‘The Construction of Individual Criminal Culpability 1199-1245: Heresy, inquisitio and Inquisition.’

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Abstract

During the long twelfth century (ca.1070-ca.1240) medieval society was undergoing a dramatic transformation. Power structures were becoming centralised, bureaucratic and hegemonic, to the exclusion of smaller communities and regional variations. The most important and long-lasting effect of the long twelfth century was the renewed power of the written word. During the long twelfth century, the written word afforded elites the power to coerce and subjugate people in a manner that had previously been denied to them. No better example of this new bureaucratic and authoritative legal construction exists than the Inquisition. The Inquisition, as an institution, relied on the production of written documents, to enforce a legislated conception of what the Catholic community should be. In essence, the contestation of religious practice between orthodoxy and heresy, during the thirteenth century, represents a microcosm of the long twelfth century. The enforcement of a homogenous practice at the behest of elites via bureaucratic means. It is into this narrative of heresy and repression that this thesis inserts itself, trying to shade out a subtler picture of inquisitorial development during the early thirteenth century.

This thesis outlines two new elements to our understanding of inquisitorial persecution. Firstly, that the persecution witnessed during the high middle ages conformed to a model of human behaviour, labelled as the behavioural immune system, whose structures and actions highlight a continuity of persecution dating from our shared evolutionary roots. Secondly, that the transformation of the process of *inquisitio* (the legal mechanism of trial without a named accuser) into

Inquisition was centred upon individual criminal culpability and recognition of that within a stringent legal process, which was ultimately a product of Roman jurisprudence within canon law.

Chapter one, 'Disgusting persecution,' outlines behavioural immune theory and demonstrates how its features conform to reports of persecution during the high middle ages. Special attention is given to Popes Innocent III and Gregory IX because these men were most influential in shaping the early form of *inquisitio*, especially its use as an anti-heretical tool. Chapter two, 'Literate Authority,' examines the rise of Roman jurisprudence in canon law, with particular reference to the (re)discovery of Justinian's Digest and the formulation of Gratian's *Decretum*. It argues that this Romanising influence led ultimately to the rejection of ordeal at the Fourth Lateran (1215), which in turn necessitated the increased use of *inquisitio*. Chapter three, 'Corporate theory,' examines the growing debate amongst canonists towards the end of Innocent III's pontificate, concerning the appropriateness of corporate liability and punishment, a tension that was finally resolved by accepting that the rights of the criminally culpable individual must be respected in criminal proceedings. Chapter four, 'Regional Councils,' contrasts the early process of *inquisitio* used by Conrad of Marburg and Robert le Bougre to that established by the regional councils of the mid-thirteenth century, especially Tarragona (1242) and Narbonne (1243). It argues that these regional councils formulated a procedure centred upon recognising individual criminal culpability, through both individual trials and punishment. Chapter five, 'Inquisition in practice,' examines inquisitorial records in an effort to demonstrate the evolving nature of the process of *inquisitio* as it transformed itself into Inquisition. The

argument is made that the formulation of Inquisition, represents an accepted level of legislative persecution, conforming to the precepts of behavioural immune theory, which in turn was constrained by the emerging canonical consensus of induvial criminal culpability.

This thesis concludes that the usual story of Inquisitorial development stemming from heresy and repression in the Languedoc can be significantly enhanced through an exploration of individual criminal culpability. The combination of canon law and behavioural immune theory-led analysis has tried to reposition our understanding of the emerging inquisitorial process, not simply as a repressive tool of new bureaucrats or their elite masters. The Inquisition contained elements of legislative persecution juxtaposed to highly sophisticated procedural steps outlined to afford for defendant the right to a trial.

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Abbreviations

Mansi- Mansi, G. D. *Sacrorum conciliorum nova et amplissima collectio*, vols.21-3 (Graz, 1961).

MGHS- Monumenta Germaniae Historica Scriptores

PL- Migne, J.P. *Patrologiae cursus completes, series Latina*, 221. volumes (Paris, 1844-1864)

1 Introduction: Confessing Subjects, Criminally Culpable Individuals

The publication of John Arnold's work, *Inquisition and Power*, brought sharply into focus the idea of a confessing subject.[1] The confessing subject describes a universal ethos of individuation that became the focus of church policy. Arnold articulates this transformation as moving from the 'lump (of the congregation) to the leaven (of the individual).'[2] This was a process in which the individual Catholic practitioner became the basis of Catholic religiosity, opposed to older models of lay piety centred upon a homogenous discourse.[3] Arnold argues that the Catholic faith, newly attuned to the needs and responsibilities of the confessing subject, led naturally to the individualising discourse of the Inquisition.[4]

Whilst Arnold's work has been well received,[5] there are further implications to be explored regarding the extraordinary legal transformation occurring within Canon law simultaneous to the construction of the confessing subject. The focus of historians such as, John Arnold, Christine Caldwell Ames, Lucy Sackville, Claire Taylor *et al*, when discussing the Inquisition has not primarily been one of legal theory.[6] This thesis tries to extend the ideas presented in Arnold's work, into the

[1] J. Arnold, *Inquisition and Power, Catharism and the Confessing Subject in Medieval England* (Philadelphia, 2001), p.6.
[2] Arnold, *Inquisition and Power,* pp.19-47.
[3] Arnold, *Inquisition and Power,* p.102.
[4] Arnold, *Inquisition and Power,* p.47.
[5] See, B. Hamilton, 'Review,' *The Catholic History Review* Vol.89 (2003), pp.547-549 and C. Bruschi, 'Reviews' *Journals of Ecclesiastical History* Vol.55 (2004), pp.576-577.
[6] L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011); C. Taylor, *Heresy, Crusade and Inquisition in Medieval Quercy* (York, 2011); B. Hamilton, *The*

legal realm. It discusses the historical context, significance and development of legal procedure used to prosecute heresy during the early thirteenth century. Over the course of this extended period, it will be argued that a legal construction of the criminally culpable individual fulfilled a unique dual function. The criminally culpable individual, not only ensured the individual's right to a trial, balanced by procedure and legislation, but also facilitated the prosecution of heresy via the stratification of heretical categories. The criminally culpable individual was forged by the individuation of categories of heretical crimes, as well as legal procedure designed to support the rights of an individual plaintiff. The benefits of the construction of the criminally culpable individual were felt by both the prosecutor and plaintiff.

No singular piece of legislation cemented it in canon law the concept of the criminally culpable individual. The criminally culpable individual, instead, emerged over a period of centuries. It was the result of a dramatic shift within canon law from a theologically based jurisprudence to more Romanised influences. From the (re)discovery of Justinian's Digest (c.1070) there was a percolation over time of Roman law.[7] The *Digest* greatly influenced legal development during the following centuries. Over the course of the twelfth century Roman precepts, which were codified in the *Digest*, came to dominate canonical thinking. Often, this placed

Medieval Inquisition (New York, 1981) and C.C. Ames, *Righteous Persecution: Inquisition and Dominicans, and Christianity in the Middle Ages* (Philadelphia, 2010).

[7] J. Brundage, 'Legal Learning and the Professionalization of Canon Law,' in eds. H. Vogt and M. Munster-Swendsen, *Law and Learning in the Middle Ages Proceedings of the Second Carlsberg Academy Conference on Medieval Legal History 2005* (Copenhagen, 2006), p.15; J. Dawson, *The Oracles of the Law* (Westport, 1978), pp.122-134 and C. M. Radding & A. Ciaralli, *The Corpus Iuris in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival* (Leiden, 2007), pp.67-109 for a thorough discussion of the origins of Justinian's digest in the West.

them at odds with more traditional theological models of thought, especially regarding the punishment for the crimes of another, an important aspect of what today we term corporate theory. There were then two opposing ideas one theological, sanctioning corporate liability, the other based on Roman jurisprudence seeking a more individualised form of culpability.[8] Innocent III brought this debate to the fore when he committed the Church to a system of prosecuting heresy through corporate punishment as exemplified in the bull *Vergentis in senium* (1199).[9] He used the great legal transformation of the long twelfth century, to codify into Canon law an opinion, which canonists could not support. This was so far removed from Roman jurisprudence that it could not long survive. Indeed, by the pontificate of Innocent IV it had been abandoned, through Innocent's commentary *Rommana eclissia ceterum* (1245).

Whilst corporate theory informed the establishment of the criminally culpable individual, it alone did not usher in its creation. The establishment of the criminally culpable individual can, however, be said to have been brought into the prosecution of heresy through the regional councils of Tarragona (1242) and Narbonne (1243).[10] These councils were enacted by Innocent IV. The result of these councils was a procedure and ethos for the process of *inquisitio* that created the criminally culpable individual, and the institution of Inquisition. I will make a

[8] P. Clarke, *The Interdict in the Thirteenth Century*, (Oxford, 2007), p.29.
[9] K. Kendall, '"Mute Dogs, Unable to bark,"': Innocent III's call to arms to Combat to Heresy in eds. W. Muller and M. Sommar, *Medieval Church Law and The Origins of the Western Legal Tradition* (Washington, 2009), pp.170-172.
[10] See below, section '4.6 Tarragona and Narbonne, inquisitio to Inquisition,' and Mansi, XXIII, Tarragona 1242, 553-8 and Narbonne 1243 (dated 1235), 353-6. See, Sackville, *Heresy and Heretics,* p.94 for the correct dating.

clear historiographical distinction between the process of *inquisitio* and the Inquisition created by these councils.

This distinction is intended to highlight, the Inquisition as an institution. Any reference to the Inquisition, with a capital 'I', refers to the post-1243, institutionalised Inquisition. This approach is shared by Andrew Roach, although his dating is postponed until the 1250s.[11] *Inquisitio* here refers to a legal procedure, where *fama* is used as a proxy for an accuser. A literal translation of *fama* is ambiguous, but can be understood to mean something akin to public knowledge, rumour, fame or notoriety. In a legal sense it meant strong suspicion of a crime without the requisite proof of witnesses needed for prosecution, over time *fama* came to mean specifically ill-repute, which could then lead to a prosecution.[12] Equally of importance, trials conducted by *inquisitio* were presided over by a judiciary who determined the limits and acceptability of proof.[13] Yes, an Inquisitor would rely upon the evidence of witnesses, general suspicion and the written records they generated, however, proof of innocence and guilt lay with him. After 1215 *inquisitio* became the sole method of prosecution for the crime of heresy and *occult* crimes more generally (*occult* here is used in the strict canon legal definition, where a suspicion of a crime exists but not the requisite number of witnesses needed for proof, usually two).[14] By the time of Innocent IV *Inquisitio* encompassed the Papal Inquisition, but also could be found in Episcopal courts.

[11] A. Roach, 'Penance and the Making of the Inquisition in Languedoc,' *Journal of Ecclesiastical History* 52 (2001), pp.409-433, p.410.
[12] See, H.A. Kelly, 'Inquisition, Public Fame and Confession: General Rules and English Practice,' in ed. M.C. Flannery & K.L. Walter, *The Culture of Inquisition in Medieval England* (Cambridge, 2013), pp.9-13.
[13] Kelly, 'Inquisition, Public Fame,' pp.9-13.
[14] J. Baldwin, 'The Intellectual Preparation for the Canon of 1215 against Ordeals,' *Speculum* 36 (1961), pp.613-36, pp.630-36.

Inquisitio came to form the model for mainland continental procedure.[15] *Inquisitio* would not have been an unfamiliar legal precedent by the mid-1240s, however, the rigorous procedure established by the regional councils, especially in the prosecution of heresy, radically transformed this established legal procedure into a unique and distinct method of trial.

So complete was this transformation that the older method of *inquisitio* had to be distinguished from this new method of prosecution.[16] *Inquisitio* came to be called *inquisitio heretice pravitatis* (inquisition into heretical depravity). *Inquisitio heretice pravitatis*, was uniquely different as a legal process, a point stressed by both Henry Ansgar Kelly and John Arnold. Both historians highlight that *inquisitio heretice pravitatis* became *ex officio* and actively sought out heresy.[17] For this function, new procedure and laws had to be developed. These laws specifically criminalised heretical behaviour, stratifying it into legislated categories designed to reflect individual criminal culpability. This legislation evolved over the course of the long twelfth century, but became formalised at Tarragona in 1242. Equally, at Narbonne in 1243 the procedure of inquisition was radically transformed and became predicated upon affording for a defendant a recognisable and standardised trial procedure. This thesis argues that, it is from 1242/3 that the process of *inquisitio* became the institution of Inquisition. The hallmarks of this were a standardised body of procedural operation, criminal heretical categories

[15] See, A. Padoa-Schioppa, *Legislation and Justice* (Oxford, 1997), pp.48-52 for a brief explanation of the development of inquisition and its significance.
[16] See, Arnold, *Inquisition and Power*, p.30 for a discussion of the differing names of *inquisitio* procedures, as well as a brief description of the process of *inquisitio* itself.
[17] Kelly, 'Inquisition, Public Fame and Confession,' pp.8-15 & Arnold, *Inquisition and Power*, pp.30-31.

and a need for written records, all of which gave to *inquisitio heretice pravitatis* an ethos of individuation.[18]

This legal revolution can most forcibly be demonstrated by contrasting the prosecution of heresy under Innocent III, to that conducted by inquisitors during the reign of Innocent IV (ca.1243). Over the course of roughly four decades, the prosecution of heresy was transformed from outright war, to a legal procedure whose approach became grounded in recognition of an individual's right, to not only a trial but also their individual criminal culpability.

The first two centuries after the turn of the first millennium witnessed dramatic and irreversible change to medieval society, culture and power structures. There are many variations of this theme, Haskins labelled it a *renaissance,*[19] for Bisson a *crisis*[20] and Moore a *revolution.*[21] Although, these models contradict one another, they are united in the appreciation of change as occurring throughout the post-millennial period. This thesis shall refer to it as the long twelfth century. The long twelfth century runs roughly from the (re)discovery of Justinian's Digest (ca.1070) to the mid-thirteenth century with the regional councils that legislated for the procedure of Inquisition.[22] These currents of change are crucial to understanding this thesis. The Inquisition, it will be argued, was born out of the dramatic impact of the long twelfth century on the totality of high medieval society.

[18] Arnold, *Inquisition and Power*, pp.30-31.
[19] C. Haskins, *The Renaissance of the 12th Century* (New York, 1957), p.193.
[20] T. Bisson, *The Crisis of the Twelfth Century, Power, Lordship, and the origins of European Government* (Oxford, 2009).
[21] R.I. Moore, *The First European Revolution c.970-1215* (Oxford, 2000).
[22] See below, section '5.6 Tarragona and Narbonne, *inquisitio* to Inquisition'.

During the long twelfth century, the concept of legal rights had to evolve alongside the emerging understanding of law as a written form (i.e. a *lex*). Previously medieval jurisprudence had conceptualised the sources of law as either a *mos* (morality)*, jus* or *ius* (literally justice, but more like right) or *lex* (law, in a written form). As the twelfth century progressed the law came increasingly to be viewed as a *lex* to the detriment of the previous two forms. As discussed above, this often meant the marginalisation of populist power in favour of hierarchical structures. Jurists maintained, however, that there existed fundamental, inalienable rights outside of the emerging legal system. These rights were expressed as the *Ius commune* and the *ordo iudiciarius*. The distinction between these two terms is best understood as the difference between a human and civil right. The *ordo iudiciarius* protected the rights of the individual against tyrannical encroachment by elites, through the *lex.* Jurists argued, however, that *ordo iudiciarius* was ultimately a product of the *Ius commune*, that is a *jus*.[23] In this work, the term *jus* is used broadly conceptualise the idea of rights, be they communal or individual.

Ultimately, this thesis argues that the development of Inquisition into an institution was centred upon reflecting the figure of the criminally culpable individual in the inquisitorial process.[24] Coupled with this were the centralising effects of the long twelfth century, which informed the theoretical ethos used to construct the individuation of heretical criminals and necessitated the rejection of

[23] K. Pennington, 'Due Process, Community, and the Prince in the Evolution of the Ordo iudiciarius,' *Rivista internazionale di diritto comune* 9 (1998), pp.9–47, pp.9-14 'Innocent Until Proven Guilty: The Origins of a Legal Maxim' *The Jurist* 63 (2003), pp.106–124, pp.108-112 and K. Pennington, 'Lex Naturalis and Ius Naturalis' *The Jurist* 68 (2008), pp.569-591, pp.569-571.

[24] On the medieval discourse of natural rights and how they pertained to the medieval period, see B. Tierney, *The Idea of Natural Rights, Natural Law, and Church Law 1150-1625* (Cambridge, 1997) pp.43-77, for an excellent primer.

previous methods of trial, with their uncontrollable methods of proof. As Arnold explored the rise of his confessing subject as a response to a growing recognition of individual spirituality, here it will be argued the criminally culpable individual emerged from the rise and study of Roman law.

1.1 Behavioural Immune Theory an Introduction

This thesis outlines a new theoretical approach to medieval persecution, behavioural immune theory. Behavioural immune theory has been developed in the field of neuro-psychology since the late 80s, but has seen renewed interest in the last decade. Behavioural immune theory suggest that exclusion and xenophobia have deep evolutionary roots.[25] Behavioural immune theory outlines that without a scientific understanding of epidemiology or pathogen transmission, our ancestors developed behavioural patterns thought to minimise the spread of infections.[26] These behavioural norms pertained to three crucial areas sexual behaviour, food preparation and consumption and care for the vulnerable (namely, the young and old).[27] These behavioural norms became ingrained with societies and cultures as an accepted norm, creating an ingroup. Those who were not willing to conform to socially acceptable models of behaviour became subject

[25] See below, section '2.2 Behavioural Immune Theory Explained'.

[26] R. Kurzban & M. Leary, 'Evolutionary origins of stigmatization: The functions of social exclusion,' *Psychological Bulletin* 127 (2001), pp.187-208, p.189; D. Murray, R. Trudeau & M. Schaller, 'On the Origins of Cultural Differences in Conformity: Four Tests of the Pathogen Prevalence Hypothesis,' *Personality and Social Psychology Bulletin* 38 (2011), pp.318-329 *passim*; S. Neuberg, D. Kenrick and M. Schaller, 'Human Threat Management Systems: Self-protection, Disease Avoidance,' *Neuroscience and Biobehavioral Reviews* 35 (2011), pp.1042-1051, p.148 and M. Schaller, 'The Behavioural Immune System and the Psychology of Human Sociality' in *Philosophical Transactions of the Royal Society* 366 (2011), pp.3418-3426, p.3418.

[27] C. Fincher, R. Thornhill, D. Murray and M. Schaller, 'Pathogen prevalence predicts human cross-cultural variability in individualism/collectivism' in *Proceedings of the Royal Society* 275 (2008), pp.1279-1285, p.1279.

to stringent punishments.[28] An integral part of behavioural immune theory is the observable reaction of disgust and one's sensitivity to sources of disgust. It is hypothesised that an individual's sensitivity to disgust predisposes those of heightened disgust sensitivity to become more conformist to social norms and demand that conformity from others.[29] If, however, the pathogen stress is high enough in a region then people become naturally more aligned to the regulation of behavioural immune theory. That is, if the fear of disease and transmission is significant enough people will become more conforming to measures they feel are designed to protect them and those not conforming will become the targets of exclusion.[30] A pattern I feel many of us will be familiar with having experienced the Covid-19 pandemic.

This research not only helps us understand the use of the language of disgust in our anti-heretical sources, but also helps explain the rise of the persecuting society in the high middle ages. Persecution it will be argued, conformed to the familiar story of the long twelfth century, the focussing of power into the hands of a more literate elite. The Inquisition, it will be argued, came to bureaucratise persecution, especially through legislative means.[31] The Inquisition represented an explicit outlining and enforcement of behavioural norms, which were designed to regulate society, conforming to the precepts of behavioural immune theory.

[28] S. Schnall, J. Haidt, G.L. Clore, & A.H. Jordan, 'Disgust as embodied moral judgment,' *Personality and Social Psychology Bulletin* 34 (2008), pp.1096–1109, *passim.*
[29] A. Fallon & P. Rozin, 'A Perspective on Disgust,' *Psychological Review* 94 (1987), pp.23-41, p.23.
[30] See below section '2.2 behaioral immune theory explained,'.
[31] R.I. Moore, *The Formation of a Persecuting Society* Ed.2nd (Oxford, 2007), p.4.

1.2 Corporate Slaughter

The eradication of heresy in the Languedoc was the primary concern faced by Innocent III, when formulating policy in the Region. By 1198, there already existed a framework for the prosecution of heresy, which will be discussed below.[32] This legislation, however, was woefully inadequate to meet the task of heresy prosecution. Its inadequacy stemmed from the strict definition of heresy as an obstinate objection to church teaching.[33] Interestingly, defining what constituted heresy had long preoccupied the Catholic faith. Heresy literally means choice, in the original Greek. That is, one chose to reject Church teaching even after the truth had been revealed to them through proper instruction, hence the obstinate stipulation in the pre-inquisitorial definition of heresy. Such a definition of heresy was, however, ill-suited to the large heretical networks of the Languedoc because of their broad popular support. A greater stratification of heretical categories would be needed to more fully prosecute heretical networks. Tellingly, it was only at the council of Tarragona (1242) that heresy was first clearly defined in canon law.[34] In the decades that followed this Council, heresy went through a re-examination in both theology and Canon law, especially in relation to supernatural acts relating to the power of Satan.[35]

[32] See below, section '3.7 Replacing Ordeal: The Road to Inquisition'.
[33] See, Sackville, *Heresy and Heretics,* p.190.
[34] Sackville, *Heresy and Heretics,* p.190.
[35] See, A. Boureau, Satan the Heretic: The Birth of Demonology in the Medieval West (Chicago, 2006), *trans.* T.L. Fgan, pp.1-30. Also, A. Boureau, *Le pape et les sorciers: Une consultation de Jean XXII sur la magie en 1320 (Manuscrit BAV Borghese 348), Sources et documents d'histoire du Moyen Age 6* (Rome, 2004), p.xi; I. Iribarren, From Black Magic to Heresy: A Doctrinal Leap in the Pontificate of John XXII, *Church History* 76 (2007), pp.32-60, pp.48-57; J. B. Russel, *Lucifer: The Devil in the Middle Ages* (London, 1984), pp.79-89.

Compounding this inadequacy of the law was the deficiency of the infrastructure intended to prosecute the heretics themselves. The responsibility for prosecuting heretics fell solely to the bishops. It was their duty and their duty alone to pursue heretics within their dioceses. This proved to be an impossible task for the Bishops of the Languedoc.

The major issues surrounding the prosecution of heresy stemmed from the enormity of the task and the deficiency of the mechanisms in place to deal with it. The Languedoc became a focal point for Innocent in his ambition as pope to unite all Christian souls under his banner. To this end, he dispatched preachers, threatened the nobility into cooperation and called upon the French King to intercede on his behalf.[36] Innocent's initial approach can be characterised as one of preaching and persuasion. The peoples of the Languedoc, however, remained unpersuaded. Innocent's frustration grew to the point where he considered open warfare against the south of France. After the murder of his legate Pierre de Castelnau such a consideration was to become a reality. As Madaule comments, 'there was only one-way left, coercion. This meant the resort to force.'[37] The preaching of the Albigensian Crusade began in 1208 with the bull N*e nos ejus*.[38]

How are we to view this escalation in Papal policy? Did the Albigensian Crusade represent a significant break with Innocent's original intention or was it the

[36] M. Costen, *The Cathars and the Albigensian Crusade* (Manchester, 1997), p.113; J. Sumption, *The Albigensian Crusade* (London, 1999), pp.68-76 and E. Graham-Leigh, *The Southern French Nobility and the Albigensian Crusade* (Woodbridge, 2005), pp.49-50.
[37] J. Madaule, *The Albigensian Crusade, An Historical Essay* (New York, 1967), pp.61-62.
[38] Innocent III, *Ne nos ejus* in Migne PL, Vol.215 Col.1354.

ultimate endgame for a Pope, whose ambition was to be a Papal Monarch?[39] Feeding into these questions we can began to think about the very nature of the Albigensian Crusade itself. Did the crusade represent a punitive attempt to punish the heretics or was it an act of war designed to supplant the lords of the Languedoc with those more amicable to the Catholic cause? The answers to these questions are not apparent, or even mutually exclusive. I do, however, feel that certain answers offer a method of approach that places the Albigensian Crusade within a framework for the prosecution of heresy.

Viewing the Albigensian Crusade as an aberration of Papal policy, not a natural escalation, frames the Crusade as one of retribution. The assassination of Pierre de Castelnau becomes then its primary motivator. Such a viewpoint is put forward by Throop in her work *Crusading as an Act of Vengeance*.[40] Such a conclusion is confused, however, by the repentance of Raymond of Toulouse. Raymond was probably the lord of the knight who had slayed the papal legate. Knowing that Papal justice would strip him of his land and titles, he chose to perform a penance, creating a situation where, he had admitted his culpability and would be punished. The logical conclusion of Raymond's repentance would have been to stop the Crusade, if the intention had been to punish those guilty for the murder of Pierre

[39] See, C. Morris, *The Papal Monarchy the Western Church from 1050 to 1250* (Oxford, 2001); R. Bartlett, *The Making of Europe: Conquest, Colonisation and Cultural Change 950-1350* (St. Ives, 1993), pp.243-268; J. Powell, *The Deeds of Pope Innocent III by an anonymous author* (Washington, 2004), p.XVI; B.E. Whalen, *Dominion of God Christendom and the Apocalypse in the Middle Ages* (London, 2009), pp.9-41; W. Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (London, 1965), pp.262-309 and W. Ullmann, *A History of Political thought: the middle ages*, (Harmondsworth, 1965), pp.100-129.

