nessuno queste cose antecedentemente, nè s’usa.”

⁵⁵*Ibid.*

⁵⁶Peña on Eymeric, part 3, title *De defensionibus reorum*, scholium 34, 2:145–146, citing Justinian’s *Digest*, 1.1.3 *Ut vim*, and *Clem.* 2.11.2 *Pastoralis*, sec. *Ceterum defectus* (*CIC*, 2:1153). The latter reads: “Nec . . . defensionis (que a jure provenit naturali) facultas adimi valuisset, cum illa imperatori tollere non licuerit que juris naturalis existunt” (Nor would it be valid for the opportunity of defense, which comes from natural law, to be removed, since even an emperor is not allowed to take away what exists by natural law).

⁵⁷Congregation report on Galileo’s book, August/September 1632, *DV*, no. 25, pp. 49–57; *TofG*, no. 38, pp. 118–120 (excerpts); Finocchiaro, *Galileo Affair*, 218–222 (complete, except for the correspondence of the censor; *DV*, pp. 53–57).

⁵⁸Decree of the Holy Office, 23 September 1632, *DV*, no. 130, pp. 187–187; *TofG*, no. 39, pp. 121–122. The original of the decree has suffered deterioration since it was first published by Silvestro Gherardi in 1870, and the text is based in part solely on his transcription.

day, the pope's brother, Cardinal Antonio Barberini, wrote to the Florence inquisitor, telling him that it had been decided to summon Galileo to Rome, "to give an account of his book." The summoner was to summon him to appear before him with notary and witnesses, without telling him the reason. Once he was present, he told him why: he was to go to the commissary at Rome, who would inform him of the purpose of his coming. If he refused, the inquisitor was to put the summons in the form of a precept.⁵⁹

Thus one sees that Galileo was summoned by the Roman Inquisition three times without being told why: the first time was when he was already in Rome, on 25 or 26 February 1616, whereupon he discovered that the purpose of his appearance was to be given various instructions against heliocentrism; the second time was in Florence in late September 1632, when he found that the purpose was to give him a further summons, to present himself before the commissary in Rome, or, if he refused, the identical summons in the form of a precept. The Florence inquisitor had been informed of the purpose of Galileo's third appearance, at Rome, namely, to obtain from him an account of his book. But he was to tell Galileo only that the Roman commissary would tell him the purpose. As usual, however, the commissary was not about to tell him, making him guess instead.

V. FURTHER PRE-TRIAL PROCEDURES, APRIL 1633

After many delays in coming to Rome, Galileo finally presented himself to the Holy Office on April 12, 1633: "Having been summoned, Galileo appeared personally."⁶⁰ He took an "oath of telling the truth," with no further words of the formula recorded, but since he had not been charged at this point, one might think it the traditional witness-oath, *de se et aliis*, as specified by Eymeric. But Peña in his comment says that the customary formula, given to both witnesses and suspects, goes thus: "I swear by God and the cross and the four Gospels that I touch with my hands to tell the truth, and if I do, God help me, but if not, God condemn me."⁶¹ Therefore, the fiction from

⁵⁹Holy Office to the inquisitor of Florence, 25 September 1632, *TofG*, no. 40A, pp. 122–123, original in Michele Cioni, *I documenti Galileiani del S. Ufficio di Firenze* (Florence: Libreria Editrice Fiorentina, 1908; repr. Florence: Pagnini, 1996), no. 18, pp. 24–25.

⁶⁰Galileo's first pre-trial session, 12 April 1633, *DV*, no. 37, pp. 66–72; *TofG*, no. 65, pp. 155–162: "vocatus, comparuit . . . personaliter." For an edition with unexpanded abbreviations, see *OGG*, no. 24.31, 19:336–342.

⁶¹Eymeric, *Directorium*, part 3, title *Modus interrogandi reum accusatum*, 1:286, sec. 74: "juratus . . . tam de se quam de aliis dicere veritatem." Peña on Eymeric, bk. 3, scholium 21, 2:133: "Hujus autem juramenti formula vulgo talis esse solet: 'Juro per Deum et crucem et sacrosancta quatuor Evangelia manibus propriis tacta, me dicturum veritatem: quod si fecero, Deus me adjuvet; sin autem contra, Deus me condemnet.'" Peña traces the *de se et aliis* formula to the council of Béziers (1246), and says it is also in the bull *Inter cunctas* of Martin V (1418),

the old *inquisitio generalis* was finally given up, that the inquisitor was just as interested in others as in him; but the suspect still was not told that he was a suspect, and he was questioned vaguely about various matters until the real issue was touched upon, whereupon he was forced to incriminate himself.

Galileo appeared before Commissary Vincenzo Maculano, with Fiscal Procurator Carlo Sincero assisting (*assistente*). Sincero's role in these proceedings has not been properly understood. As explained by Francisco Peña, the fiscal procurator, or simply "fisc," was a public minister who took on the role that the accuser used to play in the nearly obsolete *accusatio* procedure, but without the attached liabilities (penalties for failure to make the case, or for false accusations).⁶² He corresponds in our system to an official prosecutor, like the district attorney and state's attorney, but acting under instruction of the judiciary. One of his functions early in a case was to petition the inquisitor to arrest suspects if the evidence against them seemed strong enough.⁶³

It is clear from the final sentence that the eventual trial was a case between Sincero on the one side and Galileo as defendant, or *reus*, on the other.⁶⁴ But

which he published in a companion volume, *Litterae apostolicae diversorum Romanorum pontificum pro Officio Sanctissimae Inquisitionis* (Rome: Populus Romanus, 1579), pp. 743–751; but in fact the formula does not appear there, even though the bull requires suspects to respond to questions about their beliefs. When Peña describes the *sermo generalis* in scholium 11 on Eymeric's part 3 (2:122), he cites the council of Bourges again as telling the inquisitors to order "ut omnes qui se vel alios sciverint in crimine labis haereticæ deliquisse compareant coram vobis veritatem dicturi" (that all who know themselves or others to have sinned in the crime of heretical guilt to appear before you to tell the truth). In other words, it concerns those who come forward to confess *their own heresy* as well as the heresy of others.

⁶²Peña on Eymeric, part 3, scholium 14, 2:125: "Cum hodie accusantis persona raro admittatur, publicus est constitutus minister, quem vulgo fiscalem dicimus, qui personam accusatoris subit, et reos accusat; nec se subscribit ad poenam talionis aut ad alias quas falsi accusatores pati solent" (Since these days an accuser is rarely admitted, a public minister has been appointed, whom we commonly call the fisc, who undertakes the role of the accuser and accuses suspects; but he does not bind himself to the penalty of retaliation or other penalties that false accusers commonly suffer).

⁶³Ibid., scholium 18, 2:129: "Fiscalis petit ab inquisitore ut rei comprehendantur" (The fisc petitions from the inquisitor that the suspects be taken). For more on the fisc, see Mareu, *Storia dell'intolleranza*, 221–224. Beretta, *Galilée devant le Tribunal*, 56–57, has only a very brief account of the fisc. For Mayer's description, see *RI* 1, pp. 15–16, where he claims that it was a serious violation of the rules for Sincero to conduct interrogations, "precisely because of his office of prosecutor and also because he could not administer oaths" (16). But it was the judge (in this case, Maculano), who administered oaths, not the fisc.

⁶⁴Sentence against Galileo, 22 June 1633, *DV*, no. 114, pp. 159–165, esp. 164; *TofG*, no. 81, pp. 189–193, esp. 193: "Questa . . . sentenza . . . proferiamo . . . nella causa e cause vertenti avanti di noi tra il magnifico Carlo Sincero, dell'una e dell'altra legge dottore, procuratore fiscale di questo S. Officio, per una parte, e te, Galileo Galilei antedetto, reo qua presente, inquisito, processato, e confesso come sopra, dall'altra" (We pass . . . this . . . sentence . . . in the case and cases pending before us between the Honorable Carlo Sincero, doctor of both laws, fiscal procurator of this Holy Office, on the one side, and you, the aforesaid Galileo Galilei, the

what Sincero's precise duties at the pre-trial investigations were is not clear, whether he conducted all the questioning, or simply looked on as Maculano did it, or whether they shared the task.⁶⁵ The record reads, *fuit per D. interrogatus*, and since it is only Sincero who has just been called *Dominus*,⁶⁶ one might argue that the abbreviation should be expanded to *Dominum*. But in favor of *Dominos* is Galileo's statement in a letter of April 23 telling of a visit to his room by Maculano and Sincero, "who are the ones who examine me."⁶⁷

Galileo was first asked how and when he originally came to Rome, and whether he came on his own, or was enjoined (*injunctus*) by someone. He replied that the Father Inquisitor of Florence ordered him to present himself to the Holy Office. Next he was asked whether he knew or could imagine a reason why he was ordered to Rome. Galileo replied that he assumed that the reason was that he should render an account (*render conto*) of his recent book, because the book dealer had just been ordered to stop selling it and to send the original to Rome. He was then asked what kind of a book it was, this book that he imagined to be the cause of his being ordered to Rome. He responded that it was a book written in dialogue on the two theories of the heavens and elements.

