

STORYTELLING AND TRIALS: PLAYING THE “RACE CARD” IN NINETEENTH-CENTURY ITALY

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In 1871, Salomone Mortara was undoubtedly the most famous Italian Jew in the world, though for reasons that had brought him nothing but heartbreak. Thirteen years earlier, Salomone and his wife Marianna had been living with their eight children in the City of Bologna, which at the time was under the authority of the Papal States. On June 23, 1858, the Jewish couple’s six-year-old son Edgardo was seized by the papal police and taken directly to the Vatican, where he was subsequently adopted by Pope Pius IX.¹

It seems that about five years earlier a fourteen-year-old Christian domestic servant in the Mortara home, fearing that Edgardo might die from a childhood illness, had sprinkled a bit of water on the boy’s brow while he slept, whispering “I baptize you in the name of the father, of the Son, and of the Holy Ghost.”² This act, it turns out, was sufficient under Canon law to constitute a baptism. Unbeknownst to him or his parents, the sleeping Edgardo was instantly transformed into a Catholic.

Edgardo soon recovered from his illness. The servant, named Anna Morisi, thought nothing more of her action, reporting it to no one at the time. In the course of the next few years, however, she mentioned the “baptism” in passing to at least one friend, who repeated the story to others. The information was eventually relayed to Bologna’s Inquisitor, who felt compelled under the law to take action. According to the Inquisitor, Father Pier Gaetano Feletti, his

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1. These sorrowful events, familiar in broad outline to most students of Jewish history, were recently explored in compelling detail in David Kertzer’s brilliant book, *The Kidnapping of Edgardo Mortara* (Alfred A. Knopf 1997). Through his own translations of documents from Papal and other archives, Kertzer, a professor of anthropology at Brown University, brings to light the whole agonizing story, much of it previously unknown or only dimly understood. All quotes and other references in this essay are taken from Kertzer’s book.

2. Kertzer, *supra* n. 1, at 40.

duty was clear: “[T]he boy was a Catholic and could not be raised in a Jewish household.”³

The Inquisition’s abduction of Edgardo Mortara eventually became an international cause celebre, drawing official government protests from France, England, and the United States. Liberal newspapers around the world condemned the Vatican’s act as a heartless kidnapping, and democratic forces within Italy used the Mortara case as a rallying cry for the coming *Risorgimento*.

Pope Pius IX, however, was unyielding. Unmoved by the anguished pleas of Edgardo’s parents, he could not be swayed by the various forms of diplomatic pressure asserted by more enlightened governments, much less by the increasingly barbed attacks in the liberal press. Having assumed personal responsibility for the boy’s Catholic upbringing and religious education, Pius IX came to consider Edgardo’s attachment to the Church as a sign of God’s continued blessing of the Pope’s temporal rule. “My son,” he once told Edgardo, “you have cost me dearly, and I have suffered a great deal because of you.”⁴ Then, speaking to others in attendance, the Pope added, “Both the powerful and powerless have tried to steal this boy from me, and accused me of being barbarous and pitiless. They cried for his parents, but they failed to recognize that I, too, am his father.”⁵

The story does not have a tidy ending. Edgardo was never returned to his parents. He continued his religious education in Rome, eventually becoming a priest of some renown, taking the name Father Pio Edgardo in honor of Pius IX. He remained completely estranged from his family and from Judaism, to the point of fleeing in disguise to avoid the possibility of being returned to his parents during Cavour’s overthrow of the Papal States. In 1878 he met briefly with his then-widowed mother, and thereafter remained in some contact with the other members of his family. In 1940, Father Pio Edgardo died in Belgium at age 88. David Kertzer reminds us that only one month later, “German soldiers flooded Belgium, so to begin rounding up all those tainted with Jewish blood.”⁶

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3. *Id.* at 33.

4. *Id.* at 161.

5. *Id.*

6. *Id.* at 298.