[40] See, Throop, *Crusading as an act of Vengeance,* p.119; Barber, *The Cathars,* p.108 and Sumption, *The Albigensian Crusade*, p.77.

de Castelnau. The Crusade, however, continued unabated.[41] Indeed, the Crusading war council simply switched the target to the lands of Raymond-Roger Trencavel. Raymond-Roger was Raymond VI of Toulouse's nephew and a powerful viscount in the region. His lands were viewed as a haven for heretics. Like his uncle, he too sought to reconcile with the Crusaders, but it was to no avail.[42] In the summer of 1209, the Crusading army began its campaign against his lands, with the explicit intention of usurping southern lords who were deemed insufficiently helpful to the Catholic faith.[43]

Framing the Crusade simply as a usurpation of southern lords, however, does not quite encapsulate the spirit of the Crusade or indeed, the theoretical underpinnings of a crusade in general. Theologically, in canon law, wars were conducted between two separate bodies, not within a single body. Crusades were conducted, however, to punish the guilty.[44] Battles and ultimately wars, were extensions of justice in which the most visceral form of trial was conducted, that of combat. God, by the pitting of one side against another, made his judgment clear.[45]

The Albigensian Crusade sought to disrupt heretical networks throughout the Languedoc and punish those guilty of supporting heretics. There was no realistic mechanism to do so other than a military campaign. Whilst it was acknowledged

[41] See, M. Pegg, *A Most Holy War: The Albigensiand Crusade and the Battle for Christendom* (Oxford, 2008), p.69 and E.T. Kennan, 'The Political crusades,' in ed. J. Powell, *Innocent III Vicar of Christ or Lord of the World?* Ed.2nd (Washington, 1994), p.140.
[42] Graham-Leigh, *The Southern French Nobility*, pp.43-44.
[43] Sumption, *The Albigensian Crusade*, p.89.
[44] P. Contamine, *War in the Middle Ages* (Oxford, 1985), *trans. M. Jones,* pp.278-280, for the medieval articulation of this see St Thomas Aquinas, *Summa Theologica*, IIa IIae, qu.42, art.1.
[45] Throop, *Crusading as an act of Vengeance,* pp.1-12.

that not every person in the Languedoc was guilty of heresy, it was believed that they were guilty, in some fashion, for allowing the sin of heresy to occur. Consent to another's sin was taught via St Paul's passage in Romans 1:32, which reads 'Although they know God's righteous decree, that they who commit such things are worthy of death, not only do the same, but also approve them.'[46] Innocent as a younger man may have been taught this at Paris. This thinking was concurrent in both theology and canon law. Canonists simply copied the theological view of sin into their glosses of the *Decretum*.[47] For example, the theologian Rolandus (c.1150) believed that sins of others would become our own through approval and imitation.[48] This passage was then copied into the *Summa Parisiensis* (c.1170). This view of sin extended the net of criminal culpability in the Languedoc far wider than the heretics and their immediate supporters. Who in the Languedoc could say they were not culpable of such sin?

Innocent III was explicit about the strategy of replacing southern lords who were sympathetic to heretics.[49] He instructed the crusaders to 'expel him (Raymond of Toulouse) and his followers from the castles under his lordship.'[50] The Languedoc was a legitimate target of anti-heresy prosecution. As stated above it is hard to discern precisely what was conquest and punishment during the Albigensian Crusade. Indeed, it may be counterproductive to make such a distinction at all, arguing instead that the prosecution of heresy could only have been undertaken

[46] Vulgate, Romanos, 1:32 '*Qui cum justitiam Dei cognovissent, non intellexerunt quoniam qui talia agunt, digni sunt morte: et non solum qui ea faciunt, sed etiam qui consentiunt facientibus,*'.
[47] See below, section '3.5.2 Gratian's *Decretum,*' for a fuller discussion of this seminal work.
[48] Clarke, *The Interdict,* p.29.
[49] Graham-Leigh, *The Southern French Nobility*, pp.55-56.
[50] Peter les Vaux-de-Cernay, *Historia Albigensis*, PL 213 col.560c *'fautores ejusdem de castris Domini depellendo, et auferendo terras eorum in quibus relegatis haereticis,'.*

in such a brutal manner. Hence, when Béziers was stormed, it represented a 'splendid example of divine Justice.'[51] God had ruled against the heretics of the Languedoc by the miracle of battle. The speed at which the Crusaders took the town would have certainly added to the interpretation of events as a miracle, as indeed Roger Wendover frames them to be.[52]

The events of the day are confused, coming to us *via* a variety of sources but we shall begin with Peter les Vaux-de-Cernay, and his official history of the crusade, *The History of the Albigensian Crusade.*[53] Peter was a Cistercian monk of the Abbey of les Vaux-de-Cernay, where his uncle was Abbot. The chronicle, written ca.1212-18, begins in 1203 with the preaching efforts made against heretics in the region in which his uncle participated. Peter had a close relationship to the principal historical figures and would have witnessed events on the ground as they unfolded. Unfortunately, his chronicle ends in 1218 coinciding with the death of Simon de Montfort (Peter probably died around this time too). Peter was the closest of our chroniclers to events at Béziers, however, viewing *The History of the Albigensian Crusade* as more accurate would be false. Peter's account is unapologetically partisan, unwavering in its support to the Catholic cause. To this end, Peter frames the massacre in a way which irks our modern sensibilities,

[51] Peter les Vaux-de-Cernay, *Historia Albigensis*, PL 213 col.560d '*disciplinam in sanctitate et justitia serviant coram Deo*' a translation can be found in W. Silby & M. Silby, The History of the Albigensian Crusade, Peter of Vaux-de-Cernay (Woodbridge, 2002), p.51.
[52] See, J. Bird, P. Edward & J. Powell, *Crusade and Christendom: Annotated Documents in Translation from Innocent III to the fall of Acre,* 1187-1291 (Philadelphia, 2013), p.70.
[53] Peter les Vaux-de-Cernay, *Historia Albigensis* can be found in PL 213.

linking the slaughter to divine retribution. He rebranded the butchering as a 'splendid example of divine Justice and providence.'[54]

Equally, the account of William of Puylaurens frames the act within the prism of divine justice. William was a native of Toulouse and a contemporary of the events he describes, being born ca.1200. He served in the households of two Bishops of Toulouse, Fulk (d.1231) and his successor Raymond de Falgar (d.1270). William was both Catholic and a southerner, as a result, his account is more sympathetic to his fellow southerners, however, it is decidedly anti-heretical in tone. William writes, 'the Lord had wrought vengeance on them for their having treacherously murdered their lord Trencavel,' and for 'unspeakable offences by way of heretical beliefs and blasphemies.'[55] Clearly, the butchering at Béziers had scope to be viewed as God's justice, even by the Southern French.

Similarly, Roger of Wendover leaves to us an account of the events of that day. Roger began his chronicle in 1217, at St. Albans. Bird *et al*, believe his account 'reflects the point of view of a learned, able English monastic cleric who had access to important documentary sources and possessed the intellectual and literary ability to organize events and present a coherent narrative.'[56] He describes in greater detail, than any other source, what so incensed the rank and file of the Crusader army that day. Roger places significant blame for the massacre on the

[54] Peter les Vaux-de-Cernay, *Historia Albigensis*, PL 213 col.560d '*disciplinam in sanctitate et justitia serviant coram Deo*' a translation can be found in Silby & Silby, *The History of the Albigensian Crusade*, p.51.
[55]William of Puylaurens, *The Chronicle of William of Puylaurens* translated in W. Silby and M. Silby, *The Chronicle of William of Puylaurens, the Albigensian Crusade and its Aftermath* (Woodbridge, 2003), P.33.
[56] Bird *et al, Crusade and Christendom,* p.67.

mocking actions of the defenders, who riled up the crusaders into a vengeful frenzy. Roger wrote,

> 'those who were defending the walls inside threw down the book of the gospel from the city on them,[57] blaspheming the name of the Lord, and deriding their assailants: ''Behold,'' they said, ''your law, we take no heed to it; yours it shall be.'' The soldiers of the faith, incensed by such blasphemy and provoked by their insults, in less than three hours' time crossed the fosse and scaled the walls, by the Lord's assistance.'[58]

Roger's account hints at not only the wider significance of the conflict, but also the visceral reality of warfare: the meta struggle between the competing faiths was played out in an event akin to melodrama. The heretics of Béziers throwing the gospel over the wall provides a potent metaphor. This episode is a microcosm of medieval religious thought. The contestation of Christian truth was so enmeshed with notions of power and authority, that the defenders of Béziers called the scripture law.[59] Conversely the Catholic church could only exercise its religious power through a manifestation of violence. Religious truth was not a discussion between two competing ideals, but a system of law derived from sacred texts enforced in blood.

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[57] In Caesarius of Heisterbach account the heretics first urinate on the Gospel. See, Bird *et al, Crusade and Christendom,* p.80.

[58] Roger of Wendover, *Chronica Roger De Wendover liber qui dicitur flores historiarum: ab anno Domini MCLIV. Annoque Henrici Anglorum Regis Secundi Primo* Vol.2 (London, 1887) p.88-9, '*qui muros defendabant, librum evangeliorum extra muros projecerunt, blasphemantes nomen Domini et assilientibus insultantes; "Ecce," inquiunt, "lex vestra, non curamus de ea; vestra sit." Ad quas blasphemias fideles accensi et contumeliis provocati, quasi sub trium horarum spatio, fossata atque muros tam potenter quam mirabiliter, duce Domino, transcenderunt*.' translated in Bird *et al*, *Crusade and Christendom,* p.70.

[59] Note the use of the term *lex* specifically, i.e. a written form of law.

Roger's account does not shy away from the massacre, it does, however, have a subtly different focus on it than Peter of les Vaux-de-Cernay's account. Roger prefaces his retelling of the massacre with a verse describing the chaos of the attack. Roger tells us,

'the Catholic barons considered how they could save those among them [People of Béziers] who were Catholics, and made overtures for their liberation. But the rabble and low people, without waiting for the command or orders from the chiefs, made an assault on the city'[60]

Roger clearly felt discomfort on hearing reports of the massacre. His chronicle distances the nobility at large from actions that he associated with the common people. Clearly not all Catholics could delight in the finer details concerning the fall of Béziers. Roger stresses that the massacre itself was confined mainly to the heretics and that very few Catholics were killed.[61] Roger, however, did not go as far as to condemn the actions outright. He insisted that it was a 'miracle' and 'divine retribution.'[62] The prosecution of heretics in such a bloody manner was simply the right course of action even if it was overzealously enforced.

By far the most sympathetic source to the plight of the people of Béziers was William of Tudela. William of Tudela was a troubadour, who wrote *The Song of*

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[60] Roger of Wendover, *Chronica Roger De* Wendover, Vol.2, p.88 *'tractaverunt barones de liberatione eorum, qui errant catholici inter eos; sed ribald interim et viles personae, non exspectato principum mandato vel ordinatione, fecerunt insultum in civitatem.'* Translated in Bird *et al, Crusade and Christendom,* p.70.

[61] Roger of Wendover, *Chronica Roger De* Wendover, Vol.2 p.89, '*Capta itaque civitate, ipsa die spoliata et succensa, facta est ultione divina ex infidelibus strages maxima; de catholicis vero, servant Domino, paucissimi ceciderunt.*' Translated in Bird *et al, Crusade and Christendom,* p.70.

[62] Roger of Wendover, *Chronica Roger De* Wendover, Vol.2 p.89, 'miraculi' and 'ultione divina,' N.B. Bird *et al* translate '*ultione divina,*' as God's punishment (*Crusade and Christendom,* p.70), whereas I consider a more literal translation to be fitting.

the Cathar Wars.[63] *The Song of the Cathar Wars* is, however, a composite piece by two performers. After laisses (a form of verse) 131-32, the song is taken up by an anonymous author. Troubadours performed a type of courtly poetry that was uniquely trans-Pyrenean. Whilst the complexions of Occitan courts mutated throughout our period of study, the underlying characteristics of the courtly ideal remained fairly stable, stressing cultural refinement, sophistication, romance, gift giving and an urbane lifestyles.[64] These performances were given in the Occitan language of the south. The language of transmission, however, did not parochialise the art form. Ruth Harvey is keen to stress the broader 'European' appeal of Troubadour poetry, even hinting that it would not have been unusual to have witnessed the performance of *cansos* in the Latin Kingdoms formed after the First Crusade.[65]

It is then little wonder that our most sympathetic source is a cultural product of this unique Occitan sphere. William's account of the massacre, like Roger Wendover's, places blames on the underclass of foot soldiers. Its real distinction, however, is that frames the massacre as a deliberate strategy of terror. The leaders of the crusade hoped to conduce capitulation in other strongholds, less they suffer the same fate. William wrote,

[63] A translation can be found in J. Shirley, *The Song of the Cathar Wars, a History of the Albigensian Crusade, William of Tudella and an Anonymous Successor* (Aldershot, 1996).
[64] See, L.M. Paterson, *The World of the Troubadours Medieval Occitan Society, c.1000-c.1300* (Cambridge, 1995), pp.90-91 for the developing nature of courts and pp.100-107, for the embodiment of courtly ideals. R. Harvey, 'Courtly Culture in Medieval *Occitania,*' in eds. S. Gaunt & S. Kay, *The Troubadours an Introduction* (Camebridge, 1999), pp.12-14 and J. Lindsay, *The Troubadours and Their World* (London, 1976), pp.213-236.
[65] Harvey, 'Courtly Culture,' pp.9-10.

> ‘All agreed that at every castle the army approached, a garrison that refused to surrender should be slaughtered wholesale, once the castle had been taken by storm. They would then meet with no resistance anywhere, as men would be so terrified at what had already happened…that is why they massacred Béziers... killing them all. It was the worst they could do to them and they killed everyone who fled into the church…and these raving beggary lads, they killed the clergy too.’[66]

Such broad sympathy is not evident in any other source material. Indeed, *The Song of the Cathar Wars*, more generally stresses the Catholicism present in the south, most specifically at *laisse* 15 Raymond Roger is described as ‘certainly Catholic.’[67] The war for the people of the Languedoc and Occitan more broadly, was more likely construed as one of French encroachment and hegemony upon lands that had previously been relatively heterogenous and independent.[68]

There were, however, other Christians who felt no such compunction towards their innocent fellow Catholics. Caesarius of Heisterbach, a Cistercian monk, wrote c.1220 an instructional dialogue for novice monks. He was not present at the events of Béziers. The source of his information would have been the Cistercian community. On recounting the events at Béziers he tells us, the Papal legate, Arnold-Amalric, uttered infamously ‘Kill them [all]. For God will recognise his own.’[69] So strong is the sentiment surrounding this quote and the massacre at

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[66] Shirley, *The Song of the Cathar Wars,* p.21 *laisse 21.*
[67] Shirley, *The Song of the Cathar Wars,* p.18 *laisse 15.*
[68] M. Lambert, *The Cathars* (Norfolk, 2004), p.100, J. Madaule, *The Albigensian Crusade, An Historical Essay* (New York, 1967), p.70. and L. Marvin, The Occitan War a Military and Political History of the Albigensian Crusade, 1209-1218 (Cambridge, 2008), p.305
[69] Caesarius of Heisterbach translated in Bird *et al, Crusade and Christendom,* p.80

Béziers that it has been described as 'genocidal atrocity,'[70] and an 'appalling holocaust.'[71]

Caesarius is the only source to place those words in the mouth of Arnold-Amalric. The question arises then, why did Caesarius wish to include such a forthright statement within his work? Firstly, Caesarius viewed heresy as an abomination and crucially, as a disgusting practice. He recounts how heretics at Toulouse defecated in front of the altar, then cleaned themselves with its cloth, before a prostitute earned her trade on it, in full view of the crucifix.[72] A heightened disgust sensitivity would suggest a harsher punishment for transgressors of behavioural immune system.[73] Secondly, Caesarius' extreme position reflects that he wrote at a time at which the Crusaders had suffered a number of setbacks at the hands of the heretical forces, which cast doubt over a fruitful victory for the Catholic forces.[74] Simon de Montfort had been killed in 1218. The resultant turmoil had led the son of Raymond VI, Raymond VII, to begin an insurrection fighting to reclaim his family's land.[75] So in 1220 there was a persistence of thought that viewed corporate punishment and the killing of innocent people as a desirable church policy, as it had been in 1209.

How then, did the legal prosecution of heresy so radically transform itself from the massacre at Béziers to the individualising ethos of the Inquisition? Some clues

[70] D. MacCulloch, *A history of Christianity* (London, 2010), p.388.
[71] Madaule, *The Albigensian Crusade,* p.69.
[72] See, Bird *et al, Crusade and Christendom,* p.81. Disgust and the outrage generated by heresy is an important theme in this work. At this early stage view Caesarius' case as evidence between a sensitivity to disgust and a wilfully draconian attitude towards punishment for heresy.
[73] S. Schnall, J. Haidt, G.L. Clore, & A.H. Jordan, 'Disgust as embodied moral judgment,' *Personality and Social Psychology Bulletin* 34 (2008), pp.1096–1109 *passim.*
[74] Bird *et al, Crusade and Christendom,* p.67.
[75] Sumption, *The Albigensian Crusade,* pp.199-211.

can be found in the rather surprising case of the Simon de Montfort, who was leader of the crusading army.[76] As the embers of Béziers, Lavaur and Minerve[77] smouldered, the Athlete of Christ was facing a difficult task.[78] He juggled three persistent problems. He had to fight a war, prosecute heresy and assert the rights of his new lordship. In the wake of such wanton destruction and crusader zeal, it is striking that the measures he introduced (Statutes of Pamiers, 1212) to prosecute heresy demonstrate the precepts of canon law that would ultimately lead to inquisition.[79] The most important statute is the twenty-fifth, which states 'no men are judged to have been heretical believers or to have been heretics, except on their testimony of bishops or priests.'[80] There is here an embryonic articulation of the wider debate concerning an individual's right to a trial, presumption of innocence and individual guilt. In a similar fashion, statute 13 codified the notion that 'justice [ought to] be exercised without charge to all, and if a poor man has no advocate, let one be provided for him by the court.'[81] Securing the *jus* of the individual defendant to a trial. A thorough examination of the statutes is beyond the scope of this thesis, especially their interaction with existing anti-heretical legislation, but the clear articulation of a defendants' rights

[76] Lippiat's most recent work is an excellent biography assessing his efforts to create a neo-Gregorian state within the Languedoc. See, G. Lippiat, *Simon V of Montfort and Baronial Government, 1195-1218* (Oxford, 2017).
[77] All prominent heretical towns taken by the Crusading armies that suffered subsequent mass burnings. See, Lippiat, *Simon V of Montfort and Baronial Government,* pp.169-170.
[78] Peter les Vaux-de-Cernay refers to Simon in numerous affectionate ways, 'our Count,' 'athlete of Christ,' and 'the knight of Christ.' See, Silby & Silby, *The History of the Albigensian Crusade,* p.XIX It is, however, the athlete of Christ which has a particular resonance. Pegg in his work sardonically uses this epitaph.
[79] A full translation of the statutes can be found in Silby & Silby, *The History of the Albigensian Crusade,* pp.321-329.
[80] Silby & Silby, *The History of the Albigensian Crusade,* p.325.
[81] Silby & Silby, *The History of the Albigensian Crusade,* p.323.

through an emerging *ordo iudiciarius* is more important than their implementation on the ground.

These neo-Gregorian ideals, as Lippiat labels them, were undoubtedly learnt within the cloisters of Paris. Lippiat is able to demonstrate an intimate connection between the spiritual leaders of the Albigensian Crusade and the intellectual network of Peter the Chanter.[82] Equally, Members of the Chanter's circle had a close connection to Simon de Montfort.[83] Lippiat goes so far as to suggest that this may have been a deciding factor in his election as the Viscount of Béziers, by members of the crusading party.[84] Simon was an archetypal reformer of the long twelfth century.[85] He wished to impose a model of lordship, legislation and justice whose defining feature was literate regulation.[86] Simon through the Statutes of Pamiers, sought to limit trial by ordeal and secure a method for persecuting the *occult* crime of heresy within limits that he could control by legislative means.[87]

Simon's attempt to re-align the Languedoc into a more Frankish sphere ended with his death in 1218. The Languedoc returned once more to turmoil. A perpetual state of guerrilla warfare had persisted since 1209 but through Simon's efforts it had seemed that Catholicism and his rule would shape the Languedoc into a decidedly French sphere of influence. Hence, the framing of Caesarius' account of the Albigensian crusade and the bellicose call to arms at that end of his dialogue.

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[82] Lippiat, *Simon V of Montfort and Baronial Government,* p.94, J. Baldwin, *Masters, Princes and Merchants, The Social Views of peter the chanter and his Circle* Vols.1-2 (New Jersey, 1970). Vol.1 is the authoritative work on the Chanter and his legacy.
[83] Lippiat, *Simon V of Montfort and Baronial Government,* pp.93-95.
[84] Lippiat, *Simon V of Montfort and Baronial Government,* p.93.
[85] See below, 1.3.1 'Currents of Change'.
[86] Lippiat, *Simon V of Montfort and Baronial Government,* p.96.
[87] Lippiat, *Simon V of Montfort and Baronial Government,* p.96 (*occult* here is to be take in the strict Canon Legal definition, which is a case where full proof cannot be established).

Caesarius feared greatly a resurgence of heresy, not only within the Languedoc, but across Christendom. Over the coming decades these two competing visions for the elimination of heresy, one bent upon its expulsion by whatever means and one predicated upon protecting the judicial rights of the individual, would merge into a legal framework for the prosecution of heresy, which we know today as the Inquisition. Although, the course of transformation was not a smooth arc to the recognition of individual criminal culpability, filled as it was with aberrations like Conrad of Marburg,[88] there could only ever be one successful victor: the concept of the individual culpable criminal. This thesis tracks the legal developments that cemented an individualising ethos into canon law.

1.3 The Long Twelfth Century

1.3.1 Currents of Change

The power of change during the long twelfth century was so encompassing that the very nature of everyday life was transformed. Stone edifices of castles and churches, emerged across Europe cementing the authority of Church and the emerging states.[89] Such buildings became centres of administration used to control local populations, demanding subservience to larger authorities through the paying of tithes and taxes. Food production became increasingly cereal based, the impact of which was to make peasant life more restrictive and parochial.[90] Although Bartlett does hint that migration amongst the lower orders of society

[88] See below, section '5.2 Conrad of Marburg'.
[89] Moore, *The First European Revolution,* p.34 & p.50.
[90] Moore, *The First European Revolution*, p.52 and J. Cotts, *Europe's Long Twelfth Century Order, Anxiety, and Adaptation, 1095-1229* (Basingstoke, 2013), pp.84-85.

was perhaps more common than previously thought, it seems that settlement patterns were fairly restrictive.[91] Brooke's approach captures the disparity of the transformation best, stressing both the limitations of subsistence farming and a growing market economy, highlighting that famine was an ever-present threat but that it could be mitigated via trade.[92] Whilst trade networks did flourish in the post-millennial period they came at great cost to the majority of society, which was subjugated by the seignorial system. Even something as mundane as a coin bore witness to the ideological transformation of the age. Brooke's view of the seignorial revolution contrasts the utility of land during the tenth and the twelfth centuries arguing that, 'in the tenth century a lord valued the land he held as a source of warriors… by the twelfth… he valued it increasingly as the source of money.'[93] An increasing use of coin was a further result of the long twelfth century.[94]

Culturally, a renaissance of sorts was experienced as Classical ideals were once again taught throughout Europe.[95] This renewal of Classical ideals was most pronounced in the study of law where a (re)discovered copy of Justinian's Digest contributed to the great legal transformation of the long twelfth century.[96] The power of the written word was propelled to new heights of authority as

[91] Bartlett, *The Making of Europe,* pp.134-38.
[92] C. Brooke, *Europe in the Central Middle Ages* Ed.2nd (London, 1987), pp.72-73.
[93] Brooke, *Europe in the Central Middle Ages,* p.73.
[94] S. Epstein, *An Economic and Social History of Later Medieval Europe* (Cambridge, 2009), pp.70-99; P. Spufford, *Power and Profit, The Merchant in Medieval Europe* (London, 2002), pp.12-59; P. Spufford, *Money and its Use in Medieval Europe* (Cambridge 1998), pp.109-131.
[95] M. Clanchy, *From Memory to Written Record: England 1066-1307* Ed.3rd (Chichester, 2013), pp.29-36 & pp.64-70.
[96] See, J. Brundage, Medieval Canon Law (London, 1995), p.44-69 This view is critiqued by Susan Reynolds in her article 'The Emergence of Professional Law in the Long Twelfth Century,' *Law and History Review* 21 (2003), pp.347-66, however, even she cannot fully divorce the climate of change at an intellectual level from the professional class of lawyers her article focusses upon.

bureaucracy became the focal point of the centralising effects of the long twelfth century.[97] The authority of the written word to manifest, organise and be power, grew immeasurably. Written manifestations of power were seen across Christendom.[98] The best early example is Domesday Book (1086), which was a novel mechanism of Norman governance.[99] Societies became increasingly restricted by the power of central governments, whose authority stemmed from the proliferation of government bureaucracy.

Still there remains the question, why did societies suddenly find Roman ideals appealing? A Roman renaissance, in some form or other, offers the most fruitful answer.[100] It is a testament to the totality and nature of the post-millennial transformation that it defies one structural answer. Instead, we must point to the interconnectivity of the great myriad of changes sweeping across medieval society in the wake of the first millennium. There were a raft of micro-transitions across medieval society, whose markers we can label with great confidence, and we can even point to their co-dependent relationships, but the macro transformation of the post-millennial period defies a unitary explanation.