This report shows the typical routine of preliminary questioning, asking the suspect to speculate why he had been ordered to appear, without telling him that he was a suspect. Note that he was not even said to have been summoned to the Holy Office, but only to Rome. There would certainly be no reason to offer him the assistance of an advocate, since he had not yet been informed that he was under suspicion, and no charges had been made against him.

After being shown the *Dialogue* and acknowledging that it was his, he was asked if he had ever been to Rome before, specifically in 1616, leading to a discussion of the order given to him by Cardinal Bellarmine. He admitted that there may have been a precept given to him to the same effect. He was finally dismissed, having been given another precept: of not departing without permission from the room to which he was assigned (in place of

defendant here present, investigated, tried, and confessed as above, on the other side). Specifying *causa e cause* 'case and cases' was a mere matter of boilerplate precaution and prolixity.

⁶⁵Mayer, *Trying Galileo*, has Maculano doing the honors. Blackwell, *Behind the Scenes*, 8, says that the interrogations were conducted by Sinceri (i.e., Sincero) under Maculano's supervision. Blackwell wrongly includes the actual trial session of 10 May in his analysis, at which Sincero was not present (he was only at the pre-trial sessions of 12 April and 30 April).

⁶⁶*OGG*, 19:336–337: "coram . . . R. P. Fratris Vincenzo Maculano . . . et assistente R. D. Carolo Sincero, procuratore fiscale Sancti Officii; . . . fuit per D. int.s." Pagano silently expands the second *D* to *Dominos* rather than *Dominum*.

⁶⁷Letter of Galileo to Geri Bocchineri, 23 April 1633, *OGG*, no. 2478, 15:101: "che son quelli che me disaminano."

being kept in prison); and he was “enjoined” to sign his deposition, and required to take a vow of silence.⁶⁸

On April 22, Commissary Maculano wrote to one of the cardinal inquisitors, Francesco Barberini, saying that it had been decided in a meeting the day before that Galileo’s book defended the prohibited doctrine, which thereby made him suspect of holding it; and therefore his case could be quickly expedited.⁶⁹ Since Galileo confessed that he had written the book in question, no further confession would be necessary to bring him to trial. But on discussing the matter again, the cardinals foresaw that such a trial would raise difficulties because Galileo in his interrogation denied that his book contained what it clearly did contain. Maculano thereupon proposed a solution that was accepted: he was authorized to try to obtain an admission from Galileo outside of court (extrajudicially). This solution was reached on the morning of April 27, as is clear from a new letter that Maculano wrote to Cardinal Barberini on April 28. The idea was that a confession on Galileo’s part (repeated formally, of course, in court) would reduce the penalties he would otherwise have to suffer if he refused to acknowledge his fault.⁷⁰ This arrangement can be called a plea bargain, but not, as has been argued, because it entailed pleading guilty to a lesser offense with a smaller penalty to avoid a trial,⁷¹ but rather because a plea of guilty to the actual charge (which he had to guess at) would result in a lighter punishment. The truth was, of course, that if he did not admit to a fault, the inquisitors may not have convicted him at all, because of the weakness of the case against him.⁷²

Maculano visited Galileo that very day (the 27th) after lunch,⁷³ and explained to him that he had erred and gone too far (*di haver errato, di haver ecceduto*) in his book, and urged him to confess it judicially. Galileo responded that he wanted time to think about how best to express his error. Maculano hoped to get the confession that day (the 28th), and all that would be left would be to interrogate him about his “intention” (*intentione*), and

⁶⁸Galileo’s first pre-trial session, 12 April 1633, *DV*, p. 70; *TofG*, pp. 159–160, ques. 19.

⁶⁹Maculano to Card. F. Barberini, 22 April 1633: Holy Office condemned Galileo’s book on 21 April, *DV*, no. 137, pp. 191–192; *TofG*, no. 68, p. 168–169.

⁷⁰Maculano to Barberini, 28 April 1633: extrajudicial approach, *OGG*, no. 2486, 15:106–107; *TofG*, no. 70, pp. 170–171.

⁷¹By Blackwell, *Behind the Scenes*, 15–16, and by Finocchiaro, *Defending Copernicus*, 149.

⁷²Depending on their evaluation of the disposition of Maculano and Francesco Barberini toward Galileo, some historians consider the extrajudicial plan to have been beneficial to Galileo, whereas others, like Mayer (*RI* 3, pp. 223–224), consider it detrimental. But the mere fact that it was designed to guarantee conviction made it detrimental in itself.

⁷³It seems that Maculano and Sincero had made an earlier extrajudicial visit to Galileo on April 23, telling him of their firm intention to “expedite him” once he could rise from his sickbed: Galileo to Geri Bocchineri, 23 April 1633, *OGG*, no. 2478, 15:101. Moreover, in his letter of 22 April, cited above, Maculano says that he had visited Galileo twice already.

then “give him his defenses” (*dargli le difese*).⁷⁴ As will be seen, by “intention” is meant Galileo’s actual beliefs about heliocentrism; and “giving defenses” is shorthand for the actual beginning of the trial, in which the suspect was formally charged and given a period to respond, along with full documentation, in order to mount a defense against any of the charges he rejected.

It seems clear that Maculano meant for the examination on intention to take place before the trial began, as Masini indicates should be done.⁷⁵ Peña, too, placed it there, but that was before the custom of making it mandatory and enforcing it with torture was instituted.⁷⁶ But in Galileo’s case it was postponed until after his trial concluded, perhaps because of the principle invoked by Masini that the Holy Office did not resort to torture until the defendant had a chance to defend himself.

On April 30, Galileo was not “summoned” (*vocatus*), but was “judicially recognized in person” (*constitutus personaliter*), before Maculano and Sincero. This time, that is, Maculano acknowledged that Galileo himself had petitioned a hearing; and after taking another oath of telling the truth, he was asked (by Sincero or Maculano) only one thing, to say what it was that he wished to say. Galileo proceeded to admit his fault in a very roundabout way: “I freely confess (*liberamente confesso*) that a reader not knowing my mind (*il lettore non consapevole dell'intrinseco mio*) might understand the arguments as supporting the false side (*per la parte falsa*), which I intended to refute (*ch'io intendevo di confutare*).” This section of his testimony (except for the bit about his intention to refute the false side) is underlined and marked off, and it was undoubtedly the basis of one of the charges formulated against him in the formal arraignment (which, as will be explained, does not appear in any record). Shortly afterwards, Galileo repeated that he did not mean to support heliocentrism, that it was foreign to his intention (*alieno dalla mia intentione*). After signing his statement, he returned and offered to emend his book, to reinforce the arguments against the heliocentric system; it could easily be done, he said, since the interlocutors in the *Dialogue* say that they will meet again for further discussion.⁷⁷

⁷⁴Maculano to Barberini, 28 April 1633.

⁷⁵Masini, *Sacro Arsenale*, part 2, pp. 37, 46–47.

⁷⁶Peña, *Praxis inquisitorum*, bk. 2, chap. 15, no. 3, fol. 118r. Farinacci adds a long note (fol. 118rv) in which he too gives no indication that torture was used to evoke intention. Beretta, *Galilée devant le Tribunal*, 192, says that the examination on intention concluded the *processo offensivo*, citing this passage of Peña’s.

⁷⁷Galileo’s second pre-trial session, 30 April 1633, *DV*, no. 38, pp. 72–74; *ToFG*, no. 71, pp. 171–173.

VI. FINAL PREPARATIONS FOR THE TRIAL

It was only on May 10 that the actual trial by *inquisitio* would take place, when the form set out at the Fourth Lateran Council, which was still the basic law in the matter, was to be followed, with the inquiring judge, that is, the *inquisitor*, asserting that the summoned inquiree, *inquisitus*, was under suspicion of committing a specific offense or offenses, which would be explained, so that he could defend himself. The Lateran text says nothing about how the plea was to be performed. During the thirteenth century it became the practice to put the accused person under oath to answer the charges truly,⁷⁸ an oath modeled on the oath imposed after infamy was established and canonical purgation was ordered (the suspect swearing innocence of the charge, and supplying a required number of compurgators, that is, character witnesses). The Lateran law specified that the role of the accuser was taken by *publica fama*, voiced by the judge. But, as has been noted above, in Continental practice, this voicing of suspected offenses was performed by a public official, the *fisc*.

In order to play his role, the *fisc* obviously had to formulate charges from the evidence that the inquisitor, with his help, had gathered. But there is curiously little discussion among legal writers of the time for the “contesting of the suit” (*litis contestatio*), as it was called (originally referring to civil cases)—that is, the leveling of charges against the suspect and the suspect’s answer, the point at which the suspect became a defendant, if he denied the charges. As Mayer shows, only the leveling of charges received attention, while the plea was completely neglected.⁷⁹ But even the collecting and presenting of charges was confusingly and slightly treated in official records. As Mayer puts it, “Commentators went straight from the interrogations during the investigative phase to how to conduct the defense, a question presupposing that the suspect had denied the charges.”⁸⁰ There is little sense of how and when it was done. But one can get a good idea from Peña’s scattered remarks on the role of the *fisc*. He says that it is now the custom that the *fisc* is always the accuser in the inquisitorial tribunal.⁸¹

⁷⁸Adhémar Esmein, “Le serment des inculpés en droit canonique,” *Bibliothèque de l’Ecole des Hautes Etudes, Sciences religieuses* 7 (1896): 231–248.