By 1865 Salomone (also known as “Momolo”) and Marianna Mortara had moved to Florence, a city that lay beyond the authority of the Pope. There they aspired to raise their remaining children in peace, though they never gave up their hope of Edgardo’s return. By the spring of 1871 they were well established in a relatively spacious apartment on the Via Pinti, Momolo working as a merchant and Marianna caring for their two youngest children, Imelda and Aristide, who had been born after Edgardo’s abduction. As was customary among middle class Italian families, they employed a series of domestic servants. In the early spring of 1871 they hired a young woman from rural Tuscany named Rosa Tognazzi.

On April 3, 1871, barely a month after she joined the household, Rosa Tognazzi plunged to her death from a bedroom window in the Mortaras’ fourth floor apartment, landing in the courtyard below. At first her fall was thought to be suicide, brought on by her legal problems with a former employer. Soon, however, suspicion was focused on Momolo — the Jew reputed to be an angry and violent man. It was said that he had pushed his servant from the window. Although the initial police report cleared Momolo, further investigation turned up some disturbing evidence.

Still alive after the fall, Rosa was taken to a hospital where she died several hours later. A medical examination disclosed a deep, bloody laceration on her forehead. Though it was possible that such an injury could have been caused by the fall, this one was covered by a firmly knotted kerchief — suggesting that the wound had been received and stanching inside the apartment before she tumbled from the window. In other words, it seemed that she had been beaten, then murdered.

Adding further to the suspicion was the account of Signora Anna Ragazzini, a neighbor who had run to the assistance of the semi-conscious Rosa. “Did they throw you down,” she asked the dying girl who weakly answered “Yes.”⁷ “I know the Jew Momolo Mortara by sight,” Signora Ragazzini told the investigating magistrate, “day and night, I always heard loud noises, arguments, and quarreling in the Jew’s house.”⁸ Other neighbors confirmed the seeming violent nature of the Mortara household. “You hear noises, quarreling, and swearing all the time, and they seem to live like

7. *Id.* at 268.

8. *Id.* at 269.

animals,” said one.⁹ “I know the Jew Momolo Mortara,” said another, he is “a violent, quick-tempered character.”¹⁰

On April 6, Momolo Mortara was arrested and charged with murder.

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The decade of the 1860s had seen the successful struggle for Italian national unification, much of which was directed against the remaining temporal authority of the papacy. By 1870, nearly all of Italy had become a constitutional monarchy under the secular rule of King Victor Emmanuel II and the liberal political administration of Count Camillo di Cavour. The exception, of course, was Rome itself, which was still governed by the Pope as a much diminished Papal State. Then, on September 20, 1870, Italian troops entered Rome, declaring it the Italian capital and confining the Pope’s authority to the few acres surrounding the Vatican.

In 1871, Florence had long been beyond the control of the Church. In fact, it had served as Victor Emmanuel’s capital from 1865 until 1870. Thus, Momolo was to be tried in a civilian court, subject to the same law and procedures as all other Italian citizens. It could not have escaped the court’s notice that Momolo’s trial would be a test for the fairness and impartiality of the new, liberal state. Though the evidence against him seemed compelling, it was clear from the outset that Momolo, through his counsel, would be permitted to raise a vigorous and unconstrained defense.

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The prosecutor’s theory was straightforward. Rosa had not committed suicide. Whatever her difficulties with her former employer, they could not have been so serious as to cause a normal, healthy young woman to take her own life. Instead, the prosecution argued that Momolo, in a fit of rage for which he was well known, had struck Rosa with a cane or other object and that “following this grave wound, she was thrown from the window.”¹¹ At first, Momolo must have attempted to cover the gash with a kerchief, but seeing

9. *Id.* at 272.

10. *Id.* at 273.