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[97] See, E. Kantorowicz, 'Kingship under the Impact of Scientific Jurisprudence,' in ed. M. Clagett, G. Post & R. Reynolds, *Twelfth Century Europe and the Foundations of Modern Society* (Madison, 1961); S. Reynolds, *Kingdoms and Communities in Western Europe 900-1300* Ed.2nd (Oxford, 1997), pp.46-48 Reynolds is sceptical of the totality of the ideological transformation, yet, she is willing to admit the written word did take on a renewed importance during the long twelfth century.

[98] See, Brundage, 'The Learned Judge,' p.439 and R. Helmholz, 'Cannon law and Roman Law' in D. Johnston, *The Cambridge Companion to Roman Law* (St. Ives, 2015), p.397.

[99] H.M. Thomas, *The Norman Conquest: England After William the Conqueror* (Lanham, 2008), p.65 and S. Harvey, *Domesday Book of Judgment* (Oxford, 2014), *Introduction* for a brief historiographical overview and C. Daniel, *From Norman Conquest to Magna Carta: England 1066-1215* (Abingdon, 2003), pp.162-165

[100] See, Haskins, *The Renaissance of the 12th Century,* and R. Feenstra, 'Law,' pp.399-419 and C. Davis, 'The Middle ages,' pp.61-96 in ed. R. Jenkyns, *The Legacy of Rome A New Appraisal* (London, 1992). Moore rejects the Renaissance paradigm but even he concedes that Classical legacies provided an 'essential stock of materials,' *The First European Revolution,* p.3.

1.3.2 The Long twelfth century in Context: Law

The nature of law became fundamentally transformed by the teaching of Roman based juris prudence, at Bologna, by a jurist named Irnerius.[101] Irnerius began studying the law using a form of the *Corpus juris* (re)discovered *circa* 1070.[102] The *Corpus juris* was first issued by the Emperor Justinian I between 529 and 534. Initially it consisted of three parts the *codex, digest* and *institutes*, throughout his reign a fourth part, the *novella,* was added to in which new laws were written. The *Corpus juris* was intended to be a panoramic tool for the study and implementation of law.[103] In brief, it represented an effort to articulate the totality of Roman jurisprudence. This (re)discovery of Justinian's digest gave renewed power to written forms of law placing greater significance on written, codified laws.[104] The law school at Bologna became the first in a substantive list of legally based learning institutions across Europe. These included Bologna (in c.1140), Paris (c.1150-70) Oxford (c.1167) and Vicenza (1208 a possible offshoot of Bologna), Cambridge (1209, an offshoot of Oxford) Padua (1222, a split from Bologna) Vercelli (1228, also founded after disagreements at Bologna).[105] From the education provided by these institutions, graduates who shared a distinct educational background, began to permeate the structures of power across

[101] M. Ascheri, *The Laws of Late Medieval Italy 1000-1500 Foundations for a European Legal Systems,* (Leiden, 2013), pp.19-22.
[102] Radding & Ciaralli, *The Corpus Iuris,* pp.67-109.
[103] C. Humfress, 'law and Legal Practice in the Age of Justinian' in ed. M. Hass, *The Cambridge Companion to the Age of Justinian* (Camebridge, 2005), pp.161-162.
[104]Radding & Ciaralli, *The Corpus Iuris,* pp.108-109.
[105] See, F. Heer, *The Medieval World Europe 1100-1350* (London, 1998), *trans*. J. Sondheimer pp.198-99.

Christendom. So influential were they that Heer labels them 'the first civil servants.'[106]

So esteemed were the graduates of these law schools that their names dominate the narrative of the rise of the concept of the criminally culpable individual as I shall define it. Take for instance, Innocent III, who studied at both Paris and Bologna. There is a view that Innocent III was something of a 'lawyer pope,'[107] which I find unconvincing.[108] Whilst he was undoubtably taught Roman Law, he failed to embrace it to the degree of his contemporaries, preferring instead to rely on theology to interpret the complexities of the prosecution of heresy. This said, however, members of his *curia*, glossators and other high-ranking church figures were attuned to more Roman sensibilities. Men like John Teutonicus (d.1252), Alanus Anglicus writing (ca.1210), Stephan Langton (d.1228), even Pope Innocent IV (d.1254) were able to revolutionise the attitude of the Church towards the prosecution of heresy. So pervasive had the use of Roman Law become in the church that the maxim, *Ecclesia vivit lege romana* [The Church lives by Roman Law], emerged to describe the situation.[109]

The education of these men, and many others, would have been unachievable without one crucial document, Gratian's *Concordia discordantium canonum*, more

[106] Heer, *The Medieval World Europe,* p.195.
[107] Kendall, 'Mute Dogs, Unable to bark,'p.171.
[108] See, K. Pennington, 'Further Thoughts on Pope Innocent III's Knowledge of Law,' in his *Popes, Canonists, and Texts 1150-1500* (Aldershot, 1993), p.14. See also, K. Pennington 'The legal education of Pope Innocent III,' in *Popes, Canonists, and Texts 1150-1500* (Aldershot, 1993), pp.74-76, for an exploration of this view of Innocent.
[109] I am indebted to Bruce Brassington, who was kind enough to furnish me with his paper '*The Problem of Lazarus's Will: The Legal Hermeneutics of Bertram of Metz*' delivered at the IMC Leeds (2017), which uses this maxim as a framing device. See, also his work, *Order in the Court: Medieval Procedural Treatises in Translation* (Leiden, 2016), pp.1-12.

commonly called the *Decretum*. Completed around 1140,[110] as its full title suggests, the *Decretum* tried to harmonise the vast body of Canon law into a single codified body of understating, synthesising the often-conflicting rulings. Bibliographical information addressing Gratian is sparse. Indeed, so elusive is this figure that Winroth believes the *Decretum* to have been authored by two people.[111] For simplicity, I shall refer to Gratian as singular figure. While Gratian's remit was that of the Canons, he relied heavily upon Roman jurisprudence to resolve the problems facing canon law. The most important of these concerned the very substance, source and nature of law itself. The *Decretum* represented a desire to codify law into a written form. Gratian intended for it to further the cause of law as a *lex*.[112] Brooke labels its emergence as a 'crucial moment,'[113] in the development of a papal power. That is to say, the nature and development of papal governance in the high middle ages, would have been unthinkable without the *Decretum*. The *Decretum* provided for students the theoretical underpinnings for conceptualising the Church as an institution capable of manifesting its power through written forms of law. The *Decretum,* both directly and indirectly, shifted the basis of legal principle to that of written record. Once undertaken it was an irreversible process. The study of law was understood through the written medium, a subtle, almost unperceivable, shift had occurred. Students became normalised to the idea that *lex* was the most powerful form of law. Brundage puts

[110] See, A. Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000), Dawson, *The Oracles of the Law*, C. Radding, *The Origins of Medieval Jurisprudence Pavia and Bologna 850-1150* (London, Stoughton) and R. Helmholz, *The Spirit of Classical Canon Law* (London, 1996), for discussions of the *Decretum* and its wider impact.
[111] Winroth, *The Making of Gratian's Decretum*, pp.175-192.
[112] Brooke, *Europe in the Central Middle Ages,* p.413.
[113] Brooke, *Europe in the Central Middle Ages,* p.413.

its best when he comments, 'it would be difficult to overstate the importance of Gratian's *Decretum.* It was one of the most widely-read books in Western history...the *Decretum* touched off an intellectual revolution that helped to shape the future development of Western legal systems.'[114]

The *Decretum* was not simply a law code. It was primarily a text designed for teaching. Its appeal lay not in its codification but its functionality.[115] The *Decretum* was a tool of instruction and learning. It pre-dated any official codification of canon law, under the Church's impetus, by roughly seventy years. It would not be until 1210 that Innocent III oversaw the completion of the *Compilatio tertia*.[116] The compiling of the *Compilatio tertia* was indeed important, however, it would have been unthinkable without the influence of the *Decretum* and the long twelfth century more generally. The construction of law codes, as a product of the new way in which law was being conceptualised, is of far greater importance than the content of any individual law code. As Swanson comments, 'the creation of a 'learned attitude' to law derived from the academic study of the texts may be more significant than actual citations and direct influence.'[117] The *Decretum* then is a useful marker for understanding the way in which conceptions of law were changing, from custom to written codes.[118] The reception of the *Decretum*, and the work itself, indicates the establishment of learned legal institutions across

[114] Brundage, 'Legal Learning and the Professionalization of Canon Law,' p.15.
[115] R. Swanson, *The Twelfth-century Renaissance* (Manchester, 1999), p.81.
[116] K. Pennington, The French Recension of Compilatio tertia in ed. K. Pennington, *Popes Canonists and Texts 1150-1500* (Aldershot, 1993), pp.53-71 and K. Pennington 'The making of a decretal collection: the genesis of Compilatio tertia,'in eds. S. Kuttner & K. Pennigton, *Proceedings of the Fifth International Congress of Medieval Canon Law. Salamanca, 21-25 September 1976* (Vatican City, 1980), pp.67-92.
[117] Swanson, *The Twelfth-Century Renaissance,* p.81.
[118] Clanchy, *From Memory to Written Record,* pp.29-36 & pp.64-70.

Christendom, which heralded a new approach to legal practice and ultimately the construction of society.[119]

The ability of the law to transform society should does not happen in isolation. The *Digest*, *Decretum* and the *Compilatio tertia* were all markers of wider currents within society. The generator of this transformation has been identified as the power of newly formed bureaucratic elites who were able to deploy the power of literacy to organise and manifest the apparatus of states in a more sophisticated manner. Ultimately, however, physical force had to accompany this. The ability of the state to do violence had to be maintained, as proposed by Max Weber.[120] From castles and churches bureaucrats of many different stripes were dispatched to cajole, intimidate, quantify and record the goings on of everyday life.

It is within this context that we should consider the Inquisition. Inquisitors used new literate methods to regulate religious obedience to the Catholic faith.[121] The parameters of these were themselves expressed through newly created canons. These new bureaucrats and laws tied the confessing subject to Catholicism in a manner more akin to the autocratic regime of a despot, than the benevolent steward of Christ's temporal kingdom. Ultimately, at the heart of this literate power rested the threat of incredible violence. Be it the march of crusading troops or execution by burning, God's kingdom was maintained through blood.

[119] S. Kuttner, 'The Revival of Jurisprudence,' in ed. L. Benson, G. Constable and C. Lanham, *Renaissance and Renewal in the Twelfth Century* (1982, London), p.299.
[120] K. Dusza, 'Max Weber's Conception of the State,' *International Journal of Politics, Culture, and Society,* 3 (1989), pp. 71-105, pp.77-78.
[121] Moore, *Formation of a Persecuting Society,* p.138.

1.4 Methodology

I will now turn to how this thesis has been written and what some of its underpinnings are. Firstly, it uses a variety of sources, which range from the grand narratives of chroniclers to the more compelling and intimate records of inquisitorial trials, which themselves represent an evolving body of texts. In very broad terms the sources used demonstrate two themes of this work and can be defined as pertaining to either heresy or law (and in some instances both). Chapter 2 begins with a discussion of our more familiar anti-heretical sources. I then quickly accelerate into the legal world, tracking and discussing numerous themes stemming from the renewal of Roman jurisprudence. Ultimately, I examine the culmination of this dramatic legal transformation in the form of inquisitorial trial records, hoping to demonstrate how the figure of the criminally culpable individual came to be made manifest in Canon law and society at large.

This thesis begins with a discussion of numerous anti-heretical tracts as a vehicle for explaining behavioural immune theory. The anti-heretical sources are well known to heresiologists and much of what can be said about them has been. My purpose is to subject them to behavioural immune theory. It is argued that our familiar anti-heretical sources exhibit these core principals of behavioural immune theory. This approach is novel. No one has tried to apply this psychological model to the sources.

Such an approach skirts around the issues of our understanding of the heretics themselves, which raises an interesting methodological question often broached by heresiologists, namely how can we rely on sources for heresy not fully

constructed by the heretics themselves?[122] This approach is both fruitful and problematic. Using behavioural immune theory delivers a greater understanding of the way in which the church constructed these sources. They are brought into focus through the language of disgust. This has resulted in a situation where the representation of heresy, is not challenged perhaps as much as it should be. For instance, when discussing *Vox in Rama*, Gregory IX's almost fantastical letter addressing heresy in Germany, the practices he describes are viewed rather opaquely. It matters little whether or not the heretics practiced their heresy in the disgusting manner attributed to them by Gregory.[123] What is important, is that Gregory thought the heretics to be disgusting and therefore assumed that they would practice their heresy accordingly. For example, by kissing the hind parts of cats, mass orgies and summoning deathly apparitions.

Papal Letters, especially those of Innocent III, are another type of source examined in this thesis to illustrate behavioural immune theory, as well as describing events in a very top down manner, when discussing the escalation of violence and repression in the Languedoc. The main methodological concern, stemming from my interpretation of these sources is, can these letters genuinely reflect the inner thoughts, personality and psychology of their purported authors.[124] Firstly there is the question of authorship. Whilst the letters used, bare the names of a respective Pope it cannot be proven that papal letters reflect the words of their authors, let alone their own hands. That said, however, it is unlikely that letters of

[122] J. Arnold, 'The Cathar Middle Ages as a Methodological and Historiographical Problem,' in ed. A. Sennis, *Cathars in Question* (York. 2016), pp.67-68.
[123] See below, section '2.7 Gregory IX *Vox in Rama*'.
[124] R. Rist, '*Lupi rapaces in ovium vestimentis*': Heretics and Heresy in Papal Correspondence in ed. A. Sennis, *Cathars In Question* (York, 2016), pp.231-232.

such importance, those addressed to Kings, Emperors and episcopates, would have left the *curia* without the direction of the pope himself. Questions concerning the authorship of letters is an important issue because the use of language is crucial to behavioural immune theory analysis. This is especially true, when arguing that a specific pope was disgusted by heresy, as opposed to a general topos of disgust to which they were merely referring. I am inclined by the reliance of Innocent III, on the metaphor of the little foxes to argue that any letter containing that phrase when referring to heresy was authored by him in some fashion. It may best, however, to think of a Papal voice and tone rather than a direct reflection of speech or authorship. In sum, the largest methodological barrier to the use of papal letters is their very designation as such. It is not clear, as to the level of involvement of any pope, in a letter's construction and contents.

The majority of this thesis is centred upon a legal argument. Therefore, this thesis basis itself within legal texts and discussion of those texts. As a general umbrella we can best discuss these sources as Canon law. Such a meta label masks the development and diversity of the sources of law approached in this thesis. It can even be argued that the range and transformation of these sources tracks the broader changes of the long twelfth century and its impact upon law. For instance, some of our earliest legal sources are papal rulings. That is specific case law in which the Pope is sought after as a legal arbitrator. Such sources, like *Monomachiam* (a bull of Pope Nicholas I, dating from 867), portray the Pope as a source of law because of his ability as ultimate arbiter in canon law disputes.[125]

[125] *Gratian, Decretum*, C.2 Q.45. C.22 *Monomachiam*.

Usually judgements of this kind rely heavily on theological discussion and liturgical references when constructing their judgments. As we move into the period of the long twelfth century, however, we begin to see two fundamental changes to the approach taken to canon law. Firstly, we start to see an academic exercise wishing to resolve and synthesise the often-conflicting judgments of various popes. Secondly, there is a shift to see the sources of law as stemming not from the judgments themselves but from the Pope as judge. Broadly the Pope's role in the making of the law was propelled from judicial review to executive and legislative, whilst still being the ultimate court of arbitration. The theoretical underpinnings of this were Roman jurisprudence and literate power.[126]

Large sections of this thesis discuss subtler shifts in canon law that were the result of using the *Decretum* to teach law. Numerous men of the long twelfth century came to discuss and debate the *Decretum* often annotating their copies of it with their own musings and queries. The works of such glossators form the core of our understanding of legal debates taking place in canon law throughout the long-twelfth century.[127] They include, Rufinus (ca.1157), Stephen of Tournai (ca.1160), Hugh of Bologna (ca.1188), Bernard of Pavia (ca.1191), Peter the Chanter (d.1197), Raymond de Peñafort (d.1275) and Zoën Tencarius (ca.1240).[128] Their glosses are treated as markers of a high intellectualism evident in the law schools

[126] See, Morris, The Papal Monarchy, Bartlett, The Making of Europe, pp.243-268; Powell, The Deeds of Pope Innocent, p.XVI: Whalen, Dominion of God, pp.9-41; Ullmann, The Growth of Papal Government, pp.262–309 and Ullmann, A History of Political thought, pp.100-129.
[127] J. Brundage, 'The Learned Judge: The Development of an Ideal,' *University of St. Thomas Law Journal* 1 (2003), pp.434-446, p.439.
[128] See below, section '3.5.3 Commentaries on *Decretum*, distinguishing between common and ecclesiastical use'.

(universities).[129] The development of *inquisitio* into Inquisition seems to have been affected more by the Glossators, like Zoën Tencarius and Raymond de Peñafort, and Popes like Innocent III and IV, than it did by a natural evolution of *inquisitio* on the ground. This is not to say that Inquisitors did not shape the inquisitorial process, especially through the writing and dissemination of inquisitorial handbooks,[130] but that the Inquisitors themselves were always playing second fiddle to the tune set by the canonist. Take for instance the regional council of Narbonne (1243), it was established by Innocent IV directed by his friend, and fellow canonist Zoën, to outline inquisitorial procedure. Certainly, Inquisitors had an influence in its rulings but ultimately the canons it created were, promulgated, codified and enforced at the pleasure of the Pope, himself a canonist, specifically attuned to the influence of Roman law.

Our final and most problematic source base are the inquisitorial trial records themselves. As with canon law the heterogeneous nature of our inquisitorial sources demonstrates transformation over time. The point is explicitly made below, but, our first inquisitors Robert le Bougre (1235-1241) and Conrad of Marburg (1231-33), left behind them no extant records of procedure, only the reflections of chroniclers.[131] When, we contrast this with the vast corpus of material left to us by later Inquisitions, itself not complete, there is a dramatic and stark juxtaposition. Even within the extant records of later inquisitors there is a palpable current of transformation, directed by the regional councils. This trend is

[129] See, Heer, *The Medieval World Europe,* pp.198-99.
[130] See, Sackville, *Heresy and Heretics,* pp.135-153 and D. Hill, *Inquisition in the Fourteenth Century the Manuals of Bernard Gui and Nicholas Eymerich* (York, 2019), pp.2-12.
[131] Sullivan provides an exhaustive list in, *The Internal Lives of Medieval Inquisitors* (London, 2011), p.233, which is ft.5, from the main text.

somewhat extenuated because the trial notes of Peter Sellan (1241) in Quercy are not extant.[132] Certainly after the councils of Tarragona (1242), Narbonne (1243), we can say that Inquisitorial procedure became standardised, along a set of questions designed to place individuals into categories of criminal culpability.[133] From the penances ascribed, we can further say that there was a distinct individualising ethos present. The literate manifestations of the inquisitorial procedure pull into sharp focus the bureaucratic, literate and Roman influences of the long twelfth century.

Inquisitorial manuscripts are a useful tool for demonstrating the transformed nature of law into a lex. They are, however, troublesome for our understanding of heresy. Such issues are addressed in depth below, but we could not gloss over it now without raising some crucial methodological issues. The most pressing issue is that the records of the Inquisition are the records of repression and reflect the construction of heresy through unequal power. The questions being posed to deponents were formulaic and designed to create heretical categories, so a deponent's thoughts and responses were constructed through this prism.[134] Equally, distorting is the way in which a deponent's testimony is translated from the spoken Occitan of the Languedoc into the Latin used to record the testimony.

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[132] J. Feuchter, 'Pierre Sellan, un vieillard expérimenté,' in ed. L. Albaret*, Les Inquisiteurs, portraits de defenseurs de la foi en Languedoc* (Toulouse, 2001); H. Barmby, *The punishment of heresy in Languedoc during the mid-thirteenth century* (unpublished PhD thesis, Nottingham, 2017) and Taylor, *Heresy, Crusade and Inquisition*.

[133] Arnold, *inquisition and Power,* p.42, Bruschi, *Wandering Heretics*, p.22 and Sackville, *Heresy and Heretics,* p.94.

[134] See, Pegg, *The Corruption of Angles,* p.35 & p.50; Bruschi, *Wandering Heretics,* pp.6-46 and J. Arnold, 'Inquisition, texts and discourse', in eds. C. Bruschi & P. Biller, *Texts and Repression of Medieval Heresy* (York, 2003), pp. 63-80, for a good summary of the debate between historians regarding the relationship between deponents and inquisitors.

The construction of our sources does not expunge the voice of the deponent completely and there are certainly interesting diversions included within testimonies indicating a certain liberalism of articulation, but we cannot divorce the deponent from the inquisitorial process.[135] In this thesis, the inquisitorial records are viewed, primarily, as part of a technical legal procedure.

The final chapter, 'Inquisition in Practice,' stresses how the procedure of Inquisition, was paramount to the records left to us, and how the records reflect the criminally culpable individual. This methodological section has outlined the nature and variety of sources used within this thesis. It remains to address two areas of contestation; how do we understand Catharism itself, and how should we categorise inquisition as a body of activity.

1.5 Catharism

The generally accepted narrative of Catharism runs something like this: After initial reports of heresy in 1143,[136] by the 1160s, Catharism flourished in Latin Christendom in two principal areas, the Languedoc and Northern Italy.[137] These regions offered fertile ground for heretical expansion because of the relatively weak bonds of social and political control exercised there. Coupled to this

[135] See below, section '6.2 The Source of the Problems, Doat and Ms. 609',

[136] B. Hamilton, 'Wisdom from the East: the reception by the Cathars of Eastern dualist texts,' in *Crusaders and the Holy Places* (Aldershot, 1999), pp.38-60 & p.42; H. Fichtenau, *Heretics and Scholars in the High Middle Ages 1000-1200* (Pennsylvania, 1998), *trans*. D. Kaiser, pp.63-64 & 79. See, Everwin of Steinfeld letters to St. Bernard of Clairvaux, Migne, PL Vol.182 Col.679 '*hanc haereism usque ad haec tempora occultatam fuisse a temporibus martyrum, et permansisse in Graecia et quibusdam aliis terries.*'

[137] For general reading on Catharism see, H. Grundmann, *Religious Movement in the Middle Ages*, (Notre Dame, 1995), *trans*. S. Rowen; J. Duvernoy*, Le Catharisme I: la religion de cathares* (Toulouse, 1976); J. Duvernoy, *Le Catharisme II: L'histoire des Cathares* (Toulouse, 1979); M. Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation* (Oxford, 2002) and P. Biller, 'Cathars and the material world,' *Studies in Church History* 46 (2010), pp. 89-110.

dispersed political system, was the practice of partible inheritance. Partible inheritance divided land equally amongst all legal (including female) inheritors. This situation created petty nobles, whose dominions were by no means powerful, but could resist the wills of local magnates effectively. This helped facilitate a situation where heresy was supported by local lords, who often found themselves at odds with the great magnates of the region, like the Counts of Toulouse. One of the greater structural tragedies of the Albigensian Crusade is that the Counts of Toulouse were staunch Catholics, but could not offer the Catholic faith the help it demanded of them.[138] Similarly, in Northern Italy feuding between Fredrick Barbarossa and Pope Alexander III facilitated not only anti-papal feeling, but also, disrupted authoritarian networks that would have helped supressed heresy.[139]

Due to the geographical closeness of the Languedoc and Northern Italy there emerged strong communal structures. These relations would prove invaluable to those heretics of the Languedoc looking to flee persecution during the Albigensian Crusade and Inquisition. These strong relations are most noticeable in the developing narrative of Catharism that has been left to us. It is recorded that around 1160 Mark, a gravedigger, along with two others, was the first convert to the new faith. Mark later went onto become a Bishop of the Cathar faith. He was ordained by Nicetas a Bogomil bishop of sorts, who came from the east to spread a dualistic doctrine. Both these men, Mark and Nicetas, presided over a heretical

[138] M. Lambert, *The Cathars* (Norfolk, 2004), pp.67-69, p.100.
[139] H. Fuhrmann, *Germany in the High Middle Ages c.1050-1200* (Cambridge, 1995), *trans*. T. Reuter, pp.157-162 and A. Haverkamp, *Medieval Germany 1056-1273* (Oxford, 1998), *trans.* H. Braun & R. Mortimer, pp.228-229.

Council of sorts at Saint-Félix de Caraman (1167).[140] The result of this was to create six bishoprics in the west.

The aftermath of the Council of Saint-Félix was an unbridled success for Nicetas. As Lambert puts it, 'he had persuaded all the Cathars of Northern and Central Italy and France to do what he wanted, and when he set sail for Constantinople, he left behind him four bishoprics in the south of France, one in the North and one more in Lombardy, all of which had accepted his *ordo* of Dragovista or Drugunthia.'[141] This remained the case in southern France for most of its Cathar history, according to the traditional narrative.

