

Cardinals and the Apostolic Penitentiary

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What was the Apostolic Penitentiary?

The apostolic penitentiary is the modern term for an office known as the papal or pope's penitentiary in the Middle Ages.¹ The penitentiary was one of the most important offices within the medieval papal Curia and it functioned under the guidance of a cardinal. The main task of the penitentiary, or "the supreme tribunal of conscience", as it also has been called, was to deal with sins reserved to the papal authority. This definition is not adequate, however, because according to the powers given to the penitentiary in the Middle Ages, it was a papal office rather than a tribunal. The penitentiary only became a tribunal in the strict sense after Pope Pius V (1566-72) renewed its powers during his reorganization of the Curia in 1569.²

¹ Peter D. Clarke and Patrick N.R. Zutshi, "Introduction," in *Supplications from England and Wales in the Registers of the Apostolic Penitentiary 1410-1503*, eds. Peter D. Clarke and Patrick N.R. Zutshi (Woodbridge: 2013), 1:xiii.

² The history and functioning of the penitentiary has been thoroughly studied. The most important publications are: Emil Göller, *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V*, 2 vols. in 2 parts (Rome: 1907, 1911); Filippo Tamburini, "Il primo registro di Suppliche dell'archivio della Sacra Penitenzieria Apostolica (1410-1411)," *Rivista di Storia della Chiesa in Italia* 23 (1969), 384-427; Ludwig Schmutge, Patrick Hersperger, and Béatrice Wiggerhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II (1458-1464)* (Tübingen: 1996); Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages: The Example of the Province of Uppsala 1448-1527* (Helsinki: 2001); Kirsi Salonen and Ludwig Schmutge, *A Sip from the "Well of Grace": Medieval Texts from the Apostolic Penitentiary* (Washington D.C.: 2009); Kirsi Salonen, "The Curia: The Apostolic Penitentiary," in *A Companion to the Medieval Papacy: Growth of an Ideology and Institution*, eds. Keith Sisson and Atria A. Larson (Leiden: 2016), 259-75.

The penitentiary functioned under the guidance of a cardinal called the major penitentiary (*poenitentiarius maior*).³ In this role, the cardinal was a special trustee of the pope, from whom the cardinal had received the powers to make decisions in certain kinds of cases of conscience on the pontiff's behalf.⁴ The cardinal penitentiary did not have to take care of all matters entrusted to the penitentiary personally, because he was assisted by a number of persons working for an office called the *officium maius*. The officials of this part of the penitentiary held certain powers, originally granted to the person of the cardinal penitentiary. These powers allowed his subordinates to bestow four different types of grace on the penitentiary's clients: absolutions for those who had violated regulations of canon law, dispensations that permitted Christians to act against Church regulations, licences that allowed Christians not to observe certain ecclesiastical norms regarding the exercise of one's faith, and official declarations.

In the late Middle Ages, the cardinal penitentiary and his staff could grant absolutions in three areas. First, they could absolve Christians from all those sins that belonged to the faculty of ordinary priests or bishops. Second, they could grant absolutions in matters described in the bull *In coena domini*, which was an "official bull of excommunication", publicly pronounced every year on Maundy Thursday, or to persons excommunicated by the

³ The earliest sources from the 12th century call him the papal penitentiary (*poenitentiarius papae*); later sources use terms such as *poenitentiarius generalis* or *poenitentiarius summus*. Göller, *Die päpstliche Pönitentiarie* I:1, 85.

⁴ In the course of the development of canon law and the central administration of the Church from the 12th century onwards, the handling of certain most severe sins was reserved to the pope, meaning that only he could absolve persons of them. The first reserved sin was violence against clerics, which the canon 15 (*Si quis suadete diabolo*) of the Second Lateran Council (1139) reserved to papal authority. Salonen, *The Penitentiary*, 58-77; Salonen and Schmugge, *A Sip*, 13-14.

pope.⁵ Third, they could deal with special issues personally entrusted to the cardinal penitentiary by the pontiff *vivae vocis oraculo*.⁶

The best source for understanding the great variety of matters entrusted to the cardinal penitentiary and his staff is the penitentiary registers. The registers are internally divided into different sections, each of which contains abbreviated copies of approved petitions regarding a certain type of case. The seven most common sections in the registers are: *de matrimonialibus, de diversis formis, de declaratoribus, de defectu natalium, de uberiori, de promotis et promovendis, and de confessionalibus*.