11. *Id.* at 274.

that Rosa had been mortally injured, he must have pushed her from the window in a panicked attempt to cover up his crime.¹²

Witnesses testified that Rosa was a cheerful girl, never gloomy and not the sort who would commit suicide. Ominously, however, one neighbor had testified to a shouting match between Rosa and her employer. “I knew the Jew Mortara,” related Signora Enrichetta Mattei, who had seen him arguing with Rosa the day before her death.¹³ He was cursing her for having taken too long at mass. “This mass takes you an awfully long time, oh, damn you and your mass.”¹⁴

Among the first police officers to arrive at the scene was Pilade Masini, who stated that he had run up the stairs to the Mortaras’ apartment in order to determine what had happened. Knocking loudly and repeatedly, he got no response and returned to the courtyard, assuming the apartment to be empty. Informed by neighbors that there were people in the apartment, he raced back up the stairs and kicked at the door until he was finally answered. The prosecutor used this delay to explain why neither blood nor a murder weapon had been found in the apartment. The family had used the time “to gather up all the bloodstains, which were consequently not found anywhere in the apartment by later inspections.”¹⁵

The medical evidence showed that Rosa had landed in a nearly upright position, causing fractures to her foot, leg, and hip. Thus, the injury to her head could not have been caused by the fall, a conclusion that was bolstered by the fact that very little blood was found near Rosa’s head in the courtyard. Furthermore, the knotted kerchief was intact and not torn — more proof that it had been used to cover a pre-existing wound.

In short, the foul play must have occurred in the Mortaras’ apartment. The wound, the kerchief, the history of furious anger, and the delay in admitting the police — all of this added up to solid, if indirect, evidence of Momolo’s guilt.

12. A family friend, Flaminio Bolaffi, was also charged with complicity in the crime, as was Ercole Mortara, Momolo and Marianna’s adult son. Later, Marianna herself was indicted. The charges against all three additional defendants were dismissed for lack of evidence before the end of the trial. For the sake of brevity and simplicity, the case against them has been omitted from this account.

13. *Id.* at 276.

14. *Id.*

15. *Id.* at 279.

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Momolo was represented by Signor Mancini, a capable attorney who provided both a theory and a “frame” for the defense. In an approach that would be immediately recognizable to every contemporary lawyer, Mancini’s theory told a story of innocence based on all of the known facts, and his frame explained why Momolo was being prosecuted for a crime he did not commit.

Regarding the death of Rosa Tognazzi, Mancini first addressed the young woman’s state of mind. She was being hounded and trailed by a past employer who accused her of theft, a mortifying ordeal that had driven her to despair. Of course, her friends and family would have described her as happy and cheerful — Rosa would have done everything she could to hide her predicament.

To say that she had never before shown suicidal tendencies, as if to say that she did not have sufficient reason for such a desperate decision, is meaningless These are ideas that are spoken of when they will not be acted on, and are most likely to be carried out when they are least discussed.¹⁶

The knotted kerchief, Mancini continued, was in fact a blindfold, affixed to help her steel her resolve. And why was it that the kerchief — untorn and intact — covered a bloody laceration? What explanation could there be, other than that it was applied after the infliction of the wound, especially since the physicians testified that the head injury could not have been sustained when her body struck the courtyard?

Mancini’s account filled all of the gaps. Rosa had jumped from the fourth floor window with the kerchief over her eyes, obviously going forward as she pushed off from the ledge. However, it was only 2.09 meters¹⁷ across the courtyard to the next building. Rosa’s head obviously struck a ledge as she plunged forward and down, which explained both the nature of the wound and the absence of blood on the ground (and also, of course, in the Mortaras’ apartment). And how did the kerchief come to cover the gash? It had been blown upward as she fell, in the same way that her skirts and petticoat had been blown up around her neck.

16. *Id.* at 290.

17. About eighty-two inches.

Finally, Mancini pointed out that Rosa had landed feet first, fracturing her foot and hip. That position was consistent with jumping, but not with being hoisted out of a window. Obviously, people desperate to shove a heavy young woman out of the window would have lifted her by the shoulders and torso, leading to a headfirst fall.

In other words, the physical evidence, far from compelling, was actually consistent with a story of suicide, and therefore innocence. But Mancini was not done yet.