On the eve of the Albigensian Crusade, Catharism had developed, in the west, in two prominent areas the Languedoc and Northern Italy. Its presence, however, expanded beyond these regions into Spain, Germany and northern France. Its adherents held a core belief in dualism, whether that be moderate or absolute. Despite not belonging to a singular unified church there remined strong links between the dissenting groups. The presence of Catharism provided such a strong challenge to the Catholic church that its very existence was viewed as an existential threat. See below for a more detailed explanation, addressing how the situation in the Languedoc devolved into the Albigensian Crusade. Innocent III was

[140] For details on this interesting event and a discussion of its sour base see, B. Hamilton, 'The Cathars and the Seven Churches of Asia,' in *Crusaders and the Holy Places* (Aldershot, 1999), pp.269-295, p.272-73 & B. Hamilton, 'Cathar Links with the Balkans and Byzantium' in A. Sennis, *Cathars In Question* (York, 2016), pp.140-41; M. Zerner, 'La charte de Niquinta, l'hérésie et l'érudition des années 1650-1660,' in ed. M. Zerner, *L'histoire du catharisme* (Nice, 2001), pp.203-48 and 'Copies de la charte de Niquinta de la main Guillaume Besse,' in ed. M. Zerner *L'histoire du catharisme* (Nice, 2001), pp.274-78 and J. Roche, *Une église cathare: l'évêché du Carcassès : Carcassonne, Béziers, Narbonne 1167- début du XIV siècle* (Cahors, 2005), pp.78-79.

[141] Lambert, *The Cathars,* p.49.

keen to stamp out heresy and dissent, the Cathar faith would be a crucial target in his war against heresy.[142]

It seems that the historian's greatest barrier to understanding the practices and beliefs of the Cathars are the very texts upon which they rely. As Biller comments our sources are 'keyholes through which we peer.'[143] A lament that often, the historian of religious dissent is in most instances a Foucauldian prisoner,[144] to the discourse of religious orthodoxy.[145] This has led to something of a historiographical war between heresiologists, between radical sceptics and those proponents of a more orthodox position.[146] It is a curiously odd conundrum that any historian of religious dissent finds themselves in when addressing the topic. How far one is willing to draw conclusions from the sources presented is, I feel, more a matter of personal reflection than scholarly integrity. I make this statement not on the strength of evidence, which I find overwhelming, but on the reflection that the methodological criticism brought forward by the dissenting voices, relies upon scepticism not evidence. The real question confronting the heresiologist is, how far does one trust the information given in the sources?

With this in mind, I offer the following three factors as a caricature of the Cathar heresy. Firstly, its unique theodicy and resultant dualist understanding of the world, whether that be absolutist or not. Secondly, its relation to Eastern dualism,

[142] Moore, *The War on heresy*, pp.241-263.
[143] P. Biller, 'Cathars and the Material World,' *Studies in Church History* 46 (2010), pp.89-110, p.109.
[144] Arnold, *Inquisition and Power,* p.10.
[145] There is a far more detailed discussion of the challenges and historiography of this theme below, in section '6.2 The source of the problems, Doat and Ms. 609'.
[146] See, A. Sennis, *Cathars in Question* (York. 2016), which is the most recent collection of articles addressing the historiographical debate concerning the Cathar heresy.

especially Bogomilism. Thirdly, its large and organised following in both northern Italy and southern France reliant upon a sophisticated network of supporters. With relevance to this thesis Catharism, based on the three principals above, offered a distinctive set of behavioural norms, which could fall under the umbrella of persecution as modelled in behavioural immune theory.

1.6 Inquisition as an Institution

The way in which I discuss Inquisition, implying an institution, is now rather old hat.[147] Destruction of the inquisition as an institution began with Richard Kieckhefer's *Repression of Heresy in Medieval Germany* in 1979.[148] In which he rather gently informs the reader, 'it would perhaps be advisable to avoid speaking of even papal inquisitors as if they formed a suprapersonal agency, or an Inquisition.'[149] Certainly, I am in agreement, there was no overarching body of institutional inquisitors. Kieckhefer, however, is trying to deconstruct a certain view of the inquisition that sees it as 'a terrible machine designed to pulverize the

[147] See, H. C. Lea, *A History of the Inquisition of the Middle Ages,* Vol. I (London, 1922), p.61, Lea as the progenitor of modern inquisitorial studies argued for an institutional Inquisition, so this view of Inquisition is a traditional one. In the closing remarks of 'The Origins of Inquisition' conference, held at the University of York (2016), participants grappled with this very problem. The list of speakers was distinguished including, Peter Biller, Lucy Sackville, Claire Taylor, Julien Théry-Astruc (paper given *in absentia*), Jörg Feuchter *et al*. The room, however, was brought to fits of laughter when, it was pointed out that the concluding remarks from a previous Inquisition conference, held twenty years prior, had tried to resolve the same issue.

[148] Most modern historians fall in behind the beet of this particular historiographical drum. See, Given, *Inquisition and Medieval Society*, p.15; Ames, *Righteous Persecution,* p.16 and Pegg, *The Corruption of Angles,* pp.32-34, however, contemporaries like Parmeggiani argue for Inquisition as an institution. See, R. Parmeggiani, *I Consilia Procedurali Per l'Inquisizione Medievale* (Bologna, 2011), p.261. Interestingly, Bruschi uses the term institution to refer to Inquisition as well as a capitalised Inquisition, *Wandering Heretics*, p.6.

[149] R. Kieckhefer, *Repression of heresy in Medieval Germany* (Liverpool, 1979), p.5.

human spirit.'[150] In time, however, Kieckhefer's attitude has become more nuanced. In a latter article he commented that, 'it is reasonable to speak, then, of a slow and partial transition from purely personal to institutional jurisdiction in late medieval repression of heresy.'[151] In contrast, I have termed the Inquisition as an institution to highlight in the reader's mind the significance of the regional councils in creating a standardised and regulate procedure. In many ways the institutionalism I ascribe to the process of *inquisitio* was one of regulation through written law. The Inquisition, as I represent it, was one of procedure and ethos. I take a similar approach to Roach, who labels the Inquisition 'a recognisable institution in the years after 1250.'[152] Roach does not wish to find this transition in a single transformative moment. He instead reflects a longer process of transition, which mirrors the confused nature of the evolving situation on the ground. I think the most damning condemnation of the institutional Inquisition is this remark of Kieckhefer's, 'the inquisitors were thus agents of the pope or of their bishops rather than of an Inquisition.'[153] There is, I fear, no adequate way to reconcile these views. There was, however, a remarkable procedural revolution around the early 1240s, which coincided with the death of Gregory IX and the regional councils of Narbonne and Tarragona that created a standardised procedure of trial. To illustrate this point contrast the inquests of John le Bougre and Conrad of Marburg conducted in the 1230s with inquests held merely a

[150] J. De Dieu, 'The Inquisition and popular culture in New Castile,' in ed. S. Haliczer, *Inquisition and society in early modem Europe* (London, 1987), p.132.
[151] R. Kieckhefer, 'The office of the Inquisition and medieval history: The transition from personal to institutional justice,' *Journal of Ecumenical History* 46 (1995), pp.35-61, p.39.
[152] Roach, 'Penance and the Making of the Inquisition,' p.410.
[153] Kieckhefer, 'The office of the Inquisition,' p.42.

decade later. Inquests of the 1240s, however, would have had to conform to a process of *inquisitio* (outlined by Tarragona and Narbonne), which, although evolving, was so complete a system for prosecution that it could credibly be called an institution.

The ways in which the reformed process of *inquisitio* can be found in the sources are many. Perhaps the most striking, and easily neglected, is that we have trial records at all. Why did it suddenly become so important to have detailed records kept of the procedure and testimony of inquisitors? The answers to this question are explored below. Fundamentally, however, the most important answer is that the individual became the most important cog in the system of heresy prosecution.

2.0 Disgusting Persecution: The Behavioural Immune System and the Formation of a Persecuting Society in the High Middle Ages

2.1 Unexpected Guests

When Spanish ships arrived on the shores of Mexico in 1519, the Conquistadores bemused their Aztec counterparts with their strange obsession for a yellow metal whose utility to the indigenous population did not extend past its ability to be worked easily.[1] Offering an explanation as to why the Spaniards were so enthralled, Hernán Cortés answered 'because I and my companions suffer from a disease of the heart, which can be cured only with gold.'[2] The Aztecs were able to sate the symptoms of Cortés' disease by the medication of Gold, but for the Aztecs there was no inoculation against the pathogens that Europeans carried.

So lethal were these new pathogens that up to nine tenths of the indigenous population succumbed to the diseases spread by the Spaniards.[3] In comparison, the Black Death (ca.1350) only managed a death toll of around one third.[4] This brief episode highlights how cataclysmic pathogens, especially novel ones, can be, not only to a population but to a psyche. It is this notion, of the inherent danger of pathogen stress and novel contacts that informs the theoretical underpinnings of behavioural immune theory. Behavioural immune theory helps inform our understanding of persecution, and therefore of the Inquisition. Behavioural immune theory explains the fundamental evolutionary utility to persecution. It shall be argued that the heretics of the high middle

[1] Y. Harari, *Sapiens a Brief History of Humankind* (London, 2011), p.193.
[2] B. Kirkwood, *History of Mexico* Ed.1st (London, 2000), p.40.
[3] See, R. McCaa, 'Spanish and Nahuatl Views on Smallpox and Demographic Catastrophe in Mexico' in *The Journal of Interdisciplinary History* 25 (1995), pp.397-431, pp.430-4310.
[4] See, B. Campbell, *The Great Transition: Climate, Disease and Society in the Late Medieval World* (Cambridge, 2016), p.319.

ages, represented a target for persecutors because they stimulated a behavioural immune response.

This chapter examines the problem posed by novel contacts, namely that whilst they can be extremely rewarding, they also pose great risk to health, especially through the introduction of new pathogens. Such meetings may seem like a delicate dance between the tantalising promise of the unexpected and the visceral risk of disease. In reality, however, there is a biologically driven proclivity to be overcautious and threat sensitive, in which the governing factor is disgust.[5] Evolution has seen to it, that as a species, we are more concerned with preservation and threats, than risk taking. Through disgust and reactions to disgust, humans have developed a set of behaviours, both physiological and cultural, designed to minimise the spread of pathogens. Below it is detailed how this disgust response can manifest itself into behavioural norms, broadly understood to be cultural practices. How alien practices, to these cultural norms can produce a disgust response. How this disgust response causes cultural alienation leading to a system of standardised practices labelled as the behavioural immune system. Fundamentally, disgust is the foundation upon which both the behavioural immune system and persecution are built.[6]

Disgust is a universal human experience and is easy to elicit; imagine licking the pus from an infected sore, or picture lice infested hair; even something as common place as

[5] R. Kurzban & M. Leary, 'Evolutionary origins of stigmatization: The functions of social exclusion,' *Psychological Bulletin* 127 (2001), pp.187-208, p.189.

[6] See, D. Murray, R. Trudeau & M. Schaller, 'On the Origins of Cultural Differences in Conformity: Four Tests of the Pathogen Prevalence Hypothesis,' *Personality and Social Pyscology Bulletin* 38 (2011), pp.318-329 *passim*; S. Neuberg, D. Kenrick & M. Schaller, 'Human Threat Management Systems: Self-protection and Disease Avoidance,' *Neuroscience and Biobehavioral Reviews* 35 (2011), pp.1042-1051, p.148 and Kurzban & Leary, 'Evolutionary Origins of Stigmatization,' *passim*.

picking one's nose can be enough to trigger a disgust response in most people. The disgust response is usually characterised by a constricting of the nasal passages and mouth.[7] This evolutionary reaction, 'disgust face', has hypothesised to be primarily as a defence mechanism to limit the host's exposure to airborne pathogens. Fallon and Roslin demonstrate how this, 'disgust face,' could also be triggered by cultural examples of disgust. These were practices where the disgust stimulus was oblique but could still trigger a disgust response. Take for instance, the practice of oral sex. Whilst the practice itself may not be innately disgusting, the association between sexual promiscuity and sexually transmitted disease, as well as the mouth's primary function of food consumption (itself a practice regulated by behavioural immune theory), can lead to the practice as being regarded as disgusting. Therefore, it could fall under the regulation of the behavioural immune system, as has happened recently in Uganda.[8] Fallon and Rozin concluded, 'disgust seems primitive and irrational, yet as a product of culture it is both uniquely human and apparently absent in young children.'[9] The inference being, disgust has a strong conditioned component, which is essentially taught. A child, who will happily eat and play with worms, can be conditioned by the time of adulthood to elicit a disgust response, to such stimuli as say skin colour, political leanings or heresy.

Recently, historians have been seeking explanations to human history beyond cultural turns, great histories and economic theory. Take for instance Daniel Lord Smail and his work *A Deep History of the Brain*, which seeks to trace a development of human history

[7] A. Fallon & P. Rozin, 'A Perspective on Disgust,' *Psychological Review* 94 (1987), pp.23-41, p.23.
[8] See, https://www.rt.com/news/424513-uganda-oral-sex-warning-president/ Oral sex has yet to be banned in Uganda, but President Museveni has strongly critiqued it and hopes to introduce legislation to that effect. More concretely, Uganda criminalised homosexuality in 2014, itself a clear manifestation of the behavioural immune system.
[9] Fallon & Rozin, 'A Perspective on Disgust,' p.39.

centred upon the brain and its evolutionary function.[10] A credible ambition given that the roughly six thousand years of recorded history is easily eclipsed by the two and a half millennia *hominins* have been evolving into their current *sapien* selves.[11] Examining the ancestral roots of human practice is a lesser explored area of history, but in certain instances can garner great rewards.

2.2 Behavioural Immune Theory Explained

Oaten *et al*, took the early work of Fallon, which identified the 'disgust face,' and explored in greater detail the symbiosis between the innate disgust response and the behavioural disgust response. They argued that whilst disgust needed a 'concrete stimulus' the presence of a stimulus was not required to generate a response. The implications of this, Oaten concluded were three-fold. Firstly, the cultural components that stimulate a disgust reaction are those most susceptible to threats from disease. The three principal areas in which cultural disgust is most prevalent are caring for vulnerable persons to pathogens (namely the young and old), food preparation and sexual behaviour.[12] Secondly, any transgression of normative behaviour can create a disgust response because it relates to a concrete stimulus, which although not present, due to socialisation can be made representationally manifest by a disgust response. Thirdly, cultural disgust and socialisation can rapidly change to create a dynamic form of

[10] D. Lord Smail, *On Deep History and the Brain* (London, 2008), p.3.
[11] M. Meredith, *Born in Africa* (London, 2011), p.151.
[12] Research identifying these three areas of disgust had already been undertaken. See, P.W. Sherman & J. Billing, *'*Darwinian Gastronomy: Why We Use Spices,*' BioScience* 49 (1999), pp.453-463; R.J. Quinlan, 'Human Parental effort and Environmental Risk,' *Proceedings of the Royal Society* 274 (2007), pp.121-125; B.S. Low, 'Marriage Systems and Pathogen Stress in Human society,' *American Zoologist* 30 (1990), pp.325-339 and S.W. Gangestad, M.G. Haselton & D.W. Buss, 'Evolutionary Foundations of Cultural Variation: Evoked Culture and Mate Preferences,' *Psychological Inquiry* 17 (2006), pp.75-95, also, S.W. Gangestad & D.W. Buss, 'Pathogen Prevalence and Human Mate Preference,' *Ethology and Socialbiology* 14 (1999), pp.89-96.

disgust.[13] Therefore, disgust is a malleable concept anchored by an innate response and concrete stimulus.

In the decade since 2008, research into disgust has expanded. Numerous scholars have started to explore, in greater detail, the relationship between the disgust mechanism and socially constructed behaviour. Fincher, Thornhill and Schiller have conducted most of this research. Their findings have some remarkable implications for our understanding of medieval persecution. Fincher *et al*, outlined that collectivism, described as behavioural practice norms, reinforced security from disease. Behavioural practice norms, can broadly be defined as cultural practice operating in the areas of food preparation, marriage rituals, mating preference and parenting practices.[14] It is best to think of collectivism as a shared set of beliefs and rituals developed over time, which could be broadly understood as culture. They, also, discovered that collectivism was more prevalent in societies where pathogen stress was higher. Collectivism, too, was strongly associated with societies that had historically high rates of infectious diseases.[15] Collectivism found expression as 'a strong value placed on tradition and conformity.'[16] Hence the greater the pathogen stress and consequential fear of disease, the more people expressed desire for not only conformity, but also tradition. It should also be noted, people with a higher disgust sensitivity are not only more likely to be disgusted, but too are more likely to align to collectivism.[17]

[13] M. Oaten, R. Stevenson & T. Case, 'Disgust as a Disease-Avoidance Mechanism' in *Psychological Bulletin* 135 (2009), pp.303-21, p.315.
[14] C. Fincher, R. Thornhill, D. Murray & M. Schaller, 'Pathogen prevalence predicts human cross-cultural variability in individualism/collectivism' in *Proceedings of the Royal Society* 275 (2008), pp.1279-1285, p.1279.
[15] Fincher, *et al,* 'Pathogen prevalence,' pp.1279-1280.
[16] Fincher, *et al,* 'Pathogen prevalence,' p.1280.
[17] Fincher, *et al*, 'Pathogen prevalence,' p.1283.

Collectivism research developed into ideas that human behaviour can be naturally restraining and xenophobic, as a mechanism designed to protect populations from pathogens (especially non-localised verities). This theory was essentially an aggrandisement of the earlier disgust research, but came to be named the 'behavioural immune system.'[18] The behavioural immune system was characterised as a process by which, 'people feel more vulnerable to infection…[then become] relatively more conformist in their own behavioural tendencies and also less tolerant of others.'[19] This tendency was not only noticed at an individual level, 'but also at a population level of analysis [too].'[20] Behavioural immune theory research is able to extend the collectivising tendencies noticed in earlier works to entire societies and broader structures. It offers tangible research to describe ways in which entire societies can become persecuting, rather than segments of a society, who happen to be more disgust sensitive.

A theory further developed by Fincher and Thornhill, described a phenomenon labelled as 'in-group assortative sociality,'[21] which could provide models for inwardly persecuting segments of society. In-group assortative sociality, 'refers to the preferential association among similar individuals who compose an in-group versus out-group or dissimilar others.'[22] The fundamental purpose of such behavioural and associative attitudes was linked to pathogen prevention but resulted in a complex mesh of social and structural practices.[23] Also of note was the finding that 'in-group

[18] M. Schaller, 'The Behavioural Immune System and the Psychology of Human Sociality' in *Philosophical Transactions of the Royal Society* 366 (2011), pp.3418-3426, p.3418.
[19] Schaller, 'The Behavioural Immune System,' p.3422.
[20] Schaller, 'The Behavioural Immune System,' p.3421.
[21] C. Fincher & R. Thornhill, 'Parasite-stress promotes in-group assortative sociality: The cases of strong family ties and heightened religiosity,' *Behavioural and Brian Sciences* 35 (2012), pp.61-119, p.61.
[22] Fincher & Thornhill, 'Parasite-stress,' p.61.
[23] Fincher & Thornhill, 'Parasite-stress,' p.64.

assortative sociality, as reflected in strong family ties and heightened religiosity, is positively associated with parasite-stress.'[24] If we begin to extend this theory to medieval societies, we can start to hypothesise how otherness could not only be constructed by broad cultural differences, but too through abnormal social practices.

Building on behavioural immune theories and in-group association, there is further research that can help us to explain how systems of persecution can develop within societies. Inbar *et al*, presented research which linked conservatism to higher disgust sensitivity and a resultant call for moral purity, as outlined by behavioural immune theory. [25] It may seem obvious that conservatives tend towards order and conformity, however, it is not so self-evident that such a response is driven by disgust. Of equal importance to the theoretical model of persecution being outlined here are the findings of Murray *et al*, Murray was able to demonstrate that in regions with a high pathogen-stress, not only was there a pronounced effect of the behavioural immune system, but also a greater tendency for authoritarian governance.[26] They also demonstrated that famine was a strong predictor of individual preference for authoritarian governance.[27]

The theories outlined above help us to develop new models for authoritarian, persecuting governments in the middle ages. Such a model would suggest, areas with high pathogen stress (which can also be historical stress) and food shortages,[28] display

[24] Fincher & Thornhill, 'Parasite-stress,' p.74.
[25] Y. Inbar, D. Pizzaro & P. Bloom, 'Conservatives are more easily disgusted than liberals' in *Cognition and Emotion* 23 (2009), pp.714-725, p.723.
[26] D. Murray, M. Schaller and P. Suedfeld, 'Pathogens and Politics: Further Evidence That Parasite Prevalence Predicts Authoritarianism,' available on https://doi.org/10.1371/journal.pone.0062275 (accessed on 20/02/2018 10:07).
[27] Murray, *et al,* 'Pathogens and Politics,'.
[28] Displaying instances of high medieval parasite and food (consumption) stress has remained relatively elusive outside the realms of caricature and impression. For parasite stress see, S. Dewitte, 'The anthropology of plague: insights from bioarchaeological analyses of epidemic cemeteries' in ed. M.H. Green, *Pandemic disease in the medieval world* (Bradford, 2015), pp.111-115; O. Benedictow, *The Black*

a prevalence for conformist behaviour and a system of governance capable of implementing it. Resultantly there would be a societal tendency resistant to change, outgroups and the noticeably diseased, as well as a call for a draconian system to enforce these measures. Such a political climate would also be highly conservative and therefore predisposed to in group association, higher disgust sensitivity and moral purity norms.

2.3 The Language of Disgust

When we start to map these findings onto our sources for heresy, we can see some very striking similarities between the psychometric research and our historical evidence. Adhémar of Chabannes (1022) is one of our earliest sources for the emergence of heresy in the eleventh century. His writings exhibit some crucial features of disgust as outlined by Oaten. Firstly, there is an extended metaphor of disease and corruption in the text. Adhémar writes, the heretcs were 'leading the people astray,' and 'corrupting men and women.'[29] Such fears emerged from the transgression of moral norms, 'they denied baptism, the cross, and all sound doctrine. They did not eat meat, as though they were monks, and pretended to be celibate, but among themselves they enjoyed every indulgence.'[30] In this passage, are the three-crucial behavioural areas highlighted by

Death 1346-1353: The complete history (Woodbridge, 2004), pp.9-34; For a general discussion of epidemiology and its relevance to the middle ages, especially regarding Bubonic plagues see, J. Cotts, *Europe's Long Twelfth Century Order, Anxiety, and Adaptation, 1095-1229* (Basingstoke, 2013), pp.81-93; for a general description of medieval society over our period see, p.82, especially for a discussion of (high) mortality rates and p.86 for the susceptibility to famine and A. Martin, 'Society,' in D. Power, *The Central Middle Ages Europe 950-1320* (New York, 2006), p.41, especially for discussions of peasant life.

[29] Adhémar of Chabannes in J. Chavon, *Chronique, Adémar de Chabannes, Publiée d'après les Manuscrits par Jules Chavanon* (Paris, 1897), p.173 '*seducents plebem*,' and p.185 '*quoscumque poterant viros et mulieres subvertebant*,'.

[30] Adhémar of Chabannes in Chavon, *Chronique, Adémar*, p.173 '*Negabant baptismum et crucem et quiquod sanae doctrinae est. Abstinentes a cibis, quasi monachi apparebant et castitatem simulabant, sed inter se Ipsos, omnem luxuriam exercebant,*'.

Oaten. Firstly, the care for Children exhibited via baptism (although this may not necessarily refer to child baptism), secondly, the refusal to eat meat falls under the purview of food preparation, and finally, sexual behaviour, intimated by their enjoying of every indulgence. There is also a clear link to a concrete stimulus in Adhémar's account of heresy at Orléans in 1022. Adhémar relates that the heresiarch was able to influence his followers with 'dust from dead children which quickly made anyone who came into contact with it into a Manichee.'[31] The causal link is clear; a concrete disgust stimulus is used, to infect the believers and causes behaviour that transgresses behavioural norms. Adhémar finds the heresy so objectional, not because Manicheism as a theological position stood in opposition to Catholicism, but because the practices and reportage of its manifestations were able to disgust Adhémar so strongly. Some of their moral transgressions were so disgusting to Adhémar that 'it would be sinful even to mention [them].'[32] In fact it is highly doubtful that the heretics at Orléans were Manichee in doctrine.[33] It is more plausible that heresy was so inextricably bound to the idea of Manichee in the high middle ages that Adhémar simply did not have the vocabulary to express his disgust by any other means. In his most recent work, *The War on Heresy*, Moore assess Adhémar in a very similar manner, relating that Adhémar 'was sure that their (Manichee) influence lurked behind many of the evils that, for him, abounded in his time, but he would not, or could not, explain exactly how.'[34] Behavioural immune theory allows us to argue that, Adhémar felt so deeply perturbed

[31] Adhémar of Chabannes in Chavon, *Chronique, Adémar*, p.184, '*pulverem ex mortuis pueris secum ferebat, de quo si quem posset communicare, mox manicheum facieba,*'.
[32] Adhémar of Chabannes in Chavon, *Chronique, Adémar*, p.184, '*abhominationes et criminal, quae dici etiam flagitium est,'.*
[33] See, R.I. Moore, *The War on Heresy* (London, 2014), p.59.
[34] Moore *The War on Heresy,* p.59.

because these heretics disrupted the operative norms of society, and represented a visceral fear of disease, which he was incapable of articulating. The answer for Moore can be found in understanding the innate response that drove Adhémar's writings, disgust.