⁷⁹Mayer, *RI* 1, p. 186.

⁸⁰Ibid.

⁸¹Peña on Eymeric, bk. 2, scholium 11, 2:40: “Cum in tribunali inquisitionis receptum nunc est, ut fiscalis semper accuset” (Since it is now the accepted practice that the *fisc* is always the accuser in the tribunal of [the?] inquisition). One sees from Masini’s *Sacro Arsenal* that the *fisc* serves as the adversary of the defendant in every case; it is he who formulates and administers the articles of accusation and interrogation; but this is observed only from the defense phase onwards: pp. 88–97; cf. pp. 156, 168, 176, 227, 232, 253–254. Masini’s manual moves from uncovering suspects (part 2) and interrogating them as witnesses against themselves (part 3), to dealing with witnesses and the defendant’s defenses (part 4), when the defendant “pertinaciously remains in

The fisc formulates a *libellus accusatorius* or “bill of charges” after the testimony of witnesses has been recorded and the necessary information gathered by means of diligent inquiry (*inquisitio*); it is addressed not to the suspect, but to the inquisitor (Peña gives an example, in which the Holy Office fisc St. Augustine accuses Martin Luther of heresy, and cites many current authorities for formulas and commentary).⁸² The fisc is to detail each admitted crime, so that the suspect/defendant can know what offenses he is to respond to, in order to defend himself.⁸³ The fisc will have formulated some of these charges earlier, to administer to witnesses

denial” (*se il reo si mostrerà pertinace nel negare*, p. 85) without explaining how and when he denied what. At one point, when dealing with an absent suspect, he has the gall to say that the preliminary questioning of a suspect constituted the contesting of the suit. See part 7 (sentencing), p. 236, where he says that the testimonies of witnesses in the informative process prove nothing until they are repeated in court: “Conciosia che dopo le ordinarie citationi, come nella quinta parte, fà di mestiero primieramente repetere i testimonii quali (come già piu volte è stato detto) essaminati nel processo informativo, non citata la parte, anzi *non contestata ancor la lite, cioè, non interrogato il reo*, non provano, se non si repetono ad effetto di condannarlo, ma fanno solamente indicio ad inquirere contro di lui, tanto piu non essendo il reo nè veramente nè presuntivamente confesso. Di poi conviene legitimamente assegnargli le difese e dargli anco le opportune ditioni” (Since, after the ordinary citations like those given in part 5, it is necessary first to re-hear the witnesses, who [as has been said many times], having been examined in the informative phase, when the party [i.e., the defendant] had not been cited, *nor the suit yet contested, that is, the suspect/defendant not interrogated*, prove nothing, unless they repeat themselves with the intention of convicting him; rather they simply constitute a reason to inquire [i.e., begin an inquisition] against him; this is especially true if the defendant has not really or presumptively confessed. Moreover, it is necessary to assign him defenses and make the required declarations). The sentence-formula that follows claims that the absent defendant has been cited to respond to the condemned heresies charged against him (p. 237), but no such citation formula is given in part 5 or elsewhere in the manual.

⁸²Peña on Eymeric, bk. 3, scholium 14, 2:125, continuing the passage cited in n62 above: “qui, testibus receptis, et habitis de crimine (diligenti inquisitione praecedenti) debitis informationibus, in haec ferme verba libellum accusatorium formare solet: ‘Ego Augustinus Officii Sanctissimae Inquisitionis fiscalis, coram te, reverendo inquisitore, iudice delegato in causis fidei contra haereticam pravitatem, criminaliter accuso Martinum Lutherum.’ . . . Haec est vulgaris forma, qua hodie fiscalis utitur, de qua pulchre,” etc. (who, after witnesses have been received and due information collected by means of a preceding diligent inquisition, customarily forms a bill of charges in words like these: ‘I, Augustine, fisc of the Office of the Holy Inquisition, in your presence, reverend inquisitor, judge-delegate in cases of the faith against heretical depravity, criminally accuse Martin Luther.’ . . . This is the common form that the fisc uses today, which is well treated by [etc.]), citing Durant (13th cent.), Diego Simancas (d. 1583), and Conrad Braun (d. 1563), “and by all criminalists in their practical manuals”: Jean Milles de Souvigny (*Practica criminalis*, 1549), Girolamo Gigante (d. 1570), Giulio Claro (d. 1575), “and others.”

⁸³Peña on Eymeric, bk. 3, scholium 14, 2:125, continued: “In hoc libello crimina singula admissa fiscalis narrare debet, ut reus intelligat quibus sit responsurus delictis, ut se tueatur” (In this bill the fisc should narrate each of the crimes admitted [to the list of charges], so that the defendant may understand the offenses he is to answer to, in order to defend himself). Peña goes on to say that the names and circumstances of witnesses are to be omitted.

in an attempt to prove them, when the suspect has failed to confess guilt concerning them.⁸⁴

In his later *Praxis inquisitorum*, Peña says that after the inquisitor has gathered information about the denounced suspect, the fiscal procurator in some inquisitorial tribunals presents a *libellus accusatorius* detailing the chapters of offenses, with the defendant present in court, but in the forum of the Roman Inquisition, the *fisc* instead presents *positiones et articuli* containing the same crimes,⁸⁵ according to this formula: “The fiscal procurator of the Holy Inquisition presents the following positions and articles in the case of heresy that he has against N. (who is detained in the prisons of the Holy Office), which he petitions to be admitted to be proved, according to the procedures of the Holy Office.”⁸⁶ Note that the defendant is not said to be present, as was required in the other jurisdictions referred to above, but rather detained in prison.

In the three examples that Peña gives of the *fisc*’s list of charges before the Roman Inquisition, the *fisc* starts out by submitting all of the evidence against the suspect (*inquisitus*): “First of all, instead of articles, the said fiscal procurator here repeats and reproduces the witnesses previously examined and their depositions, as well as the suspect’s words, confessions, and deeds, and whatever documents were produced in this case,” insofar as they support the *fisc* and go against the defendant.⁸⁷ He goes on to say that, on the basis of these materials, it is established, or, insofar as it is not, he wishes to

⁸⁴Peña on Eymeric, part 3, scholium 19, 2:131: “Per quas [i.e., decem dies a tempore capturae] si reus vel nihil confiteatur vel non plene confiteatur, tunc promotor fiscalis accusationem proponit contra reum de illis delictis que per testes probata sunt” (If the defendant confesses nothing or not fully during the ten days after arrest, then the fiscal promoter formulates accusations against the defendant dealing with the offenses that are proved by witnesses).

⁸⁵Peña, *Praxis inquisitorum*, bk. 2, chap. 29, fol. 170v–171r: “Postquam inquisitor supradictis modis recepit informationem contra reum sibi denunciatum, procurator fiscalis in quibusdam inquisitionibus praesentat in iudicio, praesente reo, libellum accusatorium continentem capita delictorum, quem exhibit inquisitori. In supremo tamen foro Sanctae Romanae et Generalis Inquisitionis procurator fiscalis loco libelli dat positiones et articulos eadem delicta continentes.”

⁸⁶*Ibid.*, fol. 171rv. The formula reads, with cuts: “Positiones et articulos infrascriptos . . . exhibet . . . procurator fiscalis . . . in causa haeresis . . . quam habet contra . . . N., in carceribus Sancti Officii detentum, quos ad probandum . . . admitti petit juxta stilum Sancti Officii.” John Tedeschi, “The Organization and Procedures of the Roman Inquisition,” in *The Prosecution of Heresy* (Binghamton, N.Y.: Medieval and Early Renaissance Texts and Studies, 1991), 127–203, esp. 135 and 168n58, cites Peña’s *Praxis inquisitorum*, as printed in the 1668 edition of Carena’s *Tractatus*, 418, as specifying that the articles must be in the vernacular so that they might be more easily understood. But this instruction does not appear in the manuscript version, where all of the particulars about the articles are in Latin.