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Why, he asked, were these obvious conclusions overlooked by the prosecutors? Why hadn't they seen the innocent explanations for the unfortunate death of Rosa Tognazzi? To him, the answer was clear. The entire prosecution was infected with prejudice. The lawyer made his point succinctly:

What stands out to the eyes of the dispassionate observer is the veil of prejudice under which, in this proceeding, they began to suspect that a crime had been committed by the *Jew* Mortara. It's remarkable that the witnesses do not simply refer to him by his name. Indeed, the prosecutor's office itself does not call him, in the normal manner, the *defendant* Mortara. He is, for everyone, simply *Mortara the Jew*.¹⁸

Thus, the investigation became inexorable, even though no actual crime had been committed. "They assumed that it was a crime, prompted by the twisted suspicions of an old bigot . . . to the detriment of *Mortara the Jew*, and both logic and common sense were bent in search of proof."¹⁹

In modern terms, we would say that Mancini played the "race card," claiming that his client was the victim of preconceptions and bias, if not an outright frame up. He attempted to turn prejudice back against the prosecutors, demonstrating their lack of care, incomplete investigation, and rushed conclusions, all because they were biased against the defendant — *Mortara the Jew*.

And, of course, Momolo Mortara was not just any Jew. He was reviled by many conservative Catholics as a man who had attempted

18. *Id.* at 288–289 (emphasis in original).

19. *Id.* at 289.

to rip a baptized child out of the bosom of the Church. Even twelve years later, Momolo was still blamed for the scorn that had been heaped upon the Pope by liberal newspapers in Italy and across Europe. If ever a man needed the protection of the courts, it was this defendant.

From the time that the papal guards took Edgardo, his favorite child, from him, he was beset by a tremendous anguish! Everyone knows about this scandalous case, and all can imagine how it might change someone's character to see his treasured son torn from his breast and his religion, without warning, in the thick of the night, without pity, amidst the boy's, the mother's, and his brothers' and sisters' screams. From the moment of that agonizing scene . . . he became, it's true, a bit brooding and apt to grumble. But his nature was so gentle and good that, deep down, he has always stayed the same. For him, the old saying is apt: "The dog that barks doesn't bite."

The argument was persuasive, although just barely. Momolo was initially convicted by the three judges of the trial court, who held "that the wound on Tognazzi's head was inflicted by Momolo Mortara in his apartment, as a result of a sudden rage, and that Tognazzi was then thrown from the window to make it look like suicide."²⁰ Their ruling was provisional, however, as a higher court — the Court of Assizes — had jurisdiction over the final decision in all murder cases.

After hearing the renewed arguments of counsel, the Court of Assizes acquitted Momolo Mortara. A broken man, already in ill health and having spent nearly seven months in jail, he died the following month.

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Avvocato Mancini's trial strategy was coherent and eventually successful. It was based on true facts; indeed, it was based almost entirely on facts developed by the police and the prosecution. It was nothing but the truth. But it was not the whole truth.

For example, Mancini refused to acknowledge the substantial evidence of Momolo's nasty temper. Nor did he mention the fact that the Mortaras' other domestic servants had complained about their

20. *Id.* at 293.

treatment. Erminia Poggi left the Mortaras after barely a month, complaining that Momolo was a “furious man [who] continuously mistreated”²¹ her. Poggi also described several incidents of threats and near violence in the household. Antonietta Vestri, the servant immediately before Rosa, told a similar story. She quit after less than a month because of Momolo’s “furious character.”²² Finally, a friend of Rosa’s testified that the girl had been miserable in the Mortara household because “they beat her with fists and slaps and were always insulting her.”²³

In Mancini’s summation, however, Momolo was presented as a man “of the greatest tenderness.”²⁴ Whatever ill temper he might have shown was more than justified by the cruelty he had endured at the hands of the Inquisition. Thus, the attorney argued that the defendant himself had been victimized — an excuse-based strategy that trial lawyers would later raise to an art form in late twentieth-century America.