Having demonstrated the relationship between Adhémar and disgust, we can explore in greater detail the general metaphor of disease used by medieval commentators when writing about heresy, which transcended time and place. In 1974 Moore outlined a pattern 'of an intellectual construction which was complete and consistent in itself, as a description of heresy, and which also conformed to current beliefs about disease.'[35] The semantic representation was clear, with such words as 'infect', 'propagate' and 'contaminate' being regularly used.[36] Sackville, too, speaks of 'a generalised vocabulary of corruption and infection [which] is employed in the description of heresy in what at times seems to be an almost inadvertent manner.'[37] Finally, Arnold characterises this as 'a variety of rhetorical and cultural tropes [which] were available to any medieval writer depicting heresy… [based upon] the "infectious" nature of the "poison" of heresy.'[38] Heresiologists have long commented and identified this tendency to use disease as a metaphor for explaining heresy.[39] Indeed, there is a reflection that there seems to be a motivation to use of the trope outside its utility as a mode of understanding the world. Hence, Sackville states that its use seems 'inadvertent,' at times. We can unite these

[35] R. I. Moore, 'Heresy as Disease,' in eds. W. Lourdaux & D. Verhelst, *The Concept of Heresy in the Middle Ages* (Louvain, 1976), p.9.
[36] Moore, 'Heresy as Disease,' p.2.
[37] L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011), p.171.
[38] J. Arnold, *Inquisition and Power* (Philadelphia, 2001), p.25.
[39] The most developed work in this field is A. Cuffel, *Gendering Disgust in Medieval Religious Polemic* (Notre Dame, 2007). This work is, also, a useful study of the way in which the cultural manifestations of disgust transformed throughout the middle ages.

overviews of medieval anti-heretical texts, through disgust theory and suggest that the metaphor was more than a literary illusion by medieval commentators.

When utilising something as innate as the disgust response, we can start to understand why heresy seemed to transcend time and place. Disgust theory builds upon the disease metaphor and helps us to understand why it was so concurrent in medieval writings, beyond the rather simplistic explanation that as a trope its use was well established. Disgust theory helps us to understand why the language of disgust became such a forceful way to conceptualise heresy. The metaphor of disease had the potential to elicit a disgust response in the reader and helped place the heretic in a social category akin to otherness. Such a category was predicated upon the notion that their non-conformist ways would spread disease, although this did not have to be articulated to be understood. The ultimate end point of this disgust response was the use of the behavioural immune system to behaviourally alienate, to the point of persecution and death, those categorised as heretics.

2.4 New Psychology New Models

Using behavioural immune theory allows us to move beyond conventional representations of persecution in the middle ages, which can be characterised as the competing analyse of R.I. Moore (a Weberian)[40] and someone like Bernard Hamilton. Simplistically, it is best to characterise these approaches as either elitist, top down (Moore), or populist, bottom up (Hamilton). Moore's work is based upon a central tenet that systematic persecution was not caused by 'the unregulated passions or prejudices

[40] R.I. Moore, *The Formation of a Persecuting Society* Ed.2nd (Oxford, 2007), pp.105-106, in which Moore articulates how he views and uses Weber.

of the population at large [but by] a new class of functionaries…for whom persecution might serve their twin purposes of providing the means to extend their power and advance the interests of their masters.'[41] Hamilton's historiographical position rests upon the notion of popular lay persecution. Hamilton proposes that when, 'heretics aroused popular hostility it was not primarily because they reviled the clergy.'[42] Hamilton argues instead, that it was 'the mob [who] seized them (heretics) and burnt them,'[43] in defiance of the clergy's wishes, resulting in a situation where, 'the Church finally came to condone coercion because the attitude of the clergy was shaped by the society in which they lived, which regarded the persecution of heretics as normal.'[44] The behavioural immune system, however, unites these models into one unified theory because it helps explain how persecution can develop at both an individual and societal level.[45]

If we extend Moore's persecution theory into that of behavioural immune, there is a credible argument that as societies became bureaucratic, they too became more conformist (persecuting) because they become more disgust sensitive at an elite level.[46] This phenomenon, also, can be found in Hamilton's work when he outlines his position that; 'the inquisition substituted the rule of law for mob violence in the persecution of heretics.'[47] Conceptually the new bureaucrats, inquisitors, were able to create order out of the chaos of violence of popular persecution. Inquisitors sought to impose legislative

[41] Moore, *Formation of a Persecuting Society,* pp.144-145.
[42] B. Hamilton, *The Medieval Inquisition,* (New York, 1989), p.16.
[43] Hamilton, *The Medieval Inquisition,* p.25.
[44] Hamilton, *The Medieval Inquisition,* p.33.
[45] Schaller, 'The Behavioural Immune System,' p.3421.
[46] J. Graham, C. Joseph & J. Haidt, 'Above and Below Left–Right: Ideological Narratives and Moral Foundations,' *Psychological Inquiry* 20 (2009), pp.110-119, p.113.
[47] Hamilton, *The Medieval Inquisition,* p.57.

order upon the crimes of heresy, hence why such stringent and defined categories arose through the legal mechanisms afforded to the emerging bureaucracies of the church during the long twelfth century. Behavioural immune theory can, also, be used to explain why the legal definitions associated with heresy became ever more predicated upon actions rather than belief.[48] This is because it is the action transgressing behavioural norms that stimulates the behavioural immune response, not the underlying motivation behind it.

The belief that behaviour can signify a deeper meaning than its immediate context or intention ascribed to it by the nominative person, is a core criteria of the behavioural immune theory. In other words, actions were not only the most obvious trigger for the behavioural immune response, but also became equated with belief. This trend has been noted before. For example, Arnold argues that heretical categories were created 'with the assumption that exterior actions could be interpreted as signs of interior morality.'[49] There are two important factors here, both pertaining to the behavioural immune system and law. Firstly, we have the issue of the heretical categories and the way in which heresy was transformed into a behavioural opposition by the church, rather than an ideological one, and how this came to manifest itself in law. Secondly, we have the consequential extension of that; the way in which the behavioural immune system can imply proper belief through proper actions. Arnold frames its slightly differently, but the conclusion is the same; good morality equates to proper behaviour.

[48] Sackville, *Heresy and Heretics,* p.100. On this point, see B. Blankenhorn, OP, 'The Instrumental Causality of the Sacraments: Thomas Aquinas and Louis-Marie Chauvet,' *Nova et Vetera*, *English Edition*, Vol. 4, (2006), pp.255–94, pp.286-293, for the way in which views of St. Thomas Aquinas concerning the instrumental causality of Grace evolved. Also, W. J. Courtney, 'The King and the Leaden Coin: The Economic Background of "Sine qua non" Causality,' *Traditio* 28 (1972), pp.185-209, *passim*. These articles help place a wider theological debate relating to action, grace and belief into a wider context.
[49] Arnold, *Inquisition and Power,* p.44.

The behavioural immune system not only constricts improper action, but also, ensures correct moral behaviour, too. This trend is most noticeable as the long twelfth century took hold and behavioural norms became more prescribed, regulated and codified. The church as it sought to battle heresy, was simultaneously forced to define what it meant to be a Catholic. Catholicism itself became enmeshed with a new series of procedural norms designed to display publicly one's faith. The maintenance and correct observation of Catholicism began to find itself focussed not upon theological observation, but adherence to behavioural norms.[50] This is especially true regarding heresy because from the Fourth Lateran onwards the laity of all levels was expected to conform to religious observances (like the taking of Holy Communion at Easter), which were imagined to demonstrate a belief in Catholicism, but the relations between the two were vague at best.[51]

2.5 Disgust at Work: The Behavioural Immune System

Our high-medieval anti-heretical sources are numerous and span a period of more than three centuries, demonstrating just how ubiquitous the idea of heresy became in the high middle ages.[52] I shall provide a flavour of their content, in order to demonstrate how behavioural immune theory manifests itself within the sources. Such manifestations link to the disease metaphor, but also can be extended to some rather peculiar cultural practices that medieval commentators ascribe to heresy, which were intended to elicit disgust, but fall outside the metaphor of disease.

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[50] H. Maisonneuve*, Études sur les origins de l'Inquisition* (Paris, 1960), pp. 287-93 and Arnold, Inquisition and Power, pp.44-45.
[51] A.A. Larson, 'Lateran IV's Decree on Confession, Gratian's De Penitentia, Confession to One's Sacerdos Proprius: A Re-Evaluation of Omnis Utriusque in Its Canonistic Context,' *The Catholic Historical Review* 104 (2018), pp.415-437, pp.416-418.
[52] Moore, *The War On Heresy,* p.145.

We begin with Tanchelm of Utrecht, a prominent heresiarch in the early twelfth century (d.1115).[53] We shall explore his activities through the canons of Utrecht,

Tanchelm was 'able to distribute his bath water to the fools, to be drunk as a benediction… He ordered an image of St Mary-the mind recoils from repeating it—to be brought into the middle of the crowd. Then he walked over to it, and joining hands with the image, used it as proxy in marrying himself to St Mary.'[54]

The author is clearly operating under a disgust response. There is a concrete stimulus of disgust, the soiled bath water, which then infects his followers through its consumption. One does not have to be a psychologist to interpret this anecdote within the behavioural immune system. Equally, Tanchelm's behaviour subverts sexual practice norms, which fell within the remit of the behavioural immune system.[55] Tanchelm subverted normal sexual practice by marrying the archetypal virgin. Quintessentially, this symbolic act despoiled not only St. Mary herself but all virgins everywhere through its subversion, or at the very least its reportage could have the power to.

This may also explain why the author struggles to articulate his disgust, his line 'the mind recoils from repeating it,' clearly illustrates some form of perplexation at the sheer magnitude, this incident was able to elicit to his disgust sensitivity. It also must be observed, how closely this reflects the words of Adhémar of Chabannes, written more than a century previously, that 'it would be sinful even to mention [some heretical

[53] See, N. Cohn, *The Pursuit of the Millennium: Revolutionary Millenarians and Mystical Anarchists of the Middle Ages* (London, 1970), pp.46-53, for a fuller description of Tanchelm's career.
[54] R.I. Moore, *The Birth of Popular Heresy* (London, 1975), p.30
[55] See, Low, 'Marriage Systems and Pathogen Stress,' pp.325-339; Gangestad *et al*, 'Evolutionary Foundations of Cultural Variation,' pp.75-95; Gangestad & Buss, 'Pathogen Prevalence and Human Mate Preference,' pp.89-96 and Oaten *et al,* 'Disgust as a Disease-Avoidance Mechanism' p.315.

acts].'[56] Abstractly, there is a strong thematic current in both of these texts, which lies outside the usual metaphor of disease and is best interpreted through behavioural immune theory. It is striking beyond the realms of literary tropes outlined by previous historians and hints at a deep-rooted psychological connection, which transcends the century between the two writers.

From the eleventh and twelfth centuries, we have a solitarily incident of heresy in England, dating from 1163.[57] It is unclear whether heresy was not as prevalent in England or simply not as documented.[58] The account of William of Newburgh is included here to demonstrate just how well the behavioural immune system can translate to our medieval sources. William wrote that 'heretics came to England… who undoubtedly originated in Gascony…[and] have spread the virus of their wickedness through many lands. Indeed so many are said to have been infected by this plague throughout France, Spain, Italy and Germany.'[59]

William's disgust here manifests itself through his fear of foreignness. The notion that the corrupting elements came from a foreign land, is perhaps the starkest example of the underlying principle of behavioural immune theory. William, so embroiled within his

[56] Adhémar of Chabannes in Chavon, *Chronique, Adémar*, p.184, '*abhominationes et criminal, quae dici etiam flagitium est,*'.

[57] M. Lambert, *Medieval Heresy Popular Movements from the Gregorian Reform to the Reformation* Ed.2nd (Oxford, 1992), p.226.

[58] See, W.L. Wakefield & A.P. Evans, *Heresies of the High Middle Ages* (New York, 1991), p.245 and Moore, *Birth of Popular Heresy,* p.83.

[59] William of Newburgh, *Historia Rerum Anglicarum* Book.2 Ch.13 '*Iisdem diebus erronei quidam uenerunt in Angliam ex eorum, ut creditur, genere quos uulgo Publicanos uocant. Hi nimirum olim ex Gasconia incerto auctore habentes originem, regionibus plurimis virus suae perfidiae infuderunt. Quippe in latissimis galliae Hispaniae Itliae Germaniaeque prouinciis tam multi hac peste infecti esse dicuntur, secundum prophetam, multiplicati esse super numerum videantur.*' In P. Walsh and M Kennedy, *William of Newburgh The History of English Affairs: 2* (Oxford, 2007), p.56 Translated in both Walsh and Kennedy, *William of Newburgh,* p.57 and Moore, *The Birth of Popular Heresy,* pp.82-3 The above translation is my own. N.B. I have chosen to translate *virus* as virus, not poison. The passage reads either 'they have poured their poison' or 'spread their virus.' Ultimately, William viewed this out group as spreading some form of corruption.

disgust sensitivity, creates a clear demarcation between an infectious other and the pure ingroup. A divide that can only be adequately understood through xenophobia. William found heresy so conceptually threatening because of its power to corrupt the pureness of the body politic. William, although he was not aware of it, hoped to maintain that purity by exercising the behavioural immune system.[60]

William also displays further manifestations of behavioural immune theory through his desire for a strong government and his belief that weaker governments facilitate the spread of heretical disease. William writes, 'wherever the leaders of the Church and secular princes treat [heretics] with too much laxity in their provinces these treacherous foxes emerge from their holes… [and] ravage the vineyard of the Lord. But when the fire of God kindles the zeal of the faithful against them they slink back into their holes and do less harm.'[61] William's approach is in accordance with the findings of Murray *et al*, in *Pathogens and Politics*. Simplistically, his fear of disease drives his authoritarianism at an individual and societal level. William leaves the reader with no doubt, it was 'this pious and inflexible severity [that]… purged the kingdom of England of the infection which had broken out.'[62]

William's account of heresy demonstrates the value of interpreting medieval persecution through behavioural immune theory. We can see, not only how his disgust

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[60]See, M. Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London, 2003), p.116, for a more anthropological explanation of how the meta body of society is conceptualised and expressed.

[61] William of Newburgh, *Historia Rerum Anglicarum* Book.2 Ch.13 '*Denisuqe cum a praesulibus ecclesiarum et principibus prouinciarum in eos remissius agitur, egrediuntur de caueis suis vulpes nequissimae, et praetenta specie pietatis seducendo simplices vineam domini Sabaoth tanto gravius quanto liberius demoliuntur.*' In Walsh and Kennedy, *William of Newburgh: 2,* p.56 Translated in both Walsh and Kennedy, *William of Newburgh,* p.57 and Moore, *The Birth of Popular Heresy*, p.83.

[62] William of Newburgh, *Historia Rerum Anglicarum* Book.2 Ch.13 '*Huius seueritats pius rigor non solum a peste illa quae inrepserat Angliae regnum purgauit, verum etiam ne ulterius inreperet, incusso haereticis terrore, praecavit.*' In Walsh and Kennedy, *William of Newburgh: 2,* p.60 Translated in both Walsh and Kennedy, *William of Newburgh,* p.61 and Moore, *The Birth of Popular Heresy*, p.84.

response is stimulated, but also how this disgust crystallises into a preference for authoritarian government. Such a preference was soon materialised through the Assizes of Clarendon (1166). These were, the first anti-heretical secular legislation to be passed in England.

The Assizes of Clarendon were a series of twenty-two articles of law, designed to draconically reorganise the kingdom after its turbulent disruption. These new laws stemmed solely from the will of the king.[63] Equally, they were originally seen as temporary measures to restore justice and stability to the kingdom.[64] The Assizes, however, endured and were re-issued ten years later at Northampton. It is striking that one instance of heresy was capable of producing such a draconian and long-lasting effect. Interestingly, there was a stipulation that households who harboured heretics were to be burnt, outside the town.[65] There are two forms of exclusion operating here, firstly the physical removal of the diseased space and then its permeant destruction through fire. The effect of this would be to not only send a stark warning to other would be heretics and supporters, but also cleanse the diseased area. This would conform to the hyper-sensitivity of humans to threat noted by Kurzban and Leary.[66] In an era where pathogen stress was so high, the behavioural immune system in operation would be naturally more draconian. Hence the most effective way of dealing with disease and the impure was to destroy it. The behavioural immune system through the rulings at Clarendon created new behavioural norms, which became legislative persecution. In a similar manner, the Inquisition became a legislated form of persecution. The Inquisition

[63] A. Green, *Henry the Second* (London, 1892), p.116.
[64] W.L. Warren, *Henry II* (London, 2000), p.283.
[65] W. Stubbs, *Select Charters and Other Illustrations of English Constitutional History,* Ed.9th (Oxford, 1921), p.173.
[66] Kurzban & Leary, 'Evolutionary origins of stigmatization,' p.189.

represented the power of the long twelfth century, to conceptualise and transform behavioural norms, and enforce them.

Our final reflections are upon this quote of Hamilton, 'the sad truth would seem to be that truly tolerant societies are very rare, and that the desire to persecute individuals or groups who flout the received orthodoxy, whatever that may be, is a deeply rooted human instinct.'[67] The sad truth, as Hamilton puts it, is certainly supported by behavioural immune theory, the proclivity to be disgusted, demand conformity and adhere to inward sociality is a product of humanity, universally apparent and timelessly evident. Behavioural immune theory offers us an explanation for Hamilton's lament. Hopefully, the above has gone some way to demonstrating how such a society can emerge, especially in relation to heresy. We shall now highlight the value of assessing anti-heretical sources through the behavioural immune system paradigm rather than the more traditional diseased based model already explored.

2.6 Papal Letters

While the antecedents of the process of *inquisitio* predate Innocent III's pontificate, it was during his reign that it came to the fore as an alternate method of prosecution for *occult* crimes.[68] The development of this process continued under Gregory IX. It was, however, during the reign of Innocent IV that the process of *inquisitio* became standardised and regulated. This thesis argues that the earlier incarnations of *inquisitio* were a legislative form of the behavioural immune system, which directly reflected the inner disgust sensitivity of both Innocent III and Gregory IX. At this early stage of the thesis, we shall not be exploring in great detail the actual mechanisms of the

[67] Hamilton, *The Medieval Inquisition,* p.98.
[68] See below, section '3.7 Replacing Ordeal: The Road to Inquisition'.

inquisition's operations.[69] Instead, we shall examine the way in which these Popes characterise and discuss heresy, using as our filter the paradigm of behavioural immune theory. Our source base for this exercise will be the Papal correspondence of Innocent III and Gregory.

Whilst, there are certain issues surrounding the authenticity of the Papal voice in the letters, generally papal decrees are our most reliable source for exploring papal attitudes and influence. Certainly, papal decrees do not give the entire picture, however, they do portray the Catholic Church's official response to contemporary issues and form the basis of any institutional response to issues that came to the Papal Curia. This is the line taken by Rebeca Rist, when she grappled with the problems of Papal sources and their representation of the Cathars. She is, however, far more reticent to ascribe to these letters the notion of a papal voice.[70] The most pressing concern from the way in which the sources are presented here is the question, do papal letters adequately reflect a papal voice?

In the sections that follow, papal correspondence has been interpreted as a genuine reflection of Papal feeling and at times a verbatim expression of the ethos of their respective pope. Such an interpretation irons out the peculiarities of the Papal Curia's operation. Certainly, the Pope did not with his own hand, write the numerous letters that left Rome daily with the approval of his seal, yet, his words would have formed the basis of the response or addresses. Hence, whilst it may not be particularly fruitful to dwell on a specific word within a text, the language of a piece and the tone can provide

[69] See below, section '6.2 The source of the problems, Doat and Ms. 609,' for a detailed brake down of how the inquisitorial trial process operated in the mid-13th century.
[70] R. Rist, '*Lupi rapaces in ovium vestimentis'*: Heretics and Heresy in Papal Correspondence in ed. A. Sennis *Cathars In Question* (York, 2016), pp.231-232.

the message the author wished to imbue his letters with.[71] Does such a message, however, garner a glimpse into the inner workings of the papal mind? How bound and confined are the letters by convention and the niceties of diplomacy? Is there a juncture between the projection of the papal power and the inner insecurities of the papal office? Unfortunately, or thankfully, we will never be able to say with certainty. The demonstrative tone of the letters would lead me to suggest, they represent a reflection of the disgust sensitivity of the Popes in question. It would be astounding, if the Popes were articulating disgust in such a sophisticated manner, simply to conform to the metaphor and caricature of heresy. It is far more credible that the forceful nature of the letters stems from a genuine disgust response to reports of heresy.

2.6.1 Innocent III and Disgust: Applying Behavioural Immune Theory to the Developing Crisis in the Languedoc

During the pontificate of Innocent III, nowhere was to become more synonymous with heresy than the Languedoc. The Languedoc had long been a unique region of Europe, identifiable by a distinct culture and language.[72] It had been a cauldron of political and religious unrest since the twelfth century.[73] The ambitions of no less and three Kings

[71] G. Althoff, I. Fonnesberg-Schmidt, & W. Kynan-Wilson 'Framing papal communication in the central Middle Ages,' *Journal of Medieval History* 44 (2018), pp.251-260, p.254, p.257 and M. Mostert, *A Bibliography of Works on Medieval Communication* (Turnhout, 2012), see, the introduction by M. Clanchy, for his views on the developing nature of medieval literary studies, of particular relevance is that the texts do not exist in isolation, nor are they stringently divorced from other forms of communication. Receiving a letter baring the Pope's seal would have been an impressive moment for any person, be they Bishop, King or Emperor.

[72] See, J. Sumption, *The Albigensian Crusade* (St. Ives, 1999). Sumption's work is a little dated now having been first published in 1978, but it remains an excellent narrative account of the Albigensian Crusade. His introduction provides an exciting caricature of life and culture in the Languedoc, pp.15-31.

[73] As far back as 1145 Geoffrey of Auxerre described Albi as 'contaminated.' See, M. Lambert *The Cathars* (Norfolk, 2004), p.69. The 27th Canon of the council of the Third Lateran (1179) names numerous heresies operating within the Languedoc. See, N. Tanner, *Decrees of the Ecumenical Council* 2 Vols. (London, 1990), Vol.1, p.224. Equally the Bull Ad *abolendam* (1184), was issued with a particular interest in the region and sought to abolish not only heresy but mercenaries, who, too, were rife in the region.

and one Emperor were played out upon its stage, all of whom vied for supremacy in the region. The Catholic Church struggled to carry out its duty, to bring all souls within the Languedoc to salvation. Not only did the southern French have a unique way of life, they too had their own church with its abnormal, to Catholic beliefs, form of worship and theology. The faith of the Good Men and Women, which I have labelled Catharism, offered a credible alternative, in a manner that other populist heresies were unable to achieve, for the people of the Languedoc. As a form of religious observance, it was so widely and freely practiced in the region that there were several Cathar Bishopric within the Languedoc.[74] Innocent, turning his focus to the Languedoc hoped to expunge the Cathar heresy. Through the Papal correspondence of Innocent III to a variety of people, most importantly the French King Philip II, I will demonstrate his high disgust sensitivity and the way in which behavioural immune theory can be utilised when analysing anti-heretical material as well as provide a glimpse into the developing events in the Languedoc, which lead to the Albigensian Crusade.

2.6.2 *Cum unus Dominus* (1198)

Innocent's first letter concerning the subject of the heresy in the south of France, *Cum unus Dominus,* dates from the 21st of April 1198 and is addressed to the Archbishop of Aix-en-Provence. It was more widely circulated, but the extant copy is addressed to that bishop. Innocent had only been seated on the Papal throne since January 8th that year, so this letter offers a unique glimpse at the naissance of Innocent's anti-heretical policy, in the South of France.

[74] H. Fichtenau, *Heretics and Scholars in the High Middle Ages 1000-1200* (Pennsylvania, 1998), *trans*. D. Kaiser, p.86.

Innocent in *Cum unus Dominus* describes heretics as 'trying to tear this seamless tunic of faith,' because they, 'form for themselves separate churches, or rather synagogues of Satan, corrupting evangelical, apostolic and prophetic teaching, in defence of their heresy perverting it to the ruin of their own salvation.'[75]

Firstly, note the more obvious manifestations of the behavioural immune response, with use of words like 'corrupting' and 'perverting,' which align to behavioural immune theory. It is unclear whether or not this language is designed to stimulate a disgust response in the reader or an articulation of Innocent's own disgust response. It is quite possible the use of such language was so ingrained within the trope of heresy that it mattered little and functioned as both a stimulus for, and reaction to the disgust response. Either way, however, we can see how behavioural immune theory makes itself manifest within the framework of Innocent's conceptualisation of the heretical other. There is an explicit link between otherness, impurity and disease, which creates an existential threat to the Catholic, pure, ingroup merely by its existence.

Secondly, note the way in which, the ideas of corruption and perversion encompass not only heretics but also Jews and the Devil. Innocent was not trying to equate the theology of the Cathars to that of the Jewish faith or even Satanic worship. Through a behavioural immune response, stimulus with the power capable of polluting society, had become enmeshed into one systemic other. Hence, outgroups in medieval polemics often are

[75] Innocent III, *Cum unnus Dominus* in O. Hageneder, A. Haidacher, H. Eberstaller, F.Eheim, H.Feigl, F. Gill-Hillbrand, G. Möser-Mersky, H. Paulhart, K. Peball, E. Popp, C. Thomas and G. Trenkler *Die Register Innocenz III 1.Pontifikatsjahr, 1198/99 texte* (Vienna,1965), pp.135-6, '*quod quidam tunicam inconsutilem scindere molientes, diversas sibi ecclesias immo potius Satane sinagogas confingunt, doctrinam evangelicam, apostolican et proheticam depravantes et ad defensionem sui herroris in sue salutis perniciem pervertentes.*' Translated in C. Léglu, R. Rist & C. Taylor *The Cathars and the Albigensian Crusade: A Sourcebook* (Abingdon, 2014), p.33.

caricatured in a similar manner.[76] This is a phenomenon best articulated by the way in which reports of heretics conform, with alarming regularity, to an archetypal image of heresy based on disgust despite the heterogenous nature of heretical dissent. These metaphorical links start to highlight how disgust sensitivity can create a wholesale system of persecution, encompassing all modes of behaviour, which fall beyond the confines of behavioural practice norms. This is why *Formation of a Persecuting Society* deals not only with heretics, but also prostitutes, homosexuals and lepers. Behavioural immune theory can explain why socially undesirable groups struggle to gain tolerance, and even why such groups are considered socially undesirable.