⁸⁷Peña, *Praxis inquisitorum*, bk. 2, chap. 29, first example (171v–172r): “Et primo hic loco articulorum procurator fiscalis praedictus repetit et reproducit testes desuper examinatos, illorum depositions, et dicta ejusdem inquisiti, confessiones, acta, et documenta quaecunque in hujusmodi causa factas respective et facta, in parte tamen et partibus, sive quatenus praedicta omnia et eorum singula sic ut supra repetita et reproducta pro fisco faciunt et contra dictum N, et non alias aliter, nec alio modo; de quo protestatur expresse.”

prove, that the defendant denies purgatory (here he is to give some examples of his doing so), like a heretic thinking badly (*male sentiens*) of purgatory, that it is a mere pious invention, and many trustworthy witnesses have testified to this and will do so. Then he “posits” four specific charges relating to the general charge, and finally posits that there is public voice and fame about all of the above, and asserts that all of it is public and notorious, as witnesses, etc. (that is, will testify).⁸⁸ In the next chapter, Peña speaks about the content of the charges, and one of the points he makes, as Mayer notes, is that the fisc’s articles should be plain and to the point.⁸⁹

As intimated above, it seems to have been the rule that the original lists of charges against defendants in inquisitorial trials are not preserved in the records, or treated in commentaries on inquisitorial procedure; instead, it was only lists that were created later, after defendants formally contested the charges, which were detailed and explained. Since, as will be seen, Galileo would waive these formalities, even this secondary list of charges would not be produced. Therefore, just as Galileo had to guess at the precise nature of the complaints against him when he was first interviewed, so one is left to speculate about how Sincero formulated the case against Galileo. Assurance that it did indeed happen is found in the statement to that effect in the final sentence that was passed against him; as cited above, it asserts that the trial was a case between Sincero and Galileo: “We issue this sentence in the case pending between Fiscal Sincero on the one side and you, Galileo Galilei, the defendant here present, on the other side.”⁹⁰

It might be thought that subsequent records, like Galileo’s plea, the summary of the case, and sentence, could produce clues as to the nature of Sincero’s formulations, but one cannot be certain, and it would be fruitless to spend much time on the exercise. They doubtless included all of the points touched upon in the narrative portion of the final sentence, including disobeying the precept and obtaining the license to publish his book under false pretenses, as well as encouraging belief in heretical and erroneous propositions.

⁸⁸Ibid., fols. 172r–173r; followed by a long protest that he intends everything to be done properly (fol. 173rv). See the full concluding formula about fame in Masini, *Sacro Arsenal*, part 4 (repetition and defense), fisc’s articles, no. 1, p. 88: “Et alias, prout testes desuper informati specificabant, quod fuit et est verum, manifestum, publicum, et notorium.”

⁸⁹Peña, *Praxis inquisitorum*, bk. 2, chap. 30, fols. 178v–179r, cited by Mayer, *RI* 1, pp. 186–187. Mayer makes a slip when he says that Farinacci added a monster note here on Peña’s caution that the fisc is to avoid impertinent charges; rather than covering fols. 177r–182r, his note appears only on fol. 179r (elsewhere too Mayer mistakes Peña’s elaborations for Farinacci’s comments: *RI* 1, p. 176 on torture of suspects). In the next chapter, 2.31, Peña skips the defendant’s plea and moves to the questions that the imprisoned defendant’s defender (*procurator et defensor*) submits to be asked of the witnesses that the fisc has produced against him (fols. 182v–189r).

⁹⁰Sentence against Galileo; for the full text, see n64 above.

But there are two very important points to be learned from Peña's account of the Roman Inquisition's practice: first, unlike in other tribunals, the defendant was not present when the fisc delivered his charges; and second, that along with the charges, he delivered the documentary proofs that he had compiled against the defendant. Therefore, Sincero must have submitted his *positiones et articuli* to Maculano sometime between Galileo's judicial confession on April 30 and when Galileo actually appeared for trial on May 10. Included with the charges, then, would be materials comprised of, among other things, the April 30 confession, the written version of the 1616 precept, depositions of theological experts who had commented on his *Dialogue*, and damaging excerpts from his testimony about himself in the interrogations of April 12.

Whereas Sincero's submission would have consisted only of adverse elements of the collected materials, a complete record of everything turned up in the pre-trial information-gathering was supposed to be given to the defendant; this was called "a copy of the process" (*copia processus*). In the trial of Giordano Bruno, it was called "copy of the whole offensive process" (*copia totius processus offensivi*), that is, of the investigation that had been conducted against him.⁹¹ It is perhaps conceivable that Maculano himself ordered this to be done, but it is more likely that the mandate had to come from the pope and the cardinal inquisitors. Eymeric discusses six different ways in which such copies were to be given, mainly dealing with protecting the identity of witnesses, when they might be endangered. But by the time that Peña came to comment on these methods, a "universal custom of the Holy Office" forbade any disclosure at all of the identity of witnesses.⁹²

⁹¹Luigi Firpo, *Il processo di Giordano Bruno*, ed. Diego Quaglioni, 2nd ed. (Rome: Salerno, 1993), doc. 51, official summary of the trial, addressed to the assessor, Marcello Filonardi (previously the fisc who assembled the charges for "repetition," no. 238), March 1598, pp. 247–304; section 240, p. 297: "Frater Jordanus habuit copiam totius processus offensivi." The summary is one of the few official records of the case to survive. For an analysis of the case, see Maurice A. Finocchiaro, "Philosophy versus Religion and Science versus Religion: The Trials of Bruno and Galileo," in *Giordano Bruno, Philosopher of the Renaissance*, ed. Hilary Gatti (Aldershot: Ashgate, 2002), 51–96, esp. 55–65, 86–91. The case is also analyzed by Francesco Beretta, "Giordano Bruno e l'Inquisizione Romana: Considerazioni sul processo," *Bruniana e Campanelliana* 7, no. 1 (2001): 15–49, making use of Peña's *Praxis inquisitorum* (in the 1655 edition).

⁹²Eymeric, title *Directorium*, part 3, *Modi sex tradendi copiam processus delato de haeresi, suppressis delatorum nominibus*, 1:296–298; cf. Peña, scholia 36–37, 2:148–149. In Eymeric's previous chapter, *De defensionibus reorum*, at the point where he mentions the disclosure of witness names, a side note has been placed: "Haec hodie cessant per generalem Sancti Officii consuetudinem" (1:196).

VII. THE TRIAL: MAY 10, 1633

A formal trial began then, like now, only when a defendant was “brought up on charges” and required to plead guilty or not guilty; this occasion in a criminal inquisition was likened, as noted above, to the *litis contestatio*, or “contesting of the case,” in a civil action, when the defendant answered the plaintiff’s charges. Confusion arises from the use of the term *processus* (or, in Italian, *processo*) for the investigative phase (including the uncanonical grilling of suspects as witnesses against themselves) as well as for the trial itself.⁹³ As just noted, the “first process” was called the *processus offensivus* in the case of Giordano Bruno. In the prosecution of Joan of Arc it was termed *processus preparatorius*, whereas the actual trial was called *processus ordinarius*.⁹⁴

Galileo’s next recorded appearance, on 10 May, was the result of a summons (the text of the citation is not given): *Vocatus, comparuit personaliter*, this time appearing only before Maculano, and with no mention of an oath being administered. The record says only that Maculano “assigned him a term of eight days to present his defenses, if he wished and intended to present any.”⁹⁵ This was, in fact, the beginning of his trial. It is remarkable that even Mayer, who so perceptively notes that accounts of cases moved straight from interrogation of the suspects to the presentation of the defense, misses the point at which Galileo’s trial took place. In fact, he claims that Maculano was acting on his own: “Following his plan and still acting without the Congregation’s knowledge or approval, on 10 May Maculano summoned Galileo and assigned him eight days to prepare his defense.”⁹⁶

What must have happened, on the basis of Peña’s descriptions of procedure, is that Maculano formally presented to Galileo the fisc’s list of formal accusations, giving him the opportunity to study them for a week before responding, and also to prepare a strategy for refuting any of the charges he intended to deny. Maculano would also have given him the complete copy of the previous proceedings, as described above. In addition, he would have informed him that, if he wished to deny any of the articles, he could have the services of an advocate. As stated earlier, there was some dispute over whether advocates and procurators could be permitted to defendants in inquisitorial proceedings, but it was the practice of the Roman Inquisition to

⁹³See Hofstедter, *Earth Moves*, 21n (on *processo*), 141, 149 (contravention of canon law).

⁹⁴Pierre Tisset, ed., with Yvonne Lanhers, *Procès de condamnation de Jeanne d’Arc*, 3 vols. (Paris: Klincksieck, 1960–1971), 1:184.

⁹⁵Galileo is formally charged, 10 May 1633, *DV*, no. 40, p. 75: “Idem pater Commissarius assignavit terminum octo dierum ad faciendas suas defensiones, si quas facere vult et intendit.” Cf. *TofG*, no. 74, p. 175.

⁹⁶Mayer, *RI* 3, p. 196.

allow them.⁹⁷ Peña says, “An advocate is to be given when the defendant denies the charged crimes.”⁹⁸ Then Peña quotes the Madrid instruction of 1561: “In an inquisitor’s presence, the defendant will communicate with the advocate, and with the advocate’s advice he will respond to the accusation either orally or in writing.”⁹⁹ Further: “The role of the advocate is to admonish the defendant to tell the truth and ask a penance for his fault, if he is at fault; and his response will be imparted to the fisc.”¹⁰⁰

Galileo, however, declined these opportunities, admitting partial guilt, but defending his good intentions concerning the precept he had been given. His words are, “I have understood what Your Lordship has said to me; and I say in reply, in my defense, that is, to demonstrate the sincerity and purity of my intention, not to excuse the excess I have in fact committed (in the way I have already admitted), I present this writing, along with an attached affidavit of his late eminence, Lord Cardinal Bellarmine, written in the very hand of the said lord cardinal.”¹⁰¹ The writing was a justification for his not having mentioned to the censor of the *Dialogue* the prohibition he had been given; the essence is that he did not believe it necessary to tell the censor about the prohibition that was given to him, since, as he read it in Bellarmine’s affidavit, it was no different from the prohibition binding upon everyone by the decree of the Congregation of the Index. He had not remembered that the precept given at the time had additional words “which I hear are contained in the command” (*che sento contenersi nel comandamento*), the extra words being “or to teach it in any way” (*vel quovis modo docere*).¹⁰² This was to support his claim that he had not been given the precept in writing.