The *de matrimonialibus* section records petitions for dispensation and absolution from couples that had married or intended to marry despite the existence of a marital impediment, such as consanguinity or affinity. The *de diversis formis* section contains different types of graces: absolution and dispensation for Christians who were guilty of serious offences, such as violent behaviour, apostasy, simony, sacrilege, sexual crimes, or breaking their oath or solemn vow, and license for Christians who for example wished to eat forbidden products during Lent or to make a pilgrimage to territories under the Muslim control. The *de declaratoriis* section contains petitions regarding the competence of the penitentiary to grant official declarations either stating that the petitioners (despite their participation in events that resulted in someone's death) were not guilty of causing someone's death and thus could continue in his ecclesiastical career without problems or that they were not monks or nuns despite the fact that they had stayed in a monastery for some time or that they were legally married even though some people claimed that they were not. The *de defectu natalium*

⁵ The sins or crimes mentioned in this bull varied somewhat in the course of centuries but included, for example, various heresies and schisms, infringement of papal and ecclesiastical privileges, sacrilege, attacks on ecclesiastical persons and property, piracy, and forgery. Göller, *Die päpstliche Pönitentiarie* I:1, 85, 108.

⁶ Göller, *Die päpstliche Pönitentiarie*, I:1, 100-02.

section contains petitions for dispensation made by illegitimate children who desired to become priests despite the fact that canon law considered an illegitimate person unsuitable for an ecclesiastical career. Petitions by persons who wanted, in addition to an illegitimacy dispensation, a licence to hold contemporaneously more than one ecclesiastical office with cure of souls are in their turn recorded in the *de uberiori* section. Petitions concerning the sacrament of ordination and promotions in ecclesiastical orders are recorded in the *de promotis et promovendis* section. Constitution 21 of the Fourth Lateran Council (1215) (*Omnis utriusque sexus*) stipulates that all Christians had to confess their sins at least once a year to their parish priest. If someone wanted to confess to another priest, that was not possible without a so-called confessional letter, which allowed the person to confess to whom he or she wanted. The section *de confessionalibus* contains petitions for such letters.⁷

The most important officials of the *officium maius* of the penitentiary were the regents, who acted as the cardinal penitentiary's right hand and could make decisions on his behalf in all kinds of cases entrusted to the competency of his office.⁸ In addition to the regents, the cardinal penitentiary was the superior of a number of other persons necessary for the daily practices related to the handling of the petitions. These included scribes, abbreviators, *taxators*, sealers, and correctors, all of whom were involved in registering approved petitions in the penitentiary registers as well as in composing penitentiary

⁷ Salonen and Schmugge, *A Sip*, 28-68. See also Ludwig Schmugge, *Marriage on Trial: Late Medieval German Couples at the Papal Court*, trans. Atria A. Larson (Washington D.C.: 2012), 55-98; Ludwig Schmugge, *Kirche, Kinder, Karrieren: päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zürich: 1995), 33-69, 106-11, 135-207; Kirsi Salonen and Jussi Hanska, *Entering a Clerical Career at the Roman Curia, 1458-1471* (Farnham: 2013), 103-05, 114-48.