Also, *Cum unus Dominus* provides a window into Innocent's internal motivation. Innocent outlines that he is defending the Catholic faith and curating the salvation of souls. In essence, there are two major themes here that conform to behavioural immune theory. Firstly, the idea of purity projected onto the body of the corporate whole, which must be protected by conformity. Secondly, there is the notion that the need for conformity is designed to protect the individual. Conformity and protection provide the underlying motivation for the operation of the behavioural immune system.[77] In this opening address of *Cum unus Dominus* we can see almost all the functional elements of the behavioural immune system, the use of disgust-based language, as either a trigger or response to a concrete stimulus, as well as the stressing of conforming to protect the individual and society as a whole.

[76] Cuffel, G*endering Disgust,* p.3.
[77] Fincher, *et al* 'Pathogen prevalence,' p.1280.

Cum unus Dominus is also of significance because it is the first instance of Innocent using the metaphor of the little foxes as pope, to discuss heresy in the south of France. Innocent's first recorded usage of the term, to describe heresy, pre-dates his time as Pope and can be found in a letter written to Emperor Henry VI (1190).[78] The metaphor itself is a liturgical reference, from Song of Songs 2:15, which reads 'catch for us the little foxes, the little foxes that ruin the vineyards of the lord of hosts, for our vineyards are in bloom.'[79] Its usage was popularised by St. Bernard of Clairvaux. Bernard used it in his sixty-fifth and sixty-sixth sermons concerning the Song of Songs after his anti-heretical mission of 1143.[80] So, clearly the metaphor and its usage had a cultural currency outside of the correspondence of Innocent III, with a context that extended beyond the Languedoc.[81]

I would like to draw particular attention to the use of this metaphor, not only, because of its ubiquitous nature, but because it displays some crucial aspects of behavioural immune theory. Vermin, such as foxes, can act as a powerful metaphor for stimulating a disgust response because they link both the spread of disease and famine through food consumption, the effects of which a pastoral society would be particularly attuned to. If we recall the predictors for preferring authoritarian government discussed by Murray *et al* in 'Pathogens and Politics,' we will remember that famine and pathogen

[78] See, D. J. Smith, *Innocent III and the Crown of Aragon: The Limits of Papal Authority* (Aldershot, 2004), p.31. Also, S. Waugh and P. Diehl, *Christendom and its Discontents: Exclusion, Persecution and Rebellion* (Cambridge, 1996), p.1 and B. Kienzel, *Cistercians, Heresy, and crusade in Occitan, 1145-1229* (York, 2001) p.8.

[79] Vulgate, Canticum Canticorum 2:15 'Capite nobis vulpes parvulas quae demoliuntur vineas: nam vinea nostra floruit,'.

[80] Bernard of Clairvaux, *Opera*, J. Leclercq, C. Talbot, M. Rochais 8 Vols. Vol.1 (Rome, 1957-77), XVI. See, Lambert, *The Cathars,* p.39 for a brief explanation.

[81] See, Sackville, *Heresy and Heretics*, pp.155-161 for a fuller description of the literary origins of the little foxes and its usage.

stress were both strong predictors for the preference of authoritarianism, hence the symbolic use of vermin, like foxes, unites both these predictors and could hopefully elicit a disgust response in the reader. Obviously, I do not wish to argue that Innocent used the metaphor of the little foxes, solely, to provoke a disgust response. Behavioural immune theory, however, offers to us a fuller explanation as to why the little foxes became such a potent metaphor and why it was so universally favoured by Church writers.

The most expressive form of this metaphor can be found in *Cum jam captis,* a letter written to the Archbishop of Narbonne at the height of the Albigensian crusade in 1213. The context of the letter is actually quite remarkable, in so much as it seems to be written at a time when Innocent wished to halt the crusade, it having, in his mind, achieved its objectives. What I would like to highlight, however, is the semantic elision of the little foxes and heresy described as a virus. Innocent wrote, 'to the Archbishop of Narbonne, legate of the Apostolic see, since now in the south of France little foxes have been captured which were destroying the vineyard of the Lord of Hosts, which had been infected by the virus of heretical wickedness.'[82] Bluntly, there is no clearer manifestation of the precepts of behavioural immune theory than the above quote. Innocent unambiguously describes heresy as a disease, which has infected the people of the south of France. The quote is not so explicit as to demonstrate the totality of behavioural immune theory. Innocent does not call for the destruction of the disease, as he would do in *Inveterata pravitatis heretice*,[83] however, the crucial motif of disgust

[82] Innocent III, *Cum jam captis,* Migne PL, Vol.216 Col.744 '*vulpeculis demolientibus vineam Domini Sabaoth in Provincia, quam virus infecerat haereticae pravitatis,*' translated in Léglu *et al, The Cathars and the Albigensian Crusade*, pp.41-42.

[83] Innocent III, *Inveterata Pravitatis Heretice,* in Hagenender *et al, Die Register Innocenz III 1207/8,* p.256 '*Ideoque, cum ferro abscidenda sunt vulnera, que fomentorum non sentiunt medicinam… invocadum*

is being used. Innocent projects ideas of public health, disease and disgusting imagery onto a heretical other.

The metaphor of the little foxes served a dual purpose for Innocent III. Not only did it allow him to express disgusting imagery, but also allowed him to symbolically unite the idea of heresy, into one homogeneous whole, in opposition to the Catholic faith. In *Cum unus Dominus* Innocent wrote, 'such little foxes which destroy the vineyard of the Lord of hosts indeed although they have different forms their tails are bound to one another because they combine into one by reasons of vanity.'[84] The disgusting imagery of the vermin, little foxes, not only extends to the Cathar heretics in the Languedoc, but projects onto all heretics everywhere not because they themselves are Cathars, but because they simply do not conform to the Catholic faith. Such a reflection illuminates the way in which heresy was being thought about in the higher echelons of the Catholic faith, especially in its most senior positions. Heresy troubled the Catholic faith for a myriad of reasons, but ultimately it was their defiance of behavioural norms expressed through religious observance that most irked Catholic sensibilities. The behavioural immune system was able to unify heretics into an all-encompassing other whose theological diversity mattered little, solely of importance was their opposition to the Catholic faith, which found expression through disgust-based language and metaphor.

duximus ad vindicandam iniuriam Iesu Christi et capiendas vulpeculas, que vineam Domini Sabaoht non in simplicibus demoliri… quatinus ad extirpandos tam degeneres palmites, qui missis radicibus in profundum lambruscos generant et non uvas.' translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* pp.36-37.

[84] Innocent III, *Cum unnus Dominus* in Hageneder *et al*, *Die Register Innocenz III 1198/99,* p.136 '*Cum igitur ad capiendas huiusmodi vulpes parvulas, que demoliuntur vineam Domini Sabaot-species quidem habentes diversas, sed caudas ad invincem colligatas.*' Translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* p.33.

The behavioural immune response can be further demonstrated in Innocent's correspondence by the way he sought to punish heretics. Note, the language used by Innocent as further evidence of his disgust response. Innocent wished that, 'if by chance they cannot convert some of them, let these be excluded from your territories, lest they drove down that element which is pure.'[85] Firstly, note the use of term pure, which juxtaposes the notions of cleanliness and corruption. Our attention, however, should be drawn to the way Innocent wished to exclude the corrupting element from society in order to maintain its sanctity. Exclusion and the destruction of things, in this instance people, labelled or conceptualised as diseased or infectious, is a common human phenomenon falling within the remit of behavioural immune theory. In this instance, Innocent is merely conforming to type when calling for the exclusion of heretics from his pure body politic.

Innocent extended this notion of excluding diseased elements from society to those whose relationships with heretics was not immediately apparent, under a strict theological definition.[86] Innocent wished to exclude, not only the verifiable heretics, but he also passed 'a sentence of excommunication against all who, after he had excommunicated them, provided a refuge of heretics and have dared to participate in their business dealings or marriages or to foster them in their perversity; and equally that he should decree that they submit to the same penalties exactly as the heretics.'[87]

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[85] Innocent III, *Cum unnus Dominus,* in Hageneder *et al, Die Register Innocenz III 1198/99, 'si qui forte converti non poterunt, ne pars sincera trahatur, de vestris finibus excludantur.'* p.137 Translated in Léglu *et al*, The Cathars and the Albigensian Crusade, p.33.

[86] Sackville, *Heresy and Heretics,* p.190, for the theological definition of heresy.

[87] Innocent III, *Cum unnus Dominus,* in Hageneder *et al, Die Register Innocenz III 1198/99, 'ut [in] omnes, qui hereticis, postquam ab eo excommunicati fuerint, receptaculum prestare et in mercimoniis vel cohabitatione participare presumpserint vel eos in sua perversitate fovere, excommunicationis sententiam sollempniter non differat promulgare et pari eos cum hereticis pene subiacere decernat.'* p.137 Translated in Léglu *et al, The Cathars and the Albigensian Crusade,* p.34.

Above, we discussed, how anti-heretical legislation came to encompass categories of heretical activity. It was argued, the formation of some categories relationship to incorrect belief was tangential, at best, and that actions became the basis for anti-heretical legislation because it is behaviour that stimulates the behavioural immune response, not thought. Here we can see why the Catholic church would wish to extend its regulations for heretical behaviour to wider groups outside of the heretical believers, because they too were wrapped up in the metaphor of disease and corruption that triggered the behavioural immune response. Obviously, there was a functional utility to this, in so much as it helped the church disrupt the heretical networks, upon which heretics relied. Equally, categorisation of heretical crime helped establish the criminally culpable individual as opposed to the corporate heretical body. There is, however, a forceful argument to be made that an underlying motivation to the growing corpus of anti-heretical legislation was the behavioural immune system. The legal transformation of the long twelfth century, afforded for rulers the power to enforce their conception of behavioural norms, in previously unseen ways, like the Inquisition.

2.6.3 *Ad sponse sue* (1204)

By 1204, after close to six years of Papal intervention in the Languedoc, palpable results were thin on the ground. The Cathar faith seemed stronger than ever. Mendicant preachers were outrightly rejected by their congregation or bested by their Cathar counterparts in debates.[88] The problem of heresy, in the southern lands, was clearly weighing heavy on the mind of Pope Innocent. He tried to escalate the conflict outside

[88] Sumption, *Albigensian Crusade,* P.72, the events described refer to 1206 and 1207, but debates between Cathars and Catholics were a staple in the region.

of the parochial lords and Bishops of the Languedoc, who had proven unwilling or incapable of remoulding their demesnes into Innocent's idealised Catholic vision. To remedy this, Innocent sought the support of the most powerful temporal lord in France, King Phillip II 'August,' to redress the situation.[89]

Behavioural immune theory, too, influenced the manner in which Innocent corresponded with the French Crown, as he hoped it would press his cause against the heretics in the south. There are a few motifs that Innocent uses throughout his correspondents with Philip August, which demonstrate behavioural immune theory. I would like to highlight the way in which Innocent continues to describe heretics in a disgusting manner, as well as implore the King into action. In *Ad sponse sue*, a letter written to Philip, dated 28th May 1204, Innocent hoped to compel the King to intercede in the troublesome region, to supress the heretics, via an assertion of regal power. Innocent argues at length for action against the heretics, who he portrays once again as the little foxes. So intertwined are the two themes of disgust and regal action that I have felt it best to include the extract in full.

Innocent wrote to Philip, 'in order that you might not seem to carry the sword without cause, it is necessary that, seizing weapons and shield, you rise up powerfully to the aid of that man, whose tunic which we refer to with grief suffers a tearing in the kingdom of the Franks, whose vineyard the little vixen destroys and whose sheep are exposed to the onslaught of wolves. For rapacious wolves in sheep's clothing, who seize and scatter

[89] See, J. Bradbury, *Philip Augustus King of France 1180-1223* (London, 1998), pp.187-189, in which relations between Innocent and Philip are characterised as harmonious and on the whole supportive. Bradbury makes clear that the tensions of political manoeuvrings lay between the King and other rulers, *vis a vis* the Pope, not between the two men directly. See, pp.207-213 for Philip's attitude towards heresy and intervention in the Languedoc. Bradbury, hints that the legality of the issue was more pressing than an evasive tactic.

the sheep, have entered into the kingdom itself. And since they do not fear ecclesiastical discipline, insofar as they are separated from the church, to such an extent do they raging shamelessly against the sheep-pen of Christ.'[90]

The theme of heresy, seen through the prism of disgust, makes itself most explicit through the continued metaphor of the little foxes. Overall, the imagery employed by Innocent seeks to juxtapose the idea of a pure conformist in-group with a diseased pollutant other. Indeed, later in the letter Innocent hopes that both the crown and the cross 'will powerfully oppose their (the heretics) perversity,'[91] linking the behaviourally regulated Catholics in opposition to heretical depravity. It would be remiss, not to mention that Innocent still relied upon his tunic metaphor to describe his vison of the Catholic faith. It is remarkable, just how enduring the imagery used by Innocent is. The two letters we have so far examined, were written six years apart, but use the same archetypal ideas to describe the way in which Innocent conceptualised heresy, Catholicism and the contestation of Christian truth between them. The enduring and archetypal nature of the metaphors used by Innocent, hint at a power struggle understood as one between good and evil, vocalised by the language of disgust but predicated upon the deeper-rooted behavioural immune system and disgust response. Hence, despite a changing dynamic on the ground in the Languedoc, the archetypal

[90] Innocent III, *Ad sponse sue*, in O. Hagenender, A. Sommerlechner, H. Weigl, C. Egger and R. Murauer, *Die Register Innocenz III 7.Band 7.Pontifikatsjahr, 1204/5 Texte und Indices* (Vienna, 1997), pp.127-129 '*Ne igitur sine causa portare gladium videaris, oportet, ut apprehendens arma et scutum in adiutorium eius potenter assurgas, cuius vestis, quod dolentes referimus, in regno Francorum scissuram patitur, cuiuc vineam vulpes parvula demolitur et cuius oves luporum insultibus exponuntur. Intrarunt etenim regnum ipcum ecclesiasticam non timeant disciplinam, utpote ab ecclesia separate tanto in ovile Christi licentious debachantur*.' translated in Léglu *et al*, *The Cathars and the Albigensian Crusade: a Sourcebook* (Abingdon, 2014), p.35.

[91] Innocent III, *Ad sponse sue* in Léglu *et al*, *The Cathars and the Albigensian Crusade: A Sourcebook* (Abingdon, 2014), p.35.

nature of the conflict had changed little. The conflict seemed to Innocent so rigid in its structure because it pitted not theology against theology but proper, regulated and delineated behaviour against the abnormal other, with the power to figuratively and literally disease the body politic.

2.6.4 *Inveterata pravitatis heretice* (1207)

As the situation in the Languedoc persisted, or deteriorated, Innocent became more exasperated with the persistence of Cathar support, and the seeming inability of Catholicism to quash the heretical practices, which abounded there. As a result, in his correspondence, there is a marked increase in the language of disgust, which becomes more pronounced. Equally, the equation of purity to correct behaviour becomes more explicit. A year after *Ad sponse sue,* in 1207, Innocent expanded his pleas for aid to a wider audience incorporating both the King and other powerful magnates (e.g. the counts of Troyes, Vermandois, Blois, Bar-le-Duc, Nevers, Dreux and the duke of Burgundy). Such a measure demonstrates a dramatic escalation in Papal response. Innocent by directly appealing to the French nobility, after the King's inaction, wished to broaden support for his anti-heretical campaign, as well as shame Phillip into action. In 1207 Innocent wrote *Inveterata pravitatis heretice*, which marked a significant expansion of the Catholic mission to fight heresy. It granted the same plenary indulgence to the king, as to those who sought to go Crusading in the Holy Land, if he would fight against heresy in the Languedoc. *Inveterata pravitatis heretice*, marks a real escalation in papal response. It was a palpable moment in shifting attitudes towards the anti-heretical policy in the Languedoc.

The imagery of disgust, in *Inveterata pravitatis heretice,* is explicit and designed to demonstrate Innocents' perturbed nature. Its visceral nature captures the importance in which Innocent held his mission to quell the heretics in the Languedoc. Innocent wrote, 'the age-old seduction of wicked heresy, which is constantly sprouting in the regions of Toulouse, does not cease to bring forth monstrous offspring, by which, with corruption derived from his own insanity, it immediately revives to the detriment of others. And a detestable succession of the damned multiplies, who, glorying in the novelties of their own vanity, than the doctrine of the true faith.'[92]

The language of disgust is abundant in this text. There is an explicit link between heresy and corruption. Note in particular the 'monstrous offspring' and the 'detestable succession of the damned.' I would take the use of such evidence as demonstrating, Innocent's high level of disgust sensitivity. Certainly, the language of disgust is more pronounced and vivid, when compared to previous letters. Is such a shift in tone merely a reflection of Innocents' increased desire to garner support for his anti-heretical policy, rather than a genuine reflection of his disgust sensitivity? I believe the provocative tone of the piece fulfils both roles, but is more a mirror of Innocents' disgust sensitivity, than manipulative rhetoric expediently employed to exploit the disgust sensitivity of others. I consider that the tone of the letter has been exacerbated by a perceived worsening

[92] Innocent III, *Inveterata Pravitatis Heretice,* in *O. Hagenender, A. Sommerlechner, H. Weigl, C. Egger and R. Murauer, Die Register Innocenz III 10.Band 10.Pontifikatsjahr, 1207/8 Texte und Indices* (Vienna, 2006), pp.254-257 '*Inveterata pravitatis heretice corruptela, que succrescit assidue in partibus Tolosanis, fetus non desinit parere monstruosos, per quos in alios corruption proprie vesaine derivate reviviscit instanter et pullulat detestabilis successio dampnatorum, qui de sue vanitatis adinventionibus gloriantes dogmata recte fidei aspernantur et eo amplius predicatam sibi veritatem obaudiunt,*' translated in Léglu *et a*l, *The Cathars and the Albigensian Crusade,* p.36.

situation on the ground. Its evocative nature seems to be more a reflection of Innocent's exasperation with the situation in the Languedoc than simply a ramping up of rhetoric.

Further to the above, there are subtler manifestations of the behavioural immune response present in the above section, which we shall explore in order to highlight just how ingrained and useful this mode of analysis is. Recalling the work of Oaten *et al*, we will remember that the behavioural immune system operated in three primary areas, the care of vulnerable persons, the preparation of food and sexual behaviour, because these three areas of human activity were most susceptible to pathogens.[93] Drawing attention to the phrase 'the age-old seduction of wicked heresy,'[94] there is clearly an allusion to the idea of irregular sexual practices and heresy. Whilst this can be seen to be a manifestation of behavioural immune theory, it is not as explicit as the language of disgust above, however, its inclusion projects onto heresy the fear of sexual impropriety. Its inclusion hints at a framework of thought that more closely associates all areas of behavioural immune theory to anti-heretical practice, than the far easier to comprehend disgust-based language, which is more prominent. Equally, notice how it is the threat to the community which stimulates the need for action. Innocent formulates that heresy 'revives [itself] to the detriment of others,' therefore, it is the danger that heretics pose to the community that triggers such a strong behavioural immune response.

The language of *Inveterata pravitatis heretice* becomes most explicitly identifiable within the framework of the behavioural immune system when Innocent writes, 'since

[93] Oaten *et al*, 'Disgust as a Disease-Avoidance Mechanism,' p.315.
[94] Innocent III, *Inveterata Pravitatis Heretice, 'Inveterata pravitatis heretice corruptela,'.*

wounds which do not respond to the medicine of poultices must be cut out with steel… To invoke your help in order to vindicate injury done to Jesus Christ, and to catch little foxes which do not cease destroy the vineyard of the Lord of Hosts… That for the extirpation of such rotting vine shoots which, with roots deeply extended, bring forth wild vines and not grapes.'[95]

The above is a clear articulation of the underlying psychology behind behavioural immune theory, linking the spread of disease to socially undesirable groups and conceptualising their persecution within the framework of health and medicine Equally, the language of disgust is once again fragrantly used by Innocent here to articulate his feelings towards heretics and heresy.

The language used in *Inveterata pravitatis heretice* not only demonstrates, an intensifying of the rhetoric of disgust, which is utilised against heretics, but also sees a more explicit manifestation of the positive association of correct behaviour and Catholic belief. Innocent wrote to Phillip in a tone that smacks of desperation. He wrote, 'you may too, gird yourself manfully and powerfully to eliminate such injurious filth, so that both the purity of your faith, which as a Catholic Prince you keep in mind, may be exhibited indeed by strenuous actions.'[96] Here, we can see the psychology of

[95] Innocent III, *Inveterata Pravitatis Heretice,* in Hagenender *et al, Die Register Innocenz III 1207/8,* p.256 '*Ideoque, cum ferro abscidenda sunt vulnera, que fomentorum non sentiunt medicinam… invocadum duximus ad vindicandam iniuriam Iesu Christi et capiendas vulpeculas, que vineam Domini Sabaoht non in simplicibus demoliri… quatinus ad extirpandos tam degeneres palmites, qui missis radicibus in profundum lambruscos generant et non uvas.*' translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* pp.36-37.

[96] Innocent III, *Inveterata Pravitatis Heretice, in Hagenender et al, Die Register Innocenz III 1207/8, p.256* '*ad eliminandam quoque spurtitiam tam nocivam accingras viriliter et potenter, ut et fidei tue puritas, quam tamquam princeps catholicus servas in mente, strenius actibus in opre declaretur et heretice perfidie sectatores potentie tue virtue contri ad veritatis notitiam saltem inter afflictiones bellicas reducantur.*' Translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* p.37.

behavioural immune theory, by the way in which Innocent associates Catholicism to proper behaviour and conversely describes heresy as injurious filth.

It is understandable that Innocent wished Phillipe to support his cause and that he would try to provoke him into action. A theme, he uses when attacking Phillipe's masculinity in the first clause. What better to spur a King into action than an assault upon his ego? What is less clear, however, is why would Innocent chose to make such an explicit connection between Catholic purity, Phillip's position as king and correct moral behaviour. The answer can be found in behavioural immune theory. Innocent did not wish Phillip to become involved with his anti-heretical policy, simply, because he was a powerful King capable of dismantling Cathar networks. He wished him to do so because he felt it was his intrinsic Catholic duty, and in so doing Phillip could demonstrate his purity. Behaviour immune theory offers not an alternative explanation as to why Innocent sought to seek the help of Phillipe. It does, however, explain why Innocent chose to frame his approach in such a manner.

2.6.5 *Ne nos ejus* (1208)

Despite the pleas of Innocent, King Phillipe remained unmoved and the Languedoc persisted as a focal point for Innocent's prosecution of heresy and projection for his vision of Catholicism. An impasse was reached, however, when on the 14th of January 1208 Innocent's Legate to the region, Peter de Castelnau, was assassinated by a solitary knight, believed to be at the direction of Raymond VI, Count of Toulouse. Raymond latter, on the 18th of June, prostrated himself, stripped to the waste, before the church to make his atonement. His ritual humiliation was administered by twenty-two Church representatives, consisting of three Archbishops and nineteen Bishops, who watched

whilst he was flogged before the altar of the church of St-Giles.[97] Repentance, however, could not mitigate the fury Innocent felt at the death of his representative. It was Pierre's death that acted as a catalyst to spur on the call for the Albigensian crusade. Innocent's primary motive for calling the crusade was revenge,[98] and this should not be forgotten when reading the sources, yet, even with this new motivation to crush heresy Innocent did not neglect the use of disgust-based language. Further to Throop's work the thesis will explore the transition over time from the massacre at Béziers to the individualising discourse of the Inquisition. One of the themes we shall explore is the transformative impact of the nature of Roman Law, especially within the papal curia.[99] Simplistically, we can say that the more the Curia utilised the precepts of Roman law the less pronounced Biblical sources of law became. Resultantly there was not only a shift from the Corporate to the individual but an accompanying shift from vengeance to individualised guilt. Put more bluntly, Innocent III, it shall be argued, held an antiquated view of canon Law and sought vengeance and corporate responsibility, whereas Innocent IV, more attuned to Roman Law, strove for greater individuation when addressing the problem of heresy.

We shall examine *Ne nos ejus* within the context of vengeance and the beginning of the Albigensian Crusade, as well as an articulation of behavioural immune theory. *Ne nos ejus,* issued on the 10th of March 1208, was the first letter to grant a full remission of

[97] Sumption, *Albigensian Crusade,* pp.83-84.

[98] See, S. Throop, *Crusading as an act of Vengeance* 1095-1216 (Aldershot, 2011), p.119; Sumption, *Albigensian Crusade,* p.77 and M. Barber, *The Cathars* (Harlow, 2000), p.108.

[99] See, G. Barraclough, *Papal Provisions: Aspects of Church History Constitutional, Legal, and Administrative in the Later Middle Ages* (Oxford, 1935), which outlines precisely how well educated members of the *Curia* had to be in order to gain entry, pp.129-31 and P. Classen, 'Rom und Paris: Kurie und Universität im 12. und 13. Jahrhundert,' in ed. J. Fried, *Studium und Gesellschaft im Mittelalter, Schriften der Monumenta Germania Historica 29* (Stuttgart,1983), pp.144–5, details the migration of Italian (mainly Roman) families to Paris in order to be well educated for roles in the *Curia*.

sins, crucially, for all who would participate in the upcoming struggle against the Cathars. In this letter innocent continues to use the metaphor of the little foxes. Innocent wrote, 'we have appointed suitable men to tear up the unserviceable roots from the vineyard of the Lord of hosts and generate profitable ones capturing the little foxes which strive to destroy that vineyard.'[100] Note that suitable men have been tasked with the uprooting of heresy, further demonstrating the link between inward and outward displays of proper moral behaviour in demonstration of the Catholic cause.