⁹⁷For advocates in early-seventeenth-century practice, see Mayer, *RI* 1, pp. 191–194.

⁹⁸Peña on Eymeric, bk. 3, scholium 34, 2:146: “Dandus est autem advocatus cum reus negat objecta crimina.” See Mayer, *RI* 1, p. 191: He notes that Farinacci says that advocates are not allowed for heretics, but it was recognized that this held true only in cases where it was certain that the defendant was a heretic, not when that matter was under trial. See Peña on Eymeric, bk. 2, scholium 7, 2:36.

⁹⁹Peña on Eymeric, bk. 3, scholium 34, 2:146: “In praesentia cujuslibet inquisitoris reus communicabit cum eo, et de consilio advocati vel verbo vel scripto respondebit ad accusationem.”

¹⁰⁰Ibid.: “Advocati partes erunt admonere reum ut veritatem confiteatur, paenitentiamque petat pro culpa, si quam habet; responsio vero fiscali notificabitur seu intimabitur.”

¹⁰¹Galileo’s plea, 10 May 1633, *DV*, no. 40, p. 75: “Io ho sentito quello che Vostra Paternità m’ha detto; e le dico in risposta che per mia difesa, cioè per mostrar la sincerità e purità della mia intentione, non per scusare affatto l’haver io ecceduto in qualche parte, come ho già detto, presento questa scrittura, con una fede aggiunta, del già eminentissimo sig. cardinale Bellarmino, scritta di propria mano del medesimo sig. cardinale.” Cf. *ToFG*, no. 74, p. 175: Mayer takes the “writing with affidavit attached” to refer only to Bellarmine’s testimonial, meaning that the record does not mention Galileo’s defense statement. See *RI* 3, p. 196.

¹⁰²Galileo’s defense regarding the censor and the precept, 10 May 1633, *DV*, no. 42, pp. 76–78; *ToFG*, no. 75, pp. 176–178.

He ended by saying that, concerning the remainder, he left himself to the usual clemency of this tribunal.¹⁰³

Galileo was obviously prepared to make this response. Whether he took the time to read over Sincero's accusations is not known, nor is it known whether his informal plea, as here recorded, was accepted in place of a formal response, under oath. We do know that it was the effective end of the trial, the whole of which may have taken no more than an hour.

VIII. ARRIVING AT A VERDICT

A *Summarium* of the whole case was prepared for the consideration of the pope and the cardinal inquisitors.¹⁰⁴ Many scholars allege that it was basically unfair to Galileo, but Mayer judges it to be accurate on the whole and even slanted in his favor.¹⁰⁵ It was reviewed on June 16. Present were Pope Urban VIII, various of the cardinals, Commissary Maculano, and the Congregation's assessor (but not the fisc, Sincero).¹⁰⁶ As usual in such proceedings, the actual judges in the case did not hear or review the whole case, but only saw the summary (though they could quiz their deputed judge, the commissary, Maculano, on details).

After the *vota*, or opinions of the cardinals, were heard, the pope decreed, obviously in keeping with the consensus, that Galileo was to be interrogated, including under a threat of torture, about his *intentio*,¹⁰⁷ that is, his actual beliefs on the subject of heliocentrism.

Such a decree is a stunning demonstration of the distance that heresy inquisition had come in violation of defendants' rights. Even though individual inquisitors had been contravening the prohibition against judging secret matters for centuries now, in extorting self-incriminating confessions from suspects in preliminary interrogations, one sees here that the explicit coercion of a defendant's beliefs by torture was authorized at the highest level of the Church's government. To repeat, the pope here ordered that

¹⁰³Galileo's plea, 10 May 1633, *DI*, no. 40, p. 75: "Del rimanente mi rimetto in tutto e per tutto alla solita pietà e clemenza di questo tribunale."

¹⁰⁴*Summarium*, *DI*, no. 1, pp. 5–11; *ToFG*, no. 77, pp. 179–183; May–June 1633.

¹⁰⁵Mayer, *RI* 3, p. 199. He cites, as examples of the anti-Galileo perceptions, Francesco Beretta, "Rilettura di un documento célèbre: Redazione de diffusione della sentenza e abiura di Galileo," *Galilaeana* 1 (2004): 91–115, esp. 102; Beltrán Marí, *Talento*, 579–582; and Speller, *Galileo's Inquisition Trial*, 298. Heilbron, *Galileo*, 316, believes that it was unfair, but says that it made no difference, since the pope was fully aware of the facts.

¹⁰⁶Congregation of the Holy Office pronouncing on Galileo, 16 June 1633, *DI*, no. 138, pp. 192–193; *ToFG*, no. 78, p. 184.

¹⁰⁷*Ibid.*: "Auditis votis, Sanctissimus decrevit ipsum Galileum interrogandum esse super intentione, etiam comminata ei tortura." The pope's words could be translated, "even threatening him with torture," and taken to indicate that the examination could have been ordered not only without torture but even without the threat of torture.

Galileo was to be forced, in virtue of an oath, to answer questions truthfully, and under threat of torture, to reveal his private opinions. By papal law (rather than by papal abuse), such a demand would be legitimate only in confession, a question asked by a confessor to whom one went voluntarily, and the response would be protected by the seal of confession; and there would certainly be no threat of torture, or possibility of ordering torture.

Torturing for intention, as Mayer rightly notes, “has been misunderstood,”¹⁰⁸ but even Mayer’s understanding of it is mistaken, and so is Speller’s, with which he agrees.

Speller says that it was not intended to find out the reasons for the suspect’s wrong actions, but rather to discover his wrong beliefs.¹⁰⁹ The truth is that it was designed to discover precisely whether or not wrong beliefs were the motivation of the the suspect’s wrong actions.¹¹⁰ In its mandatory form it was a new practice, which could hardly have been in force for more than three decades. It was certainly unknown to Peña when he was commenting on Eymerich in 1578. At that time Peña barely admitted the possibility (that is the legitimacy) of torturing for intention, and only at the very end of his long scholium on torture, where he cites Diego Simancas for a justification of the process.¹¹¹ Farinacci in 1614 approved of the practice as a reasonable compromise at times between ordering purgation and ordering abjuration (that is, convicting the defendant on the basis of presumption).¹¹² But it is only in Masini in 1621 that it appears as a routine practice of the Holy Office.¹¹³ An early

¹⁰⁸Mayer, *RI* 3, pp. 203.

¹⁰⁹Speller, *Galileo’s Inquisition Trial*, 33, disagreeing with Fantoli, *Galileo for Copernicanism*, 315, and others.

¹¹⁰See Kelly, “Judicial torture,” 789–790.

¹¹¹Peña on Eymeric, part 3, scholium 118, 2:231. He does not mention the practice in his *Praxis inquisitorum*, finished in 1605.

¹¹²Farinacci, *Tractatus de haeresi*, title 179, no. 56, p. 37.

¹¹³Masini, *Sacro arsenale*, part 2 (examining suspects), pp. 46–47: “E qui pure fà di mestiero particolarmente avvertire che, quantunque la mala credenza contra la fede risieda nell’ animo, di cui solo Iddio è ve[n]ditore et giudice incorrottevole e incorrotto, ne possa perciò dall’ huomo vedersi ò penetrarsi, non potendo l’acume dell’occhio mortale tanto avanti trapassare in alcun modo, tuttavia dalle parole e fatti hereticali si presume pur anco nella mente errore et mala fede. La onde, se il reo havrà giuridicamente confessato ò pur sarà dopo la negativa rimasto legittimamente convinto, d’haver proferito bestemmie hereticali ò commesso fatti parimente hereticali, dovrà immediatamente essaminarsi sopra l’intentione ò credenza sua, cioè, se ha col cuor tenuto et creduto ciò che con la bocca sacrilegamente ha proferito, ò con l’opere istesse empivamente protestato [for professato?], interrogandolo distintamente supra ciascuno di quegli articoli che vengono tocchi dalle supradette bestemmie e fatti hereticali” (And here it is necessary to take particular notice that, even though bad belief against the faith resides in the mind, of which only God is the incorruptible and uncorrupted avenger and judge, and consequently cannot be seen or penetrated by man, since the vision of mortal sight cannot extend so far in any way, nevertheless it is presumed from heretical words and deeds that error and bad faith are also in the mind. Therefore, if the suspect has confessed juridically, or at least after remaining in denial has been legally convicted, of having uttered heretical blasphemies or having committed deeds similarly heretical, he should immediately be examined on his intention

instance of its use appears in 1607, when Paul V decreed that a bigamist be tortured on his intention, and then, if nothing more turned up, he was to abjure *de vehementi*, and be sentenced to the galleys for five years.¹¹⁴

In Galileo's case, the examination on intention was to be carried out not with actual torture but only with the threat thereof. Whether Galileo was told of this limitation is not known. It may well have been part of the plea bargain that he made with Maculano, or it may have been the result of standard rules for defendants of advanced age or ill health.¹¹⁵

After arriving at this decision, the pope continued (doubtless still in keeping with the vote of the cardinals): if Galileo bore up (*si sustinuerit*)—that is, passed this test¹¹⁶—and did not confess that he had in the past held heliocentrism, or still held it, he was to abjure *de vehementi*. This meant, of course, that he would first be convicted of the crime of “vehement suspicion of heresy” (VSH), a charge lesser than heresy, roughly standing as misprision of treason does in relation to treason,¹¹⁷ or murder in the second degree as opposed to first-degree murder. It could be imposed for a large variety of reasons, all dealing with ways of showing sympathy for heresy,

or belief, that is, whether he held and believed in his heart that which he sacrilegiously uttered with his mouth or with his very deeds impiously protested [professed?], questioning him separately on each of those articles that touch upon the said heretical blasphemies and deeds). The examination involves torture when wrong beliefs are denied: see pp. 121–129.