And Mancini’s factual theory, though derived from established facts, was fairly thin. First, it depended on a conclusion that Rosa Tognazzi would kill herself over a dispute with a former employer, rather than simply move on or run away. And even if Rosa had been suicide prone, Mancini could only explain the injury to her forehead by positing a rather unlikely series of events. Rosa had affixed a blindfold, groped her way to the window ledge, and jumped out. Her head struck the opposite window ledge with the blindfold still in place, only to have the force of the wind subsequently blow the kerchief up over the wound, remaining there even as Rosa continued her fall and landed in the courtyard.

To sell a theory like that, Mancini would need a powerful theme that could give moral weight to the defense. Mancini could only succeed by providing the judges with a reason for *wanting* to exonerate Momolo Mortara. If they were inclined to view the defendant favorably, the “window ledge” theory would make sense; if they saw the defendant only as a raging brute, the defense would be as flimsy as a wind-blown kerchief.

Mancini took a chance on his theme, staking nearly everything on the possibility that he could evoke sympathy for “Mortara the Jew.” It was a risky gamble. The judges were all Christians. And

21. *Id.*

22. *Id.* at 277.

23. *Id.*

24. *Id.*

while Italian unification had cast off clerical rule, there was still an obvious residuum of sympathy and affinity for the Church. The witnesses who instinctively referred to “the Jew Mortara” were, after all, ordinary Florentine citizens. And while it might have been hoped that judges would have more education and fewer biases, there was certainly no guarantee.

So Mancini played the race card. His client was not a wanton murderer, but a victim of prejudice. The police investigation had been haphazard and incomplete, jumping to an unwarranted conclusion because they wanted to pin the crime on Mortara the Jew. The adverse witnesses voiced their unreasonable suspicions, again out of aversion to the Jew Mortara. All of the accusations were premised on the identity of the defendant, not the facts of Rosa Tognazzi’s death.

Was it wrong for Mancini to depend so heavily on the race card? Was it merely a cynical ploy to win freedom for an abusive murderer, or was it a conscientious and admirable effort to combat bigotry in the legal system? In part, the answer would appear to depend on Mancini’s knowledge and Momolo’s guilt. No one would object to an exposé of intolerance when it is offered in defense of an innocent man, but it seems somehow more questionable to cry bias when the defendant is truly guilty.

Still, it is hard to conclude that the limits of advocacy are determined by the culpability of the defendant. Wouldn’t a guilty Momolo nonetheless be entitled to a trial free from discrimination? Isn’t it fair to caution the court against accepting the testimony of witnesses who see the defendant only as a Jew, rather than as a fellow citizen? More broadly, wouldn’t the entire Jewish community of Florence be in jeopardy of unfair prosecution if the anti-Semitism directed at Momolo, whatever his involvement in Rosa’s death, were allowed to go unchallenged?

The defense, however, was not unrestrained. Counsel did not claim that Momolo was the victim of a conspiracy, or even that Jews could not be tried fairly in Florence. Rather, he pointed to specific incidents in the trial where prejudice against Mortara had been exhibited. That is, he tied his use of the race card into the precise context of the case. Even his reference to the abduction of Edgardo was presented as an explanation for Momolo’s temperament, which had been made an issue by prosecution witnesses.

The context of the trial — Momolo’s heartbreaking fame, the witnesses’ evident bias, the absence of a direct eyewitness, the ambiguity of the physical evidence, and the necessity for interpreta-

tion — placed a premium on the quality of the advocacy. There was no way fully to consider Rosa Tognazzi's death without addressing the singular identity of the defendant.

The defense counsel had no choice but to confront the story of "Mortara the Jew," lest religious prejudice play a hidden role in the conviction of his client. By bringing the question into the open, Signor Mancini was able to do his best to counteract it. As the attorney put it, "We believe that because we are dealing with the *Jew Mortara*, it is all the more important that we employ some common sense."²⁵

And if the advocate managed to shame the judges into giving Momolo some extra benefit of the doubt, well, that was surely preferable to allowing pervasive biases to infect the verdict. It was a story he had to tell.

25. *Id.* at 292 (emphasis in original).