By now we should be attuned to spotting such manifestations of behavioural immune theory. *Ne nos ejus*, however, contains more than a simple reiteration of the metaphors and dynamics we have already discussed. There is a far greater emphasis on revenge. Innocent wrote, 'but to those who, kindled with the zeal of Orthodox faith to avenge just blood-which does not cease the cry out from earth to heaven, until the Lord of vengeance shall descend from heaven to earth to confound both subverted and subverted-shall have girded themselves manfully against pestilential people of this kind.'[101] This vivid passage, encapsulates the raw emotion Innocent felt when considering the next steps to take in his now literal crusade against heresy. We cannot escape the reality that the Albigensian Crusade was the product of a political assassination and a deep-rooted visceral lust for vengeance. At the same time, however,

[100] Innocent III, *Ne nos ejus* in Migne PL, Vol.215 Col.1354 '*qui de vinea Domini Sabaoth avellerent inutilia et utilia propagarent, capientes vulpeculas quae moliuntur ipsam vineam demoliri.*' Translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* p.40.
[101] Innocent III, *Ne Nos Ejus,* in Migne, PL, Vol.215 Col.1356D '*non cessat ad coelum, donec ad confundendum subversos et subversores de coelo descendat ad terram Dominus ultionum, viriliter se accinxerint adversus hujusmodi pestilentes, qui simul in unum et pacem et veritatem impugnant*.' Translated in Léglu *et al*, *The Cathars and the Albigensian Crusade,* p.40.

Innocent was unable to detach his thinking from the lingering metaphors of disease and disgust.

The crusading army quickly presided over a massacre at Béziers and then a brief siege of Carcassonne, these victories instituted a new political regime under the direction of Simon de Montfort. In less than a year a flourishing society was trampled under the foot of a vengeful crusading army. The balance of arms, however, was precarious at best as neither side could force the other's hand and a state of perpetual, semi-guerrilla, warfare emerged. Finally, the French crown was persuaded by Innocent's successor Gregory IX, to intervene in the south. After nearly two decades of warfare the peace of Paris (1229) surrendered the county of Toulouse to the royal bloodline, with the proposed marriage of Raymond VII's daughter, Joan, to the King's brother, Alphonse of Poitiers.[102] Despite the capitulation, Cathar resistance would persist, however, for nearly another two decades before the final surrender of Montségur (1243).[103] The suppression of non-Catholics was violent, bloody and long lasting. Behind the war, however, there lay a deeper motive, one stemming from the behavioural immune system. Ultimately, long after the political conflict had smouldered away and Pierre's murder no longer burnt white hot in the collective mind of the Papal curia, heresy remained, and it was heresy that would trouble the Catholic faith and endure within the persecuting framework of behavioural immune theory. Explored below is how Gregory IX (1227-d.1241), one of Innocent's successors, came to grapple with the problem of heresy.

[102] Sumption, *The Albigensian Crusade,* p.224.
[103] Moore, *The War on heresy*, pp.274-297.

2.7 Gregory IX *Vox in Rama*

Gregory IX took papal office after the death of his predecessor Honorius III in March 1227. Honorius III had presided over the continuing situation in the Languedoc but would not live to see the Peace of Paris in 1229, which in affect signified a Catholic victory. Fighting would persist in the region, but the Cathar faith as a vibrant and visible part of life in the Languedoc, as it had been a generation earlier, was over. Heresy, however, persisted as a problem. Across Christendom secretly the Cathars continued the practice of their faith.[104] The Good Men and Women were nestled in communities throughout the Languedoc and Italy. To uproot this modified threat to Catholicism the Crusade was replaced with the process of *inquisitio*, which would eventually crystallise into the regulated procedure of the Inquisition. Historiographically this transition is often portrayed as one in which the blunt instrument of crusade is replaced with the more, if not surgical, preciseness of the inquisition.[105]

Indeed, the Inquisition did have at its a core an individualising ethos, which guided its procedure, however, early forms of the process of *inquisitio* could be just a blunt an instrument as the Crusade. Those condemned as guilty by Conrad of Marburg and Robert le Bougre were as spuriously charged as the victims of Béziers.[106] The Inquisition as an institution, it will be argued, developed in the first half of the thirteenth century to reflect an individualising ethos derived from Roman Law. The most important factor in determining the developing character of the process of *inquisitio* was the individual character of the pope, a theme explored throughout this work but most forcefully

[104] Lambert, *The Cathars,* pp.112-130.
[105] Hamilton, *The Medieval Inquisition,* p.44.
[106] See below, section '5.3 Themes Reflections and Threads'.

expressed when addressing regional councils. Gregory IX would stamp a particularly repressive mark onto the process of *inquisitio* during his pontificate. It shall be argued that the inquisitorial procedure he enacted, such as it was, reflected his heightened disgust sensitivity and corresponding need for conformity and moral punishment.

To demonstrate Gregory's high disgust sensitivity, we shall examine one of his papal letters, *Vox in Rama*. When dealing with Innocent III, we examined numerous letters, to develop a larger picture of how the behavioural immune system made itself manifest in his thinking, which displayed his disgust sensitivity. With Gregory IX, however, so explicit is his disgust sensitivity and the permeations of behavioural immune theory that we need only quote *Vox in Rama* at length to get a strong flavour of his character. In later chapters Gregory's character will be more closely assessed and more evidence provided in support of this, but the most compelling piece of evidence to support the claim that Gregory operated under a high disgust sensitivity is *Vox in Rama.*

Vox in Rama was a letter written in 1232 during the tumultuous period of Conrad of Marburg's inquisition. Gregory wrote it to urge the German princes into action against the heresy that he said persisted in Germany at the time. It is based upon a letter written by Conrad to Gregory IX detailing the heresy he had encountered amongst the peoples of the Rhine.[107] It reflects the heightened disgust sensitivity of both men. Whilst the details of the ceremonies performed are fantastical: Gregory was willing to accept and promulgate such a bizarre image of heretics because of his heightened disgust sensitivity. Both Gregory and Conrad believed that heretics demonstrated their heresy

[107] For a detailed discussion of Conrad's inquisitorial carer see, K. Sullivan, *The Inner Lives of Medieval Inquisitors* (London, 2011), pp.75-98.

through such behaviour. Both were predisposed to believe such exaggerated reports because of their heightened disgust sensitivity.

Below, *Vox in Rama* is quoted at length. When reading the following note the tone of the piece, especially the language Gregory uses to describe heresy and their practices. The passage bellow describes the initiation of a novice into a heretical sect,

> 'When a novice is to be initiated and is brought before the assembly of the wicked for the first time, a sort of frog appears to him; a toad according to some. Some bestow a foul kiss on his hind parts, others on his mouth, sucking the animal's tongue and slaver…The novice comes forward and stands before a man of fearful pallor. His eyes are black and his body so thin and emaciated that he seems to have no flesh and be only skin and bone. The novice kisses him and he is as cold as ice. After kissing him every remnant of faith in the Catholic Church that lingers in the novice's heart leaves him. Then all sit down to a banquet and when they rise after it is finished, a black cat emerges from a kind of statue which normally stands in the place where these meetings are held. It is as large as a fair-sized dog, and enters backwards with its tail erect. First the novice kisses its hind parts, then the Master of Ceremonies proceeds to do the same and finally all the others in turn; or rather all those who deserve the honour. The rest, that is those who are not thought worthy of this favour, kiss the Master of Ceremonies. When they have returned to their places they stand in silence for a few minutes with heads turned towards the cat. Then the Master says: "Forgive us." The person standing behind him repeats this and a third adds, "Lord we know it." A fourth person ends the formula by saying, "We shall obey." When

> this ceremony is over the lights are put out and those present indulge in the most loathsome sensuality, having no regard to sex. If there are more men than women, men satisfy one another's depraved appetites. Women do the same for one another. When these horrors have taken place the lamps are lit again and everyone regains their places. Then, from a dark corner, the figure of a man emerges. The upper part of his body from the hips upward shines as brightly as the sun but below that his skin is coarse and covered with fur like a cat. The Master of Ceremonies cuts a piece from the novice's vestments and says to the shining figure: "Master, I have been given this, and I, in my turn, give it to you." To which the other replies: "You have served me well and will serve me yet more in the future. I give into your safekeeping what you have given me." And he disappears as soon as he has spoken these words. Each year at Easter when they receive the body of Christ from the priest, they keep it in their mouths and throw it in the dirt as an outrage against their Saviour.'[108]

The recounting of such practices fulfils the role of both a stimulus and source of disgust. Gregory, clearly, was so disgusted by such acts that he chose to include them in his letter, hoping to induce a similar feeling within the recipients of the letter. Briefly, the act of kissing an animal in such a manner is disgusting, especially on its hind parts. Further to this the animals chosen to articulate some form of disgust, toads and frogs are obvious sources of disgust. Similarly, there is a symbolic trope of cats and satanic

[108] Gregory IX, *Vox in Rama,* in A. Potthast, *Regesta pontificum Romanorum* Vol.1 (Graz, 1957), n. 9229, 9230, 9231.

worship, which Gregory is articulating here.[109] The imagery invoked by Gregory is clearly used to show and inspire repulsion at these heretical rituals.

Besides the disgusting actuality of the acts themselves there is also the symbolic representation of the heretics' subversive acts. The most troubling question posed by the rituals and acts reported in *Vox in Rama* is, how far is this account meant to be taken literally? To what degree are the acts reported meant to be a subversion of Christian practice? Due to Gregory's heightened disgust sensitivity it is indeed likely that he believed heretics did partake in such acts. Heretics to Gregory were disgusting, therefore they must do disgusting things. What is harder to gauge and where I become more tentative, however, is whether such acts were supposed to be aping or mocking Christian rituals. Our question should not be, did the heretics commit such acts, but what was their intention when doing so? Clearly this answer alludes us. We can, however, offer an interpretation of how Gregory felt about the acts, which he describes in *Vox in Rama*.

The matter of fact way in which in *Vox in Rama* is constructed, lends itself to an interpretation that Gregory thought the rituals undertaken by the heretics, were designed to initiate a novice into the sect. That is, the rituals performed had a genuine symbolic meaning, beyond the subversion and ridicule of Catholic practice, if indeed such practices were undertaken at all. To Gregory when the novice kissed the toad, the master or the cat, that person was committing themselves to a new form of ritual

[109] D. Engels, *Classical Cats the Rise and Fall of the Sacred Cat* (London, 1999), pp.152-156. Specifically, for a discussion of *Vox in Rama* see, p.183 and L. Kalof, *Looking at Animals in Human History* (London, 2007), p.59. See also, Lambert, *The Cathars,* p.43, which explains how Alan of Lille in *De Fide* first made the elision between cats and Cathars, making explicit the practice of kissing. See, PL Vol.210 col.366 for *De Fide*.

worship. Kissing in the Christian tradition had well established roots and a symbolic meaning beyond the obvious manifestation of affection and courtship, which was also distinct from any Judeo or Hellenistic practice.[110] Kissing as an act peculiar to Christianity was developed in the fourth and fifth centuries and came to be ever more symbolic, ritualised and delineated, signifying, status, worship, belief and most importantly to the emerging religion, community.[111] The continuity of the sacred kiss as a form of worship and symbolism was persistently practiced in Catholicism and by other Christians more generally, up until the thirteenth century when Gregory was writing. Its place in ritual life was bound to the Church in a way which other symbolic acts were not, the kiss remained the purview of religious practice.[112] Kissing had been part of the ceremonial legal practice of the Roman state, but its symbolic usage was transformed by Christianity into a religious phenomenon whose symbolism denoted commitment and religiosity.[113]

For Gregory the act of Kissing was explicitly religious and sacred. Therefore, when Gregory wrote about the ritualistic practices of heretics, there is a forceful argument to be made that it was done to demonstrate his belief that heretics were committing themselves to a new religion, whose central tenants was demonic worship. Gregory wished to believe that not only was heresy associated with Satan and unconventional

[110]See, K. Petkov, *The Kiss of Peace: Ritual, Self, and society in the High and Late Medieval West* (Boston, 2003), pp.12-16.

[111] M. Penn, 'Ritual Kissing, Heresy and the Emergence of Early Christian Orthodoxy' *Journal of Ecclesiastical History* 54 (2003), pp.625-640, pp.627-8. Also, N. Perella, *The kiss sacred and profane* (Berkeley, 1969), p.12-50.

[112] The evidence for this argument is more between the lines than explicit but certainly kissing as an act was more associated with Church practice than secular or political rituals. See, J. Nelson, *Politics and Ritual in Early Medieval Europe* (London, 1986), pp.239-248 & pp.283-308 and M. Fischer, 'Feudal Europe, 800-1300: communal discourse and conflictual practices,' *International Organization* 46 (1992), pp.427-266, pp.434-443. It is the absence of ceremonial kissing within the rituals that should draw the reader's attention rather than a direct expression of the sentiment above.

[113] S. Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991), p.151, specifically for a discussion about how a kiss became part of the legal framework of marriage in the time of Constantine.

practices, but also that heretics practiced their religiosity in a disgusting manner. There is some very interesting work by Alian Boureau, which outlines the way in which the figure of Satan became ever more focal for definitions of heresy, especially regarding crimes involving magic and witchcraft. Interestingly, these new definitions of heresy were predicated on an idea of a pact between Satan and the individual.[114]

Therefore, when a heretic kissed the toad, cat or master, to Gregory, the act was a symbolic obligation to practice a new form of worship. Similarly, the description of heretics in *Vox in Rama* conforms to the archetypal trope of heretics enjoying all manner of lustful and gluttonous activity. As discussed above, these are prime areas for the behavioural immune system in which to operate, the regulation of food and sexual behaviour, and so Gregory's writing on the subject demonstrates a strong disgust response.

Interestingly, the inclusion of such activities itself demonstrates the operation of behavioural immune theory. Above we mused over the transition and expansion of anti-heretical legislation to encompass an ever-widening scope of activity, whose opposition to Catholicism became less well grounded in a theological sphere, to illustrate how behavioural immune theory came to regulate behaviour and punish moral transgressions. The importance of inclusion here, however, demonstrates how integral the unity between heretical identity and improper behaviour had become in the eyes of the Church. Both anti-heretical polemics and canon law now, in the long twelfth century,

[114] A. Boureau, Satan the Heretic: The Birth of Demonology in the Medieval West (Chicago, 2006), *trans.* T. L. Fgan, p.12. Also, A. Boureau, *Le pape et les sorciers: Une consultation de Jean XXII sur la magie en 1320 (Manuscrit BAV Borghese 348), Sources et documents d'histoire du Moyen Age 6* (Rome, 2004), p.xi. Interestingly, this view of heresy is critiqued by I. Iribarren, From Black Magic to Heresy: A Doctrinal Leap in the Pontificate of John XXII, *Church History* 76 (2007), pp.32-60, pp.48-57. Also, J. B. Russel, *Lucifer: The Devil in the Middle Ages* (London, 1984), pp.79-89.

had come to view heresy not as a crime of belief, but an expression of anti-Catholic behaviours. Essentially, there is no need to include the behaviour of heretics in a description of heretics, or at least from a theological standing, unless you wish to associate the heretics with the behaviour described. Bluntly, all the improprieties of the heretics could conceivably be committed by Catholics, albeit very sinful ones, but here in *Vox in Rama* and anti-heretical texts more generally, there is an explicit symbiosis between non-conformist behaviour and heresy, which represents a manifestation of the disgust response. From reading *Vox in Rama,* one could be led to believe that the heretics of the Rhine, were heretics because of their sexual experiences as much as their Satanic worship. The unification of non-conformist behaviour and heretical belief is a fundamental part of behavioural immune theory and helps us better to understand why the high middle ages produced a persecuting society.

Disgust and disease are also present in the apparitions that are observed in the heretical ceremonies. Reading the description of the first man, who the novice kisses, there is clearly an extended metaphor of disease and sickness projected onto this character. He has a 'fearful pallor… his eyes are black and his body so thin and emaciated that he seems to have no flesh and be only skin and bone. The novice kisses him and he is as cold as ice.' It is important that, not only is the figure described in the most repellent way, but too, that such a description stimulates ideas of disease and sickness within the mind of the reader. The ideal of heresy as a source of corruption is given further credence by the way in which heresy is written about as if it was a contagion. The novice 'after [having kissed] him every remnant of faith in the Catholic Church that lingers in the novice's heart leaves him.' The notion of spontaneous conversion would not have been beyond the imaginations of Christian recipients of this letter, the bible is littered

with such examples. Nor would the idea of heresy spreading through one extraordinary moment be unfamiliar. It was reported that, Tanchelm of Utrecht was able to enlarge his sect with the distribution of his bathwater. Equally, Adémar de Chabannes recounts, heretics were able to make heresy manifest through the consumption of dust from the ground-up bodies of dead children. *Vox in Rama* is the most explicit representation of these ideas expressed through behavioural immune theory. There is a concrete stimulus for disgust, the diseased heretic, spreading their disease and heresy through sexual acts, kissing, which also reflect a perversion of regulated behaviour norms. Whilst medieval pathogen theories were not well developed there was a well observed causal link between stimulus and disease, which would have been understood.[115] What Gregory IX is making explicit in *Vox in Rama* is just how interwoven the concepts of heresy, disease and contagion had become.

Ideas of disgust are also projected onto the Satanic figure. *Vox in Rama* reads, 'the figure of a man emerges. The upper part of his body from the hips upward shines as brightly as the sun but below that his skin is coarse and covered with fur like a cat.' What Gregory is trying to do is show that the devil conforms in some measure to an archetypal ideal of disgust. Hence, he has fur but is man, not outrageously disgusting or diseased ridden as the other heretical figure or apparition, but such a strong invocation of the disgust response is not needed because the devil is not the corrupting stimulus in the piece. It would have been odd, however, to not portray him through the language of disgust.

[115] See, V. Langum, *Medicine and the Seven Deadly Sins in Late Medieval Literature and Culture* (New York, 2016), pp.51-59; F. Wallis, *Medieval Medicine A Reader* (Plymouth, 2010), p.47 and D. McCann, *Soul Health Therapeutic Reading in Later Medieval England* (Melksham, 2018), pp.5-16.

Clearly, when writing *Vox in Rama* Gregory IX was operating under a disgust response. His conception of heresy articulates itself not only through the language of disgust but also images of disgust, which he projects onto heretics. Gregory inexorably unites disgust and heresy in *Vox in Rama*: not only are the heretics disgusting but they practice their heresy in a disgusting manner. The way in which he articulates his disgust demonstrates a pathological expression of behavioural immune theory. Gregory's heretics disgust him through their sexual behaviour, eating habits and care of the young (a novice would typically be an adolescent)[116], all of which confirm to the archetypal expressions of behavioural immune theory. Gregory, attuned to behavioural immune theory, through high disgust sensitivity, resulted in a corresponding need to enforce this onto society. This manifested itself through an expression of *inquisitio* that was draconian and centred upon punishment rather than guilt.[117] This idea is explored in greater detail bellow, where it is juxtaposed to the individualising ethos Innocent IV brought to the process of *inquisitio*. Through *Vox in Rama* we have sought to demonstrate Gregory's high disgust sensitivity and how this conformed pathologically to the behavioural immune system, arguing that Gregory's response to heresy was shaped in large part by his psychological temperament.

In conclusion, this chapter has sought to outline a new behavioural based model for understanding persecution in the high middle ages. It aimed to diminish the historiographical divide between previously opposed views, namely Moore and Hamilton.[118] It started by highlighting the utility of subjecting our familiar anti-heretical sources to examination via behavioural immune theory, hoping to demonstrate how the

[116] M. Heale, *Monasticism in Late Medieval England c.1300-1535* (Manchester 2009), p.9.
[117] See above, section '5.2.1 Excommunicamus: The Anti-heretical Legislation of Gregory IX'.
[118] Moore, *Formation of a Persecuting Society,* pp.144-145; Hamilton, *The Medieval Inquisition,* p.16.

core concepts of the behavioural immune system were present in these texts. Beyond the utility of simply outlining a new model for persecution in the high middle ages, this chapter has sought to demonstrate the implications of behavioural immune theory for this thesis. It was argued that the nature of anti-heretical repression was guided primarily by the disgust sensitivity of the individuals in office. Both Innocent III and Gregory IX were extremely sensitive to disgust and therefore predisposed to be more attuned to a behavioural immune response. Hence, anti-heresy repression during their pontificates was particularly severe; think of the Albigensian Crusade and the draconian inquests of Conrad of Marburg and Robert le Bougre. More broadly this thesis will argue that the behavioural immune system acted as a framework upon which the larger persecution of the high middle ages was structured. In particular, the Inquisition, it will be argued, represented legislative persecution, conforming to the precepts of behavioural immune theory. Yes, the Inquisition was a novel institution created by the transformation of the long twelfth century (and mitigated by Roman jurisprudence), but it expressed a deep-rooted psychological aversion to the other.

3.0 Literate Authority: The Rejection of Ordeal and Development of *Inquisitio*

3.1 Seeing is Believing

This chapter begins in 1144 with an accusation of heresy against two brothers, Clementius and Everard of Bucy. These men were suspected of the of the crime of heresy by Bishop Lisiard of Soissons. When questioned by the Bishop, the two men protested their innocence and 'gave most Christian answers.' Lisiard was not to be dissuaded of their guilt, but he lacked the proof necessary to conduct a trial. In such instances trial by ordeal was used to establish proof. This was Lisiard's next step. This conundrum of guilt or innocence could only be resolved via a trial. After an initial ceremony of blessing and oath taking, Clementius was submerged in water to see if it would accept him. Unfortunately for Clementius he 'floated like a stick.' The proof was unequivocal, the water (i.e. God) had rejected the brothers. Before the brothers were able to receive a penance from the Bishop, the local populace dragged them from prison to a grim end, by fire at the stake.[1]

As an illustrative case for the themes of this chapter, one could not find a more suitable example. It outlines perfectly the elementary principles and wider implications of trial by ordeal. Fundamentally, trial by ordeal was used to establish proof in cases where suspicion of a crime was substantive but full proof was lacking. These cases were dubbed *occult*, literally unseen. The name has more to do with the nature of medieval proof requiring two full witnesses rather than a clandestine operation. Proof then was

[1] Guibert of Nogent, Book 3 Ch.XVII, Translated in *The Autobiography of Guibert Abbot of Nogent-Sous-Coucy* (London, 1925), *trans*. C. Bland p.208. A more modern translation can be found in J. Benton, *Self and Society in Medieval France*(London, 1994), p.214. For the burden of proof falling on prosecutor see, B. Brassington, 'A Twelfth Century Treastie on Proof, Saepenumero (uero) in Iudiciis Examinandis,' *Bulletin of Medieval Canon Law* 32 pp.57-78, p.60. For a more general discussion of medieval proof see, R. Bartlett, *Trial by Fire and Water* (Oxford, 1999), pp.141-143.

vested in the miracle of ordeal, via which God would display the innocence or guilt of the accused.[2] God, however, could not literally do this, communities had to come together to make a value judgment of the case presented to them. This is one of the crucial principes that will be argued in this chapter, that a communal judgment upon the result of ordeal provided the proof needed to conduct the trial, not the *judicium die*.[3]

Moore, in *Persecuting Society,* discuss this instance and reaches the same conclusion. He, however, distances himself from the notion that the community that saw fit to condemn the brothers, would also unite to put them to death.[4] Such a conclusion is born from Moore's historiographical position, which is centred upon elite led persecution. I am sceptical and consider that communal judgment would indeed lead to communal punishment. Using behavioural immune theory can help us unpick this complexity by highlighting that persecution is both elite led and populist. Interestingly, the closing remark of Guibert conforms to the precepts we would expect to see when using behavioural immune theory led analysis. Guibert informs us, the people acted 'to prevent the spreading of this cancer.'[5] The deaths of Clementius and Everard allow us to, not only demonstrate the operation of behavioural immune theory, but also, the functionality and popular power inherent in ordeal.

Imagine, now that same case taking place in the mid-1240s. Imagine, Clementius and Everard being brought before the inquisitorial court, subjected not to the proof of

[2] I.C. Pilarczyk, 'Between a Rock and a Hot Place: The Role of Subjectivity and Rationality in the Medieval Ordeal by Hot Iron' *Anglo-American Law Review* 87 (1996), pp.87-112, p.93.
[3] Pilarczyk, 'Between a Rock and a Hot Place,' p.96.
[4] R.I. Moore, *The Formation of a Persecuting Society* Ed.2nd (Oxford, 2007), pp.117-118.
[5] Guibert of Nogent, Book 3 Ch.XVII, *The Autobiography of Guibert,* p.208 & Benton, *Self and Society,* p.214.

water, but as individuals before the judgment of an inquisitor. Over the course of the long twelfth century, written record and procedure came to take the place of ritual and reputation. The same crime but radically transformed in its prosecution over the course of a century. The difference between these two cases [one real, one hypothetical] provides a contrast by which to explore the crucial changes that helped establish the process of *inquisitio* during our period. The transformation from custom based methods of *occult* prosecution to that of a procedural authoritative *lex*. The contrast could not be starker, but the real generator of this startling legal transformation lies outside of the judgment of God and more within the power of the written word.