⁸ Kirsi Salonen, "L'attività della Penitenzieria Apostolica durante il pontificato di Pio II (1458-1464)," in *La Penitenzieria Apostolica e il suo archivio*, ed. Alessandro Saraco (Vatican City: 2012), 67-72.

documents that were issued in the cardinal penitentiary's name and in expediting them to the penitentiary's clients all over Christendom. Additionally, the penitentiary employed a number of proctors who helped his clients during the petitioning process. Furthermore, in certain more complicated cases, the penitentiary used trained lawyers as auditors. It was their task to check that the decisions of the office were legally correct.⁹

In addition to the staff of the *officium maius*, the cardinal penitentiary was the superior of those priests, called papal or minor penitentiaries (*poenitentiarii pape* or *poenitentiarii minores*), who took care of the souls of Christians in the main churches of Rome. The task of these priests, who belonged to another section of the penitentiary, the *officium minus*, was to hear confessions and absolve sinners on the pope's behalf.¹⁰

The cardinal penitentiary held one of the most significant positions within the Catholic Church. He was not only head of the penitentiary's *officium maius* and *officium minus*, which distributed pardons in the pope's name, but his position was so important that his appointment held even during vacancies of the Holy See. According to Clement V's constitution *Ne Romani* (1312), only the papal chamberlain and the cardinal penitentiary remained in their offices and continued their activities between the pope's death and the election of his successor. The chamberlain had to remain in office, because someone had to manage the Church's property and take care of practicalities regarding the papal funeral and election. The cardinal penitentiary, in turn, had to remain in function because it was crucially important that Christians in need of papal absolution could receive it all the time (see also Hunt's essay in this volume).¹¹

⁹ Salonen and Schmugge, *A Sip*, 14-16.

¹⁰ Salonen and Schmugge, *A Sip*, 16, 111-13.

¹¹ Clem. 1.3.2., edited in Emil Friedberg (ed.), *Corpus Iuris Canonici* (Leipzig: 1881), 2:1135-36. Schmugge, Hersperger, and Wiggenhauser, *Die Supplikenregister*, 12; Salonen, *The Penitentiary*, 49-50.

The History of the Penitentiary and the Development of the Powers of the Cardinals

The precise moment when the penitentiary came into being is not known—like many other papal offices, the penitentiary was never officially founded by a papal constitution but simply developed over centuries. The development of the cardinal penitentiary's office is nevertheless closely related to the expansion of the Church's central administration and the development of canon law in the 12th century, a period during which many important issues were reserved to the authority of the pope (see Bombi's essay in this volume). When popes could not personally take care of the many issues they had to deal with anymore, they began to delegate their decision-making powers to others around them. The cardinal penitentiary, for example, was entrusted with powers of absolution over Christians from reserved sins. The first popes who delegated their powers in such matters were Alexander III (1159-81) and Innocent III (1198-1216), but during their pontificates the position of the cardinal penitentiary was not yet fully defined nor permanent.¹²

The special faculties granted for the cardinal penitentiaries by the different popes offer good source material for the study of the cardinal penitentiary's developing position. The first faculties to be granted, for which we have precise written evidence, date from the pontificate of Innocent IV (1243-54): Innocent entrusted the cardinal and his staff with powers to absolve sinners from various sentences of excommunication. Clement IV's constitution *Saepe contingit* (1266), in turn, allowed the cardinal penitentiary to absolve priests who had been ordained by a foreign bishop instead of the bishop of their home

¹² Salonen and Schmugge, *A Sip*, 13-14; Patrick Zutshi, "Petitioners, Proctors, Popes: The Development of Curial Institutions, c.1150-1250," in *Pensiero e sperimentazioni istituzionali nella 'Societas Christiana' (1046-1250)*, ed. Giancarlo Andenna (Milan: 2007), 275-77.

diocese. The following year, Clement entrusted the cardinal penitentiary with a further power: to absolve Christians in cases mentioned in the bull *In coena Domini*, which was annually published on Maundy Thursday.¹³ The cardinal penitentiary's delegated powers multiplied during the pontificates of Clement's successors so that almost every medieval pope added something to his competences.