¹¹⁴20 Sept. 1607, “Sanctissimus decrevit ut torqueatur supra intentione, et, si nihil superveniat, abjuret de vehementi, et damnetur ad trirèmes per quinquennium,” cited by Tedeschi, “Organization and Procedures,” 184n110. The intention to be checked would presumably concern his belief in the sacrament of marriage (see p. 144).

¹¹⁵See Peña on Eymeric, part 3, scholium 54, 2:167: “De illis vero qui propter immaturam aetatem et corporis debilitatem, quales sunt impuberes, aut propter senectutem non torquentur, dubium est an saltem terri possint; et verius est posse, cum leviter etiam et cum moderamine, juxta personae et temperamenti corporis qualitatem, torqueri possint” (But concerning those who are not tortured because of bodily weakness, like children below puberty, or because of old age, it is questioned whether they can at least be terrorized [threatened]; and the preferable opinion is that they can, since they are able to be tortured lightly and with moderation, in accord with each person's nature and bodily condition). The question is discussed by Maurice A. Finocchiaro, “Myth 8: That Galileo Was Imprisoned and Tortured for Advocating Copernicanism,” in *Galileo Goes to Jail and Other Myths about Science and Religion*, ed. Ronald L. Numbers (Cambridge, Mass.: Harvard University Press, 2009), 68–78, 249–252, esp. 77. Beretta, “Procès de Galilée,” 481, says that it is definitely the case that the pope limited the examination to the threat of torture because of Galileo's age and illness. But the record is noncommittal.

¹¹⁶Fantoli, *Galileo for Copernicanism*, 538–539n77, wrongly translates this as “after he undergoes.” Speller, *Galileo's Inquisition Trial*, 306, is correct in saying it means, “if he has remained firm” (or, better, “if he should remain firm”). But he is mistaken in claiming that there was no such thing as a crime of intention (304).

¹¹⁷An example can be seen in the case of Thomas More: refusal to take the oath of succession was misprision of treason (More was imprisoned for it); impugning the king's titles (specifically, “Supreme Head of the English Church”) was treason (More was sentenced to death upon conviction).

aiding and abetting heretics, and so on.¹¹⁸ Galileo was to be sentenced to prison at the discretion of the Congregation, and forbidden under pain of relapse to treat (*tractare*) of the condemned belief again in writing or in word (*scripto vel verbo*).¹¹⁹ It is important to realize that even the lesser conviction of VSH would be treated as equivalent to a conviction of actual heresy if he were convicted again of holding the same belief; the second conviction would constitute relapse into heresy, bringing with it automatic consignment to the secular arm and death. But the surprising point here is that the prohibition extended not just to *defending* heliocentrism, but also *treating* of it, which, literally taken, would preclude him even from refuting it. Finally, Galileo's book was to be prohibited, and the sentence was to be publicized,¹²⁰ which was a major departure from standard procedure.¹²¹

To sum up what happened at the June 16 session of the Congregation, Galileo was judged by judges at a remove from the defendant's presence; this seems to have been the way it was always done. Commissary Maculano (also present at this session, but not one of the voting judges) had presided as stand-in or deputed judge (which is what "commissary" means) at the trial actions in Galileo's presence, which took place in a single session, on May 10: Galileo was formally presented with the fisc's bill of charges (not preserved in the records, a standard omission) and given eight days to reply. But rather than accepting this term to prepare his plea and plan his defense, he entered his plea immediately. He pleaded guilty to one charge, as confessed previously on April 30 (giving the appearance of supporting heliocentrism in his *Dialogue*). Then, submitting a defense arguing the purity of his intentions, he pleaded not guilty to the charge of violating a precept and to the further charge of malfeasance for not mentioning the precept to the censor. Finally, with regard to any other charges, he threw himself on the mercy of the court.

The cardinals then gave their opinions on what the verdict should be, and the pope pronounced the actual verdict: he was condemned only for VHS, which he was to abjure. His other offenses were not subject to abjuration.¹²²

¹¹⁸See the list of offenses that call for conviction under this head by William Lyndwood, *Provinciale, sive Constitutiones Angliae* (Oxford: Oxford University Press, 1679; repr. Farnborough: Gregg, 1968), bk. 5, title 5, chap. 4, *Finaliter, at vehementer suspecti* (p. 302, col. b, note n).

¹¹⁹Urban VIII's decree against Galileo, 16 June 1633, *DV*, no. 138, p. 193; *TofG*, no. 78, p. 184.

¹²⁰*Ibid.*

¹²¹Mayer, *RI 3*, p. 202. The two precedents for publicizing sentences that Mayer names on p. 211 do not compare to the scope and importance of the Galileo action.

¹²²See Beretta, "L'affaire Galilée," 180–181: abjuration was used only when the offense concerned a matter of the faith, or when a proposition was formally or virtually heretical. See also Beretta's entry, "Galilei, Galileo," in *Dizionario storico dell'Inquisizione*, ed. Adriano Prosperi with Vincenzo Lavenia and John Tedeschi, 5 vols. (Pisa: Scuola Normale Superiore Pisa, 2010), 2:636–640, esp. 638.

According to Beretta, it was this verdict of the pope's, and not the sentence delivered in the name of the cardinal inquisitors, that was definitive.¹²³

IX. GALILEO FORCED TO CONFESS HIS BELIEFS UNDER THREAT OF TORTURE, JUNE 21, 1633

The moment that Galileo formally confessed on April 30 to favoring the heresy of heliocentrism while denying that he intended to favor it, he fell subject to the new custom of examining for intention under torture. The examination had not yet taken place when he reconfirmed his confession in his formal plea on May 10. It is not clear why the examination did not occur before the meeting of the Congregation on June 16, where the pope ordered it to take place before sentence was passed, but there was a similar timing in the case judged by Paul V in 1607. Urban did not need to state what would happen if Galileo did not pass the test, namely, if he admitted that he had held the opinion (especially after it was condemned) or still did hold it. That is, he would be convicted of actual heresy, made to abjure it as such,¹²⁴ and doubtless be subjected to a harsher punishment (say, a longer imprisonment).

On June 21, therefore, in accord with the pope's order, Galileo personally appeared before the commissary with the fiscal procurator assisting, and he took another oath of telling the truth. After being asked by the *dominus* (Maculano or Sincero) or *domini* (Maculano and Sincero) whether he had anything to add, he was asked about his thoughts: "Does he hold, or has he held, and how far in the past, that the sun is the center of the world?"¹²⁵ Again, from what is presented in the book, it is presumed (*praesumitur*) that he held that opinion after its condemnation; "therefore let him freely tell the truth about whether he holds or has held it."¹²⁶ Once again: from the way it is supported with arguments in the book, it is presumed that he held it, or at least that he held it at that time; and unless he resolves to confess the truth, appropriate legal remedies will be employed.¹²⁷ Finally: let him tell the truth, or else "it will come down to torture."¹²⁸ His answers remained constant: he originally had considered the Ptolemaic and Copernican systems

¹²³Beretta, "Siège Apostolique," 430.

¹²⁴Beretta, "L'affaire Galilée," 185: He would be made to abjure *de formali* rather than *de vehementi*.

¹²⁵Interrogation of Galileo about his beliefs, 21 June 1633, *DV*, no. 48, pp. 101–102; *TofG*, no. 80, pp. 186–188: "An teneat vel tenuerit, et a quanto tempore citra, solem esse centrum mundi."

¹²⁶*Ibid.*: "ideo dicat libere veritatem, an illam teneat vel tenuerit."

¹²⁷*Ibid.*: "vel saltem quod illam tenuerit [illo] tempore et ideo, nisi se resolvat fateri veritatem, devenietur contra ipsum ad remedia juris et facti opportuna."

¹²⁸*Ibid.*: "dicat veritatem, alias devenietur ad torturam."

as equally possible, but after the determination of the Congregation of the Index, he held only the Ptolemaic system to be true.

Then, because nothing else could be accomplished in fulfilling the pope's order (*in executionem decreti*)—that is, to sound out his thoughts—his signature was obtained and he was sent back.¹²⁹

X. THE SENTENCE AND ABJURATION

On the very next day, June 22, the cardinal inquisitors, along with Maculano and Sincero, convened in the convent of Santa Maria sopra Minerva, along with the consultor theologians. More than one case was taken up, the first of them being Galileo's, and he abjured in their presence.¹³⁰ The sentence, read by one of the cardinals, or by Maculano, was addressed directly to Galileo.

The judges' summary of Galileo's dealings with the Holy Office in 1616 has already been noted, and also its inaccurate statement of the Index decree (asserting that it prohibited all books that "treated" of the false doctrine of heliocentrism, whereas it allowed Copernicus's book to be reissued, after modifications).

The sentence continues: A diligent examination of his book revealed that he had violated the precept because of having defended (*havendo difesa*) the condemned opinion, by presenting it as explicitly probable (*espressamente probabile*), a grave error, since no opinion condemned as contrary to scripture can be probable.

Moreover, he confessed to failing to mention the precept not to hold, defend, or teach the opinion in any way when seeking permission to publish his book.

Further, he confessed that a reader could conclude to the probability of heliocentrism from arguments in the book, which he admittedly produced out of cleverness in making even false propositions seem plausible.¹³¹

It is important to note that just because Galileo's past offenses were listed in this part of the sentence, it does not mean that he was thereby condemned for them.¹³² The precise statement of condemnation comes later.¹³³

¹²⁹Ibid.

¹³⁰Meeting of the Congregation of the Holy Office, *Decreta* anno 1533: *DV*, no. 140, p. 194, June 22, beginning on fol. 102v: "In qua propositae fuere causae infrascriptae, quas in notam sumpsit idem Dominus Assessor et mihi Notario tradidit [here Pagano skips the list of consultors present, resuming on fol. 103r:] Galileus de Galileis Florentinus abjuravit de vehementi in congregatione etc. juxta formulam etc." There follows the text of Galileo's abjuration. For the missing list of consultors, see Beretta, "Rilettura," 103n47.

¹³¹Sentence, *DV*, no. 114, pp. 162–163; *TofG*, no. 81, pp. 191–192.

¹³²As some authors seem to think: for instance, Fantoli, *Galileo*, 336.

¹³³Blackwell, *Behind the Scenes*, 25.

Note that nothing is made here of the permission to treat heliocentrism hypothetically, mentioned by Galileo in his first deposition, and also recorded in the *Summarium*, which says that the pope concluded that the *Dialogue* violated the orders (*ordini*) and the precept given him, by moving away from hypothesis.¹³⁴

Then the cardinals take up his defense. They seem to accept what he says about forgetting the words of the precept and believing that the prohibition given to him did not differ from the Index's general prohibition, but they say that this prohibition, as expressed in Cardinal Bellarmine's memo, condemns him on the other charge: that is, even though he knew that it was contrary to Holy Scripture, he dared to "treat, defend, and persuade" it as probable; and his license was unscrupulously obtained because he failed to mention the precept in the form that he had it.¹³⁵

Next, the cardinals explain the "rigorous examination" that he was recently subjected to; it was mandated because of their doubt that he had entirely told the truth about his intention. He is now told that in this examination he answered "Catholically" concerning his said intention, but that this Catholic response was "without any prejudice concerning the things confessed by him and concluded against him as just stated above."¹³⁶ According to Eliseo Masini, it was very important that this sort of declaration be made *before* an examination on intention took place; otherwise, if the defendant were to deny the deed under torture, he must be absolved and released.¹³⁷ If Galileo had chosen to accept the services of an advocate, perhaps he could have made something of the failure of Maculano to enter a protest limiting the scope of the rigorous examination before they carried it out.

Finally, in the actual judgment of condemnation, they find him vehemently suspect of heresy (that is, convict him of supporting heresy), in two ways: (1)

¹³⁴*Summarium*, *DV*, no. 1, p. 8; *TofG*, no. 77, p. 181. The Italian reads: "Trovò che il Galileo haveva trasgredito gli ordini et il precetto fattogli, con riceder dall'ipotesi" (He found that Galileo had transgressed the orders and the precept given to him, by receding from hypothesis).

¹³⁵Sentence, *DV*, no. 114, pp. 162–163; *TofG*, no. 81, pp. 191–192.

¹³⁶*Ibid.* The text reads: "nel quale [esame], senza però pregiudizio alcuno delle cose da te confessate, e contro di te dedotte, come di sopra, circa la detta tua intentione rispondesti cattolicamente."

¹³⁷Masini, part 6 (torture), p. 125: "Convertrà che i giudici facciano la protesta che non se gli dà la tortura se non *pro ulteriori veritate e super intentione*, senza alcuno pregiudicio delle cose da lui già confessate e delle quali è convinto; e tal protesta è non solamente utile, ma anco necessaria, perche se il reo, ancorche confesso et pienamente convinto, senza detta protesta negasse in tortura il fatto, e in detta sua negativa persistesse, dovrebbe andarsene assoluto" (It is advisable that the judges make a protest that he is put to torture only *for further truth and upon intention*, without any prejudice concerning things already confessed by him and on which he has been convicted; and such a protest is not only useful but also necessary, because, if the defendant, after having confessed and having been fully convicted, should in the absence of said protest deny the deed under torture, and persist in his denial, he should betake himself away, absolved). Note that here the examination on intention comes after the defendant has been convicted of the heretical deed itself.

suspect of having held and believed (*d'haver tenuto e creduto*) the false doctrine, contrary to scripture, of the sun as unmoving center and the earth as moving; and (2) suspect of holding it allowable to defend as probable an opinion defined as contrary to scripture.¹³⁸

This pronouncement shows that the cardinal inquisitors accepted the determination of the consultors that heliocentrism was a heresy. It might also seem to say that they were convicting Galileo of actually believing in this heresy, the false doctrine of heliocentrism, after having assured him that he had confirmed his orthodox belief in the rigorous examination. But it must be remembered that they were convicting him of having rendered himself *suspect* of this belief, that is, of giving the appearance of believing it.

The sentence concludes: "You have thereby incurred all the penalties of canon law concerning such offenders. You will be absolved if you renounce the said errors and heresies [only one heresy has been mentioned, and only one error of belief, as determined by the consultants], and every other heresy and error, in the [pre-prepared] form that we will give to you. Finally, your book is also prohibited."¹³⁹

The sentence does not explicitly say that any return to the condemned offense will entail a conviction of relapse with mandatory consignment to the secular court, but it was implied, since one of the necessary concomitants of a conviction *de vehementi* was the penalty of relapse on a second conviction.¹⁴⁰

As punishment, Galileo was condemned to the prison of the Holy Office, for a length of time to be determined, and ordered to say the penitential psalms once a week for the next three years.¹⁴¹ The stay at the Holy Office turned out to be only for a single night, for on the day following, June 23, the Congregation met again, and after other business, ordered Galileo to be removed from the prisons of the Holy Office and to stay in the palace of the grand duke in place of prison (*loco carceris*).¹⁴²

In the abjuration provided to Galileo, which he read while personally present in court, he first swore that he had always believed what the Church held and would continue to do so.¹⁴³ Such a statement about the defendant's constant and consistent orthodoxy in the past followed from the results of the rigorous examination specified in the sentence. Both features were matched in Masini's formula for sentence and abjuration *de vehementi*.¹⁴⁴ Only the latter (that is, statement of past and present orthodoxy) was stipulated by

¹³⁸Sentence, *DV*, no. 114, p. 164; *TofG*, no. 81, p. 193.

¹³⁹*Ibid.*

¹⁴⁰See Peña on Eymeric, part 3, scholium 55, 2:171.

¹⁴¹Sentence, *DV*, p. 164; *TofG*, p. 193.

¹⁴²Congregation decree commuting Galileo's sentence, 23 June 1633, *DV*, no. 141, pp. 194–195.

¹⁴³Abjuration, *DV*, no. 115, p. 165; *TofG*, no. 82, p. 194.

¹⁴⁴Masini, part 7 (ending the process), pp. 171–180, esp. 175, 178.

Peña,¹⁴⁵ since the mandatory rigorous examination on intention was instituted only after his time.

Grammatically, Galileo's statement about faithful belief would seem to be the end of his oath; but the oath was doubtless meant to cover the rest of his statement, which was, in effect: Even though I was given a precept to abandon the false opinion of the sun being motionless and not to hold, defend, or teach it in any way, in speech or writing, after being informed that it is contrary to scripture, nevertheless I published a book in which I give strong reasons in favor of it without refutations; therefore, I was adjudged strongly suspect of heresy, that is, suspect of having held and believed this doctrine. However, because I wish to remove from myself this justly founded strong suspicion, I abjure the said errors and heresies, and I swear that in the future I will avoid anything that will give rise to such suspicion again.¹⁴⁶

Instead of holding, with Mayer, that the abjuration gives the precept as "the cause of his offense,"¹⁴⁷ one should conclude that it merely echoes the narrative in the sentence, that the fact of the precept, and his contravention of it, aggravated his offense of appearing to support a proposition against scripture. Mayer speaks of "two alternative theories of the trial" on the side of the prosecution, the precept theory and the heresy theory, with the heresy theory winning out in the sentence and the precept theory returning in the abjuration.¹⁴⁸ But it was the heresy theory that won out altogether. There has been a similar clash of theories among modern scholars about the outcome of Galileo's trial: was his crime disobedience or heresy? The answer is obviously the same; it was not possible to abjure disobedience or insubordination or contempt of court.