The cardinal penitentiary's increasing faculties can also be observed in the penitentiary's statutes, which defined the practical side of his office's work. The earliest of the penitentiary's preserved statutes date from 1291, but the statutes of Benedict XII (1335-42), compiled during the Avignon period, are the most influential.¹⁴

Benedict XII's statutes formed the basis for the cardinal penitentiary's faculties for around a century, until Eugene IV (1431-47) promulgated the constitution *In apostolicae dignitatis* in October 1438. With this constitution, Eugene confirmed all earlier faculties given to the cardinal penitentiary for granting absolutions, dispensations, licences, and declarations to Christians; he also added several new powers to the cardinal's competency. All in all, the constitution allowed the cardinal to make decisions in following matters: various forms of simony, cases in which the sinners had been excommunicated or put under interdict by other ecclesiastical authorities, violent behaviour against or by members of the clergy, robbery of pilgrims or people travelling ay to the Curia, sexual offences, heresy, schism, interaction with infidels, sacrilege, forgery, travelling without permit to the Holy Land, transgression of local ecclesiastical statutes, false promotion or ordination, apostasy, perjury, commutation of solemn vows, marital impediments, and illegitimacy. Additionally, Eugene ordered the cardinal to ensure that those who falsified penitentiary letters would be

¹³ Göller, *Die päpstliche Pönitentiarie* I:1, 85, 108.

¹⁴ The faculties of the penitentiary are edited in Göller, *Die päpstliche Pönitentiarie* I:2, 1-47 and II:2, 2-8. See also Salonen, *The Penitentiary*, 58-64.

punished and to correct and punish the office's personnel in the case that they misbehaved or did not conduct their tasks with due diligence.¹⁵ As the list shows, the cardinal penitentiary could make decisions on a great variety of matters in which the salvation of Christians was at stake.

In apostolicae dignitatis formed the basis of the penitentiary's faculties during the 15th and 16th centuries, since Eugene's successors made only minor adjustments and additions to his fundamental constitution.¹⁶ The situation changed only in the 1560s. Due to the growing criticism towards the penitentiary, and especially during the period of the Council of Trent, Pius IV decided to renew the penitentiary's faculties in their totality, as a part of his wider reorganization of the papal Curia. On 4 May 1562, only a few months after the opening of the Council, Pius promulgated the constitution *In sublimi*, in which he stressed that the penitentiary's task was to safeguard the salvation of the souls. This constitution did not effect major change in the penitentiary's powers yet, but Pius V's two subsequent constitutions—*Tempus et necessitas* (1 May 1569) and especially *Ut bonus paterfamilias* (18 May 1569)—drastically diminished the penitentiary's faculties. From May 1569 on, the penitentiary's faculties were limited only to cure of souls in cases that belonged to the *forum*

¹⁵ The text is edited in Göller, *Die päpstliche Pönitentiarie* I:2, 37-47.

¹⁶ The later faculties of the cardinal penitentiaries are edited in Göller, *Die päpstliche Pönitentiarie* II:2, 1-15. Sixtus IV is usually mentioned as one of the popes who tried to regulate the functioning of the penitentiary. In addition to listing again the faculties of the cardinal penitentiary immediately after his coronation in September 1471, Sixtus published another constitution in May 1484, in which he concentrated on practical matters of the office. Similarly to Sixtus IV, Leo X also published a constitution in which he confirmed the faculties of the office and made orders concerning practical matters, such as taxation immediately after his coronation in December 1513. These constitutions are edited in *Bullarium romanum. Bullarum diplomatum et privilegiorum sanctorum romanorum pontificum Taurinensis editio. Tomus V, ab Eugenio IV (an. MCCCCXXXI) ad Leonem X (an. MDXXI)* (Turin: 1860), 292-95, 576-80.

internum—that is, absolving Christians from sins committed. In practice this meant that the cardinal penitentiary and his staff could no longer distribute public dispensations, declarations, or licences in the *forum externum*. On 18 May 1569 Pope Pius V promulgated also a third constitution, *In omnibus rebus*, which defined how the penitentiary's office was to function after the reduction of its faculties.¹⁷

The Cardinal Penitentiaries

Emil Göller, in his *magnum opus*, has listed all known cardinal penitentiaries from the late 12th century onwards and has information regarding 41 cardinals who acted as major penitentiaries before the revocation of the office's powers. There were thirteen cardinal penitentiaries who held office between Eugene IV's reforms in 1438 and Pius V's reorganization in 1569: Nicolò Albergati (1438-43), Giuliano Cesarini (1443-44), Giovanni Berardi di Taliacozzo (1444-49), Domenico Capranica (1449-58), Filippo Calandrini (1458-76), Giuliano della Rovere (1476-1503), Petro Ludovico Borgia (1503-11), Leonardo Grosso della Rovere (1511?-20), Lorenzo Pucci (1520/21-29), Antonio Pucci (1529-44), Roberto Pucci (1544-47), Rainutius Farnese (1547-65), and Carlo Borromeo (1565-72).¹⁸

All these cardinals were experienced servants of the papal Curia and their appointment as major penitentiary had typically occurred at the end of their ecclesiastical career. All belonged to the highest rank of cardinal priests. Since the office of the cardinal penitentiary did not cease during *Sede Vacante*, the only reason for appointing a new major

¹⁷ Alessandro Saraco, "La Penitenzieria al 'secolo' del Concilio di Trento," in *Penitenza e Penitenzieria nel "secolo" del Concilio di Trento*, eds. Manlio Sodi and Alessandro Saraco (Vatican City: 2016), 124-25.

¹⁸ Göller, *Die päpstliche Pönitentiarie* I:1, 86-97; II:1, 9-12; Filippo Tamburini, "Per la storia dei Cardinali Penitenzieri Maggiori e dell'Archivio della Penitenzieria Apostolica: Il trattato 'De antiquitate cardinalis Pönitentiarum Maioris' di G.B. Coccino († 1641)," *Rivista di Storia della Chiesa in Italia* 36 (1982), 332-80.

penitentiary was his predecessor's death or his transferral to another position. This second option was, in fact, a nominal one, since—with the exceptions of Giuliano della Rovere, who was elected pope, and Lorenzo Pucci, who retired two years prior to his death—all late medieval and early modern cardinal penitentiaries served in office until their death. This offers clear testimony to the fact that the position of the cardinal penitentiary was the highpoint of most of these cardinals' ecclesiastical careers; the only possibility for further advancement was to be elected pope.

The Penitentiary Registers as Sources about the Cardinal Penitentiary's Daily Activity

The penitentiary registers, the copybooks of the office containing abbreviated copies of petitions approved by the officials of the penitentiary, form the most abundant source material for studying the activity of the cardinal penitentiaries and the penitentiary. In the course of the petition process, approved petitions were recorded into these registers so that the officials could keep track of graces granted. The name and position of the official who made the decision is recorded at the end of each registered petition. This information allows us to examine who took the decisions in the penitentiary. Did the cardinal penitentiary take part in the decision-making actively or did he leave the daily practices to the regents? This information is important because all letters of grace expedited through the penitentiary were always issued in the cardinal penitentiary's name regardless of who made the decision.¹⁹

The penitentiary registers are kept in the *Archivio storico della Penitenzieria Apostolica*. They consist of 746 volumes covering the period from 1450s until 1890s. Circa 160 volumes date back to the period prior to Pius V's reforms of 1569.²⁰ These registers have been accessible to scholars since 1983 and a significant number of studies and source editions

¹⁹ Salonen and Schmugge, *A Sip*, 94-95.

²⁰ APA, Reg. Matrim. et Div., vols. 1-160.

have been published since then. The later part of the archives was made accessible only recently, in 2011.²¹

In the late Middle Ages, the penitentiary was an extremely busy office. It has been calculated that it granted about 116,000 graces between the years 1455 and 1492, which means that the office handled around ten petitions per day.²² But what was the role of the cardinal penitentiary in this workload? Until now, this question has remained unanswered regarding the whole late medieval and early modern period. The only study made until now about the decision-making in the Penitentiary concerns the pontificate of Pius II (1458-64), when Cardinal Filippo Calandrini held the position of major penitentiary.²³