XI. CONCLUSION

Galileo's trial as thus reconstructed was in accord with the standard operating procedure of heresy inquisition from almost the very beginning. Of course, it always bears repeating that this standard procedure went contrary to the canon law of inquisitorial due process, notably as laid down at the Fourth Lateran Council in 1215, to the extent that it forced suspects to testify against themselves, before having charges laid against them. That is the way it worked in heresy-inquisition circles in most of Europe—but notably not in England, at least in the sixteenth century.¹⁴⁹

¹⁴⁵Peña on Eymeric, part 3, scholium 55, 2:171.

¹⁴⁶Cf. Abjuration, *DK*, no. 115, pp. 165–166; *TofG*, no. 82, pp. 194–195.

¹⁴⁷Mayer, *RI* 3, pp. 221.

¹⁴⁸*Ibid.*, 219–221.

¹⁴⁹For English practice, which followed canonical rules, see Henry Ansgar Kelly, "Thomas More on Inquisitorial Due Process," *English Historical Review* 123, no. 503 (August 2008): 847–894; Kelly, "Mixing Canon and Common Law in Religious Prosecutions under Henry VIII and

The one aspect that was new in Galileo's time was the examination of intention under torture, required after a crime was admitted but with a denial of a heretical or erroneous intention. In Galileo's case, instead of taking place before his trial, it was conducted afterwards, before the sentence was delivered; and because he passed the test, the sentence did not have to be altered. Furthermore, "threat of torture" was substituted for actual torture, though perhaps not as a special favor, but because the Holy Office was following a standard exemption for advanced age or physical weakness or defect.

In heresy cases, a suspect could readily be convicted of actual heresy, that is, belief in heresy (as defined by the Holy Office), on the basis of a straightforward treatise composed by him advocating the heresy. In Galileo's case, however, the alleged heresy in question was voiced not by him as author, but by one of the interlocutors in a dialogue composed by him, and Galileo's views could only be inferred by the quality of the arguments given to the speaker. It was concluded that the arguments in favor of heliocentrism were presented as more convincing than those against it.

From the viewpoint of procedure, then, the treatment accorded to Galileo was fairly routine, except for the unusual leniency of his confinement during examination and trial and the publicity given to the sentence against him. Early on, he had been given a standard precept warning him off a condemned proposition. Much later, he was summoned and interrogated in the usual roundabout way. And finally he was brought to trial and charged, found guilty and punished, after he passed the newly mandated rigorous examination concerning his beliefs and intentions.

In Mayer's account, he outlines the standard "trial" (beginning with the opening of a dossier) in eleven steps, matched to Galileo's case.¹⁵⁰ He admits that the activity in 1615–1616 amounted only to an investigation, and in 1632, the investigation started over (steps 1–2), and soon the original dossier from 1615–1616 was added, whereupon the precept was uncovered (Mayer says it would have been easy to find).¹⁵¹

Mayer is seriously off base when he describes the next step: "In step three, one of the most essential, the accused was cited to stand trial."¹⁵² It was a step, Mayer says, that was "a part of the defense that was rooted in the *ius gentium* and divine law."¹⁵³ In reality, a suspect was never told of accusations against

Edward VI: Bishop Bonner, Anne Askew, and Beyond," *Sixteenth-Century Journal* 46, no. 4 (Winter 2015): 927–955.

¹⁵⁰Mayer *RI* 3, pp. 214–217.

¹⁵¹*Ibid.*, p. 152.

¹⁵²*Ibid.*, p. 214.

¹⁵³Mayer, *RI* 1, p. 177.

him at this point and he was never summoned to trial. Rather, he was simply summoned, without being told the purpose. The purpose was not to be charged, but rather to be interrogated, as a witness against himself, in an attempt to coerce admissions of wrongdoing by means of an oath to tell the truth and sometimes by torture.

Mayer's listing of steps is as follows:

1. Denunciations
2. Investigation
3. Citation to trial
4. Interrogation
5. Laying of charges
6. Repetition of witnesses
7. Offer of defense

But the true sequence was:

1. Denunciations
2. Investigation
3. Citation to Holy Office
4. Interrogation without charges
5. Citation to trial
6. Laying of charges, with offer of time to respond
7. Offer of defense, and defense
 - a. Delivery to defendant of the fisc's case, and a copy of the whole offensive process
 - b. Offer of an advocate
 - c. Adjournment and reconvening for defendant's plea
 - d. Defendant's plea
 - e. Defendant's statement of defense against charges denied
 - f. Defendant's submission of defense witnesses
 - g. Defendant's submission of questions for prosecution witnesses
 - h. Repetition of prosecution witnesses, deposition of defense witnesses

Mayer says that Galileo's trial was defective in skipping the repetition of witnesses, but the repetition was to come only as part of the defendant's defense, and Galileo short-circuited the process by pleading immediately, admitting guilt on one point (favoring heliocentrism in his *Dialogue*), offering a written defense against one of the charges (disobeying the precept), and resting his case without further ado.

Mayer's last four steps are straightforward: (8) expedition (summarizing, consulting, deliberating); (9) the pope's sentence; (10) abjuration; and (11) the publicizing or recording of the sentence.

The outcome for Galileo could have been better and it could have been worse. How better? As usual, the summons he received to the Holy Office in

1632 was noncommittal, and, instead of interrogating him and trying him as a suspect, they could easily have treated him as they did in 1616 and given him another precept, to emend his *Dialogue* (in the way that he proposed on April 30), ordering the book suppressed until emended. This is what was done in the case of Copernicus's book: it was allowed to be brought out again in 1620, with a few changes to insure that the heliocentric system was discussed only hypothetically.

The outcome could have been worse: although he could hardly have been convicted of first-degree heresy on the basis of his book, that charge would have been in order if he had admitted actual belief in the heliostatic heresy during his rigorous examination, and he would have been made to repeat his guilt in his abjuration. As it was, however, he was allowed to say that he had always believed as the Catholic Church believed. According to both the *Summarium* and the sentence, Galileo was originally denounced for holding various false Copernican positions, but he was not held to blame for this because it had not yet been defined as heretical. Once it was, however, he was ordered "to relinquish" (*ut relinquat*) the said opinions. In 1633, he was permitted to swear that, though he had held it possible before 1616, he did not do so afterwards, not even when he published his *Dialogue* and gave the impression that the theory was probable. He departed to lead the rest of his life in easy confinement, being presented to the world as a scientist who did not doubt that the sun moved around the earth.

Is it likely that Galileo was forced to perjure himself in these proceedings, specifically in the rigorous examination? If he could truly claim that he had never believed heliocentrism to be more than possible, since it was not definitively provable, could he have said in good conscience in 1633, when threatened with torture (he was not necessarily to know that it was only a threat) that after the Index decree of 1616 he held only the geocentric system to be possible and true? Perhaps he could, by resorting to mental reservations of some sort (one would be that, since his tormentors had no right to the truth about his thoughts, he was free to tell them anything that would satisfy their illegal inquiry). However, even if he did not rationalize a justification for his answer but deliberately lied, it was something that he could clear up in the forum of confession, and no one but God and his confessor would be the wiser. But a death penalty loomed over him; he was forced to stay quiet about any contrary opinions that he had for the rest of his life, or face the penalty of relapse and execution. However, his sentence did not take the extreme form that the pope said it should in his verdict of June 16, that he would be forbidden to treat of heliocentrism again in any way, which would logically include even bringing it up with the intention of denouncing it. He did in fact strongly reject it again in 1641, in what

Francesco Beretta calls “his second abjuration.”¹⁵⁴ Meanwhile, Copernicus, whose unaltered book had recently been reprinted,¹⁵⁵ was allowed, with a few tinkerings, to speak once more in favor of the system that bore his name.

The goal in this account has been to present Galileo's encounters with the Holy Office from the point of view of the usual procedures of the Congregation, following in the footsteps most recently of Francesco Beretta and, especially, Thomas Mayer. Much of the speculation of scholars about how Galileo was treated by the tribunal and the motivations of everyone involved has been hampered by a faulty knowledge on two fronts: what actually happened to him, and what would ordinarily occur under such circumstances. It can hardly be maintained that he was the object of extra favor or special disfavor if the action fell under the normal routine of the bureaucracy. The above presentation, it is hoped, will constitute a firmer basis for further discussion of these important events.

¹⁵⁴Francesco Beretta, “Une deuxième abjuration de Galilée, ou l'inaltérable hiérarchie des disciplines,” *Bruniana e Campanelliana* 9, no. 1 (2003): 9–43, esp. 9: letter of 29 March 1641 to Francesco Rinuccini.

¹⁵⁵The edition by Nicolaus Mulerius, first printed in Amsterdam in 1617, was reissued in 1640. The next printing was in Warsaw in 1854. See Nicolaus Copernicus, *De revolutionibus orbium coelestium* (Facsimile of the 1543 edition, with preface by Johannes Müller, New York: Johnson, 1965), ix–xi.