The penitentiary registers from Pius II's pontificate show that the office approved over 15,700 petitions during these six years. In 8949 cases (57 per cent), the petitions were approved by the cardinal penitentiary, while 181 (1 per cent) were signed by the pontiff himself; the rest (42 per cent) were signed by various regents of the penitentiary. Such a result suggests that Cardinal Calandrini was indeed very much involved in the decision-making of the penitentiary.²⁴ But how was it with other cardinal penitentiaries? It is not possible to count all the signatures from the numerous penitentiary registers, but it is possible to study the signatures in the German source publication series, *Repertorium Poenitentiariae Germanicum*, which cover the years 1431-1521.²⁵

²¹ It is not possible to include here a bibliography of penitentiary studies, but a selection of most significant publications can be found in Salonen and Schmugge, *A Sip*, 189-92. Regarding the source publications, see Salonen, "The Curia: The Apostolic Penitentiary," 266.

²² Salonen and Schmugge, *A Sip*, 19.

²³ Salonen, "L'attività della Penitenzieria Apostolica," *passim*.

²⁴ Salonen, "L'attività della Penitenzieria Apostolica," 70-71. The study is based on APA, Reg. Matrim. et Div. vols. 7-11, 13.

²⁵ RPG I-X, *passim*.

Table 1. The activity of cardinal penitentiaries in approving German petitions.

RPG	Pontificate	Total of approved petitions	Signatures by the cardinal	%
I	Eugene IV (1431-47)	775	630	81 %
II	Nicholas V (1447-55)	2785	2442	88 %
III	Callixtus III (1455-58)	2242	2217	99 %
IV	Pius II (1458-64)	4028	Not recorded	(57 %)
V	Paul II (1464-71)	4626	2755	60 %
VI	Sixtus IV (1471-84)	7478	1169	16 %
VII	Innocent VIII (1484-92)	4733	0	0 %
VIII	Alexander VI (1492-1503)	6648	0	0 %
IX	Pius III & Julius II (1503-13)	3270	0	0 %
X	Leo X (1513-21)	2430	0	0 %

Source: RPG I-X, *passim* and Salonen, “L’attivit  della Penitenzieria Apostolica,” 70-71.²⁶

The cardinals would seem to have been actively involved in the penitentiary’s decision-making, but only in the first half of the 15th century, as the numbers in Table 1 clearly show. The cardinal penitentiary under Eugene IV, Nicol  Albergatis, participated very actively in the decision-making, signing four-fifths of petitions presented to the penitentiary

²⁶ The RPG series records the name of the decision-maker in all volumes except for volume IV covering the pontificate of Pius II, which was the first volume published in the series. The editors later on adjusted the principles of their edition such that the identity of the decision-maker is recorded in the other volumes. Since my own study of the decision-makers luckily covers this pontificate, it is possible to reconstruct the whole period of 1431-1521.

during his cardinalate; his colleague Dominico Capranica was likewise active during subsequent pontificates. The records from the period of penitentiary cardinalates of Giuliano Cesarini and Giovanni Berardi di Taliacozzo unfortunately do not survive. However, Filippo Calandrini was less visible in the decision-making of the penitentiary than his predecessors (signing only about 60 per cent) and the situation has changed drastically during the pontificate of Sixtus IV, when Giuliano della Rovere became the cardinal penitentiary in 1476. The penitentiary registers contain references to 1087 petitions approved by the cardinal but they date only from the beginning of his cardinalate in autumn 1476 to spring 1479.²⁷ After that Giuliano did not sign any petitions but left that task to the regents of the penitentiary. His successors in the office, Petro Ludovico Borgia and Leonardo Grosso della Rovere, followed the same principle, leaving the penitentiary's daily business to their subordinates.

The penitentiary registers do not offer us any explanation for why the cardinal penitentiaries suddenly stopped participating in the penitentiary's decision-making. Neither does this trend coincide with any reorganizing of the activities of the Curia or the penitentiary that took place in the second half of the 15th century, which might otherwise have explained such a sudden change. One can thus only surmise that the cardinals must have gained so many other more important tasks that they could no longer take care of the daily business of their offices personally.

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²⁷ Filippo Calandrini signed 182 petitions during the first years of Sixtus IV's pontificate, when he was still in charge of the penitentiary. RPG VI, *passim*.

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