This narrative, of the rejection of ordeal, has been told many times before. Traditionally it is portrayed as one of human betterment and enlightenment, stemming from a belief in human progression and rationality.[6] This is explored below, but as a general rule, legal historians cling vehemently to rationality and the written word, whereas their sociological cousins stress the importance of more abstract concepts like power and religiosity when discussing the decline of ordeal. The focus of this discussion falls within the sociological paradigm, seeking to place the rejection of ordeal within a framework of ever-increasing centralised power, stemming from a bureaucratic and literate culture.[7] This process is a multi-faceted one, which radically transformed the medieval world in the first two centuries after the turn of the first millennium. The main

[6] See, J. Brundage, 'Legal Learning and the Professionalization of Canon Law,' in eds. H. Vogt & M. Munster-Swendsen, *Law and Learning in the Middle Ages Proceedings of the second Carlsberg Academy Conference on Medieval Legal History 2005* (Copenhagen, 2006), p.15; O. Robinson, T. Fergus & W. Gordon, *European Legal History* Ed.3rd (Edinburgh, 2000), pp.23-25; R. Van Caenegem, *Legal History a European perspective* (London, 1991), p.83.

[7] See, Moore, *Persecuting Society*, pp.144-45 for how he expressly links the growth of bureaucratic written power to persecution. See also, J. Given, *Inquisition and Medieval Society* (New York, 1997), p.21.

discussion, however, focuses upon the law, especially how jurists and law makers were able to redevelop and redefine what was meant by the law. So complete and long lasting was their victory that today it is impossible to divorce their conception of law from our own understanding of that word.[8]

The great legal transformation of the long twelfth century stemmed from one crucial phrase in Justinian's digest,[9] which reads, 'whatever the Emperor has decreed has the force of law; since by a Royal ordinance which was passed concerning his sovereignty, the people conferred upon him all their own authority and power.'[10] Through this reasoning, *principes* across Christendom were able to start to transform their kingdoms and the nature of their rule, via the power of the written word. Codified systems of law began to erupt across Europe.[11] With this explosion of written law codes, a bureaucratic elite developed, who were able to centralise power and authority within an ever-contracting, literate circle. The long twelfth century witnessed the subsuming of populist power in deference to the written word. It is this central tension between custom and the novel written form of law that drives the narrative transformation of the period. The rejection of ordeal may have been framed within the confines of

[8] K. Pennington, 'Between Naturalistic and Positivistic Concepts of Human Rights' in S. Grodziski, D. Malec, A. Karabowicz & M. Stus *Vetera Novis Augere: Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi* (Krakow, 2010), p.832.

[9] For a concise but informative discussion of the formation of Justinian's Digest and its impact see, J. Dawson *The Oracles of the Law* (Westport, 1978), pp.122-134.

[10] Justinian Digest Vol.1, Book.1 Tit.4 Concerning the constitutions of the Emperors, Ulpianus, Institutes, Book I. '*quod principi, legis habet uigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.'* In A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985) ed. T. Mommsen & P. Krueger trans. A. Watson.

[11] See, J. Brundage, 'The Learned Judge: The Development of an Ideal' in *University of St. Thomas Law Journal* 1 (2003), pp.434-446 p.439 and R. Helmholz, 'Cannon law and Roman Law' in ed. D. Johnston, *The Cambridge Companion to Roman Law* (St. Ives, 2015), p.397.

rationality, but ultimately its victors were literate elites who came to dominate popular practice and custom.

As to the wider argument of this thesis, the rejection of ordeal is pertinent for two reasons, primarily because its rejection directly led to the ubiquitous use of *inquisitio* as a replacement to the use of ordeal in the prosecution of the *occult*. Secondly, the rise of *inquisitio* demonstrates the wider transformation of the post-millennial period because its operation relied upon written expressions of law, procedural rigour and bureaucrats to enable its function. The Inquisition would have been unthinkable in the years before the first millennium, not because heresy did not exist but because both the inclination and mechanisms to control and impose a unitary system of belief across Christendom, did not exist.[12]

3.2 Rationality

Rationality provides the keystone supporting the traditional thesis for the rejection of ordeal. I shall critique it in two ways. The first is more methodologically grounded and concerns the use of the word rationality itself. The second seeks to challenge the concept that a sudden age of rationality was brought about by legal learning across Christendom, through the rediscovery of Justinian's digest. Both criticisms are intertwined by the way in which historians have used their understanding of rationality to justify their writing of history. In brief, when defining rationality so stringently as to believe that logic and written forms of proof are the only means by which rationality

[12] Moore, *Formation of a Persecuting Society,* p.65.

can be manifested, then naturally any court, which relies upon value judgment and character would seem irrational.

When first trying to write this section, my method of approach was to point to the duality of rationality, looking both forward and back, stressing the importance of distinguishing between the medieval conception of what rationality was, *rationabilitas*, juxtaposed to the way in which modern scholarship uses the term.[13] Originally, I had intended to demark clearly the medieval use of the term from the way in which it is used analytically today. On deeper reflection, however, such a demarcation serves no purpose other than to mask the continuation of intellectual elitism.

Medieval commentators employed the term, *rationabilitas,* to critique a range of practices that they viewed as superstitious.[14] They remained confined, however, to a paradigm of thought in which belief in the supernatural needed to be maintained, less the entire edifice crumble away. All that could not be explained adequately was consigned to God's will.[15] Medieval beliefs seem so irrational to the modernist conceptions of the world because the air that filled the balloon labelled rationality, was filled with the phantasm of the supernatural. To the modernist outlook the balloon of

[13] For a discussion of Medieval rationalities see, D.L. D'Avray, *Medieval Religious Rationalities a Weberian Analysis* (Cambridge, 2010), *passim*. D'Avary's use of Webber limits his model of rationality. See, J. Elster, 'Rationality, Economy and Society,' in ed. S. Turner, *The Cambridge Companion to Weber* (Cambridge, 2000), pp.31-32; A. Sica, 'Rationalization and Culture,' in ed. S. Turner, *The Cambridge Companion to Weber* (Cambridge, 2000), p.42; S. Kalberg, 'Max Weber's Types of Rationality: Cornerstones for the Analysis of Rationalization Processes in History,' *The American Journal of Sociology* 85 (1980), pp.1145-1179, pp.1159-1160. For a critique of Weber's use of rationality. A fuller discussion of medieval rationality can be found in A. Macintyre, *Whose justice? Which Rationality?* (London, 2001), pp.1-12 and pp.183-208.

[14] See, G. Lippiat, *Simon V of Montfort and Baronial Government, 1195-1218* (Oxford, 2017), p.95 for a brief discussion of this. I have included this work because of its relevance to Simon de Montfort and his crucial role in the Albigensian Crusade, highlighting how ubiquitous the ideals of the long twelfth century had become.

[15] G. Evans, *Philosophy & Theology in the Middle Ages* (New York, 1983), pp.85-86.

rationality has been deflated, only to be refilled with the air of science and enlightenment. The void now filling the rational balloon, however, may yet come to be deflated and refilled once again. Certainties in science may seem axiomatic but are not foundational. Rationality, it seems, is less a lens through which to view the world, than a stick with which to beat those who do not share the opinions of their intellectual counterparts.

When using rationality in this work, I seek to broaden the understanding of rationality to encompass almost all forms of human behaviour. Taking as our inspiration Lisa Bortolotti's work *Delusions and Other Irrational Beliefs*.[16] Bortolotti argues for an understanding 'that (most) delusions are beliefs,'[17] and that 'idealised conceptions of belief…blind[s] us to the possibility that we are all procedurally, epistemically, and agentially irrational and in (sometimes) disturbing ways.'[18] In essence, Bortolotti does not deny that behaviour can be irrational, but that irrational behaviour is never arbitrary or unfounded.

With relevance to this chapter, the reader is asked to view ordeal not as an irrational belief *per se,* but as a rational belief that proof could be established through the divining of communal judgment disguised as the ruling of God. This is not a new line of argument, indeed, historians like Moore, Brown and Reynolds have argued this case before.[19] Practically, such a seemingly irrational belief found cogency through allowing the community room to negotiate what constituted lawful behaviour, and, secondly, for the

[16] L. Bortolotti, *Delusions and Other Irrational Beliefs* (Oxford, 2010).
[17] Bortolotti, *Delusions,* p.21.
[18] Bortolotti, *Delusions,* p.59.
[19] See, Moore, *First European Revolution,* p.167; P. Brown, *Society and the Holy in Late Antiquity* (London, 1982), p.324 and S. Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century' in *Law and History Review* 23 (2003), pp.347-366, p.348.

prosecution of crimes where significant circumstantial evidence existed without removing the safe guard of two forms of reliable proof, by replacing it with the immutable proof of God. The traditionalist interpretation can seem convincing, but when framed, as it is, by rationality significant challenges emerge. It cannot be credibly argued that a legal system that existed for nearly a millennia (and in the case of the bi-lateral ordeal, even longer) was irrational, to the point of madness. The longevity and functionality of such a system would have been replaced long before 1215 if this had truly been the case. I am reminded of the words of Clanchy, who warned historians that, '[we should] not accept that medieval ideas must have been different simply because they were old.'[20]

Some historians have taken up this mantel. Take for instance, Reynolds, Moore and Brown. These historians argue that increasing centralisation and bureaucracy afforded those in power a significant enough challenge to customary law, whilst simultaneously offering them new avenues to explore the prosecution of occult crimes. Interestingly, Brown frames this within a discussion of rationality arguing that, 'the shift from consensus to authority is one of the most subtle shifts of all in the twelfth century. It is, perhaps, the greatest single precondition for the growth of rationality.'[21] Moore and this thesis adopt certain aspects of Brown's work. Namely, that power and authority were being evermore concentrated into the hands of the few but argue conversely that it was not the rejection of a supposed irrationality in the proof of God that brought about the rejection of ordeal, but a rejection of popular custom.

[20] M. Clanchy, 'Medieval Mentalities and Primitive Legal Practice' in eds. P. Stafford, J. Nelson & J. Martindale *Law, Laity and Solidarities Essays in Honour of Susan Reynolds* (Manchester, 2001), p.83.
[21] Brown, *Society and the Holy,* p.324.

The traditional historiographical interpretation for the rejection of trial by ordeal, places extreme significance on its epistemic features, stressing that to believe in God's manifest judgment as a form of proof was irrational.[22] This places the rejection of ordeal into an arc of human progress culminating in our modern secular age. The language surrounding this debate can be quite telling. Rembar for instance believes the ordeal to be 'institutional sadism.'[23] Equally, Southern believed there was 'something Barbaric,'[24] about the very nature of ordeal, making specific reference to the baptismal font at Canterbury, stressing that one could both be baptised and proved innocent in the same sacred place. Sadism and barbarity aside, most commentators place their understanding of trial by ordeal's decline within a paradigm of two opposing ideas; the rational and irrational.[25] Baldwin writes, '[the] decline [of ordeal] must be viewed in the context of a general movement towards more rational legal procedure.'[26] Similarly Ho argues 'the decline of the ordeals occurred… through the growth of reason as an intellectual activity.'[27] Both stress the importance of distinguishing ordeal from an irrational mode of thought, and weave this into an understanding of law, which is more rational and sophisticated because of its written expression. It is perhaps understandable that academics and legal historians construct their understanding of rationality through literate and prescribed means. What is worrying, however, is to be so constrained by

[22] See, Pilarczyk, 'Between a Rock and a Hot Place,' p.106 for a discussion of this traditional view.
[23] C. Rembar, *The Law of the Land: The Evolution of our Legal System* (New York, 1980), p.106.
[24] R.W. Southern, *Saint Anslem and his Biographer* (Cambridge, 1963), p.265.
[25] See, S. Robinson, *Authority and Resistance in the Investiture Contest* (Manchester, 1978), p.7; S.F.C. Milsom, *Historical Foundations of the Common Law* Ed.2nd (London, 1981), pp.410-11; C. Morris, 'Judicium Dei: The Social and Political Significance of the Ordeal in the Eleventh Century,' in D. Baker, *Church, Society and Politics* (Oxford, 1975); p.110 and B. Tierney, *The Crisis of the Church and State 1050-1300* (London, 1996), p.2.
[26] J. Baldwin, 'The Intellectual Preparation for the Canon of 1215 against Ordeals,' *Speculum* 36 (1961), pp.613-36, p.614.
[27] H.L. Ho, 'The Legitimacy of Medieval Proof,' *Journal of Law and Religion* 19 (2004), pp.259-298, p.291.

this view, as to discredit the very rational reasons medieval societies chose to use ordeal. Furthermore, such a view marginalises dissenting voices of ordeal before the supposedly more learned and rational age.

3.3 Socio-Political and Epistemic Legitimacy

To frame a theoretical approach to this chapter it will help the reader to examine Ho's assessment of trial procedure. Ho identifies two universalities of a trial, which we shall use when discussing the rejection of ordeal. Ho asses that all trial systems operate a mixture of two differing forms of legitimacy, socio-political legitimacy and epistemic legitimacy.[28] Socio-political legitimacy is a rather malleable concept suiting the needs of particular societies and describes the practicalities of how courts operate within a given legal framework. Epistemic legitimacy strikes at the heart of a trial's existence, the contestation of truth and the mode, limits and acceptability of proof within that system. The traditional 'rational' narrative argues that the rejection of ordeal was due primarily to its epistemic failings.[29] The method of proof, used within trial by ordeal, was superseded by more rational means, with greater epistemic legitimacy. This is the more traditional view, expressed by historians like Plucknett, who believed that the ordeal 'can only be described as irrational.'[30] It shall be argued here, however, that whilst its epistemic features were crucial to its decline, socio-political factors were far more important to the rejection of ordeal than a developing sense of rational epistemic proof.

[28] Ho, 'The Legitimacy of Medieval Proof,' p.262.
[29] One of the most interesting discussions on the topic of rationality and ordeal, can be found in, Pilarczyk, 'Between a Rock and a Hot Place,' pp.106-110.
[30] T.F.T Plucknett, *Edward I and the Criminal Law* (Cambridge, 1959), p.69.

Trial by ordeal garnered its epistemic legitimacy from the judgment of God. God provided the proof via which the accused argued their innocence. This abstract form of epistemic legitimacy, reduced trial by ordeal to a more grandiose form of value judgment. That is, trial by ordeal, even if it was thought to, could not literally test God's judgment. Instead, communal judgment, on how well wounds had healed or if water had rejected the accused, became a medium via which epistemic legitimacy was achieved. Trial by ordeal blurred the objective lines of epistemic legitimacy by placing its authority in an abstract concept of subjective judgement, whilst maintaining the pretence of objectivity. At its very heart, trial by ordeal contained a tension of proofs. The ruling of the court was objectively true, but its method of proof relied upon subjectivity. The consequence of this was widespread abuse, resistance and a begrudged acceptance by medieval societies.[31]

Returning to the second feature of Ho's trial paradigm. Trial by ordeal had a socio-political legitimacy derived from its ambiguous of proof. Trial by ordeal allowed for a negotiation between the ruler and the ruled, which could broadly be said to redress some of the disparity of social status and rank within a legal system. Take for example, William Rufinus, who railed against God's judgment in the case of poaching barons. These barons, much to his dismay, underwent ordeal and were found innocent.[32] As discussed above these barons, after trial, were objectively innocent. Their innocence,

[31] See, S. White, 'Proposing the Ordeal and Avoiding it: Strategy and Power in Western French Litigation, 1050-1110,' in ed. T. Bisson, *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe* (Philadelphia, 1995), pp.96-99; S. White, 'Imaginary justice: The End of Ordeal and the Survival of the Duel,' *Medieval Perspectives* 13 (1998), pp.32-55, pp.34-36 and E.P. Kamali, 'Trial by Ordeal by jury in medieval England, or saints and Sinners in Literature and Law,' in ed. K. Gilbert & S.D. White *Emotion, Violence, Vengeance and Law in the Middle Ages, Essays in Honour of William Ian Miller* (Leiden, 2019), pp.62-63.

[32] See, R.I. Moore, *The First European Revolution c.970-1215* (Oxford, 2000), pp.167-168.

however, was a reflection of a subjective ruling. There existed then the façade of epistemic legitimacy without a rigour to ensure its proof. The barons were happy to undergo ordeal because it provided for them socio-political legitimacy.

The utility of trial by ordeal was not merely limited to blunting powerful elites. Trial by ordeal had a particularly useful function in *occult* cases. *Occult* cases are situations in which the normal burden of proof to produce a judgment could not be achieved. Therefore, God's judgment was offered as proof for a crime in which significant *fama* existed but two forms of independent proof (usually taken as witnesses, although, written record could also be offered as proof) did not exist, to produce a ruling.[33] Therefore, trial by ordeal had a specific socio-political function: it allowed for popular resistance to social crimes, as well as facilitating the necessary prosecution of *occult* crimes, by higher authority. The rejection of ordeal in 1215 is often represented as one of a crisis for its epistemic features. It is argued that, God's judgment after 1215 was seen to be a flawed form of proof. Whilst it is true that a rejection of ordeal was grounded in a disbelief of proof provided by God's judgment, fundamentally, it was the changing nature of socio-political legitimacy that underpinned the growing concern regarding this rather peculiar aspect of legal tradition. Ultimately, trial by ordeal was too useful a tool for those hoping to escape an ever increasing, codified, elitist, literate and professional law system. Equally, literate elites were able to devise new methods for prosecution in *occult* cases. Fundamentally, the long twelfth century afforded to the ruling classes of medieval society the mechanisms to attack both the socio-political and epistemic legitimacy of trial by ordeal.

[33] Bartlett, *Trial by Fire and Water,* pp.141-43.

3.4 Rationality Before the Age of Reason[34]

To strike at the heart of the rational progress theory, it will be necessary to argue that rationality was not a distinct feature of those trained within the Roman law schools of the twelfth century. Hence, we shall examine critics of the pre-millennium who found fault with the epistemic features of trial by ordeal. Suggesting that whilst Roman jurisprudence, may have sought rationality, it was the centralising effects of the long twelfth century that incubated the great legal transformation of the age.

Dating from 731, King Liutprand's are the earliest secular critiques of ordeal in the early-middle-ages. Liutprand spoke specifically against the bi-lateral ordeal, that is trial by combat, and critiqued its use for two very rational reasons. Liutprand in the Laws of the Lombards proclaimed: 'for we are uncertain concerning the judgment of God [in this matter] and we have heard that many men have unjustly lost their cause through combat; however, on account of the customs of the Lombard people we are unable to abolish this law.'[35] Liutprand critiques ordeal on both epistemic and socio-political grounds. Liutprand called into question the proof of God, highlighting specifically that he cannot dismiss the custom of ordeal because it was so well ingrained within the Lombard people. Amazingly, Liutprand's critiques of ordeal, despite his lack of formal education at a European law school, are no different from the, supposed, logical and rational ones levelled by twelfth-century canonists. Despite the King being surrounded by well-educated advisors, it must be asked, how were Liutprand and his council able to reach such a rational argument in spite of living nearly four hundred years before the so

[34] Ho, 'The Legitimacy of Medieval Proof,' p.291.
[35] *Liutprandi Leges, Anni XIX C.118* in F. Beyerle, *Die Gesetze der langobarden* (Weimar, 1947), p.282 an English translation can be found in K. Fischer-Drew & E. Peters, *The Lombard Laws* (Philadelphia, 2010), pp.159-196.

called 'new period of formal legal rationality?'[36] The answer is obvious; such arguments were not unique to the long twelfth-century. It cannot even be argued, Liutprand represented a lone voice in an otherwise irrational age, as rulings against ordeal proceeded into the ninth century.

Trial by ordeal came under a series of attacks by numerous popes and other churchmen in the pre-millennial age. Take, for instance, Pope Nicholas I, who in 867 forbade the use of bilateral ordeal in his decretal *Monomachiam,* on the grounds that, 'one should not tempt the Lord.'[37]A principle he quoted in a letter to Lothar II, concerning Lothar's desire to settle the dispute between him and his wife Teutberga, in a case of adultery. This argument is developed from Deuteronomy 6:16, which warns the reader, not to make God's will manifest in a miracle, as the practice of ordeal mandated. This argument would be renewed by Peter the Chanter (ca.1190) when he critiqued ordeal, which is discussed below. It is revealing that the arguments of the Chanter would lead to the rejection of the ordeal, whilst that of Pope Nicholas were ignored, despite the same rationale being used by both men.

Pope Stephen V (885-891), also, prohibited unilateral ordeals in cases of infanticide. He wrote that, 'seeking for truth in the cases of infanticide whether through the hot, iron or water or the sinking in water in an offering (ritual), neither shows or demonstrates truth.'[38] Pope Stephen's position is unequivocal; the unilateral ordeal cannot produce epistemic legitimacy. It is interesting that Pope Stephen chooses such a pointed attack

[36] D'Avray, *Medieval Religious Rationalities,* p.133.
[37]Jaffe-Loewenfeld, *Regesta Pontificum Romanorum* (Leipzig, 1885), no.2872 p.366, 'non temptatur Dominus'. Interestingly this letter was included by Gratian in the *Decretum*, C.2 Q.45. C.22 *Monomachiam,* when discussing his attitude towards ordeal.
[38] Lowenfeld, *Regesta,* No.3443 p.431, '*Roganti de infantis cade utrum per ferrum cadens an aquam ferventem quaeri in parentes debeat, neutrum probandi genus placere*,'.

of the epistemic nature of ordeal. Like that of Pope Nicholas, Stephen's critiques are virtually indistinct from those of latter legal commentators. The criticisms of both of these popes, echoed by later commentators, attacks the core epistemic feature of trial by ordeal that it could produce proof via the miracle of God. It does not seem unreasonable to argue then that changing socio-political circumstances were more crucial in the rejection of ordeal, than critiques of its epistemic legitimacy.

Archbishop Agobard of Lyon (ca.840) subjected the theoretical foundations of ordeal to 'all kinds of blistering attacks.'[39] Including, 'all of which is not just, is not of God.'[40] A reference to unilateral ordeals in which Agobard attacks the socio-political legitimacy of ordeal. Here, Agobard does not directly critique God's judgment, as a churchman such an action would be unthinkable. Instead, he claims that ordeals are simply not a just form of trial and so do not belong in the purview of Christian law. Agobard goes on to attack the legal foundations of trial by combat stating, 'nor [does it] pertain to the ancient law when the new gospel gives us freedom.'[41] That is, the biblical rationale for trial by combat David and Goliath (1 Samuel:17) belongs to the ancient laws of the Torah and not the laws of the Gospel. This is certainly a novel critique of ordeal. No other early commentators make such a specific distinction between Old and New Testament theological foundations. Later Hugh of Bologna (ca.1188) did develop a distinction between a common and canonical oath, but the rationale of such a division was grounded in the secular use of ordeal, not a rejection of Hebrew law or custom. Agobards' critiques are not solely based in biblical exegesis. He is also sceptical of the

[39] Baldwin, 'The Intellectual Preparation,' p.626.
[40] Agobard, *Liber de divinis sententis digestus*, PL 104, col 249-68, '*Omnis qui non est justus, non est de Deo,'.*
[41] Agobard, *Liber de divinis sententis digestus*, PL 104, col 249-68, 'n*ec cum antiquis legi subditus est, nec cum novis evangelicae gratiae libertate donates*,'.

epistemic nature of ordeal stating that, 'because it permits no authority and no reason to be true.' [42] Here, Agobard calls into question the rationale of using such an unclear form of proof. It would seem that Roman jurisprudence was not a prerequisite for defining rationality outside of the limits of the law.

In sum, Liutprand I, Popes Stephen V, Nicholas I and Archbishop Agobard raise broadly the same critique of ordeals as their twelfth century counterparts. Clearly then, the presupposition of a more rational age was not required to bring about the decline of ordeal in 1215. What then led to the declining use of ordeal? If the legal movement of the twelfth century did not mark a new rational era, what could be forcing such a monumental shift in the nature of proof? The answer surely lies in Liutprand's, decree where he bemoaned his impotency in the face of such a popular custom. This chapter argues that the decline of ordeal should be viewed as a product of the long twelfth century and that after the turn of the first millennium, the very concept of law and power began to be transformed by the grandiose visions of an emerging bureaucratic elite, who offered a significant challenge to the popular practice of ordeal. That is, the rise of a more codified law marginalised popular practice through the virtue of its own authority,[43] ultimately attacking its socio-political legitimacy. Secondly, this had a significant impact upon how proof was to be understood and established in the new transformative age, raising significant questions about ordeal's epistemic legitimacy. Finally, ordeal could be dispensed with because the new bureaucratic elites were able to find innovative ways in which to prosecute occult crimes. In 1215 ordeal was

[42] Agobard, *Liber adversus legem Gundobadi*, PL 104, col 113C-126, '*quod nulla auctoritas, nulla ratio credere sinit,'.*

[43] C. Radding, *The Origins of Medieval Jurisprudence Pavia and Bologna 850-1150* (London, Stoughton), p.185.

outlawed, not because of its supposed irrationality but because powerful, autocratic elites were able to extend their conceptions of law over the population at large, subsuming the functionality of ordeal in producing verdicts in *occult* cases, through their own novel legal mechanisms, the most important of which was the Inquisition.

3.5 New Rationalities? Rejecting Ordeal During the Long Twelfth Century

3.5.1 Ivo of Chartres

Ivo of Chartres ecclesiastical career spanned several decades, before finally culminating with his election as the bishop of Chartres in 1090. Whilst there, he became embroiled in the marriage affair of King Philip (1092). It was tumultuous period for him, resulting in his imprisonment by Hugh Le Puiset. The conflict was only concluded by the death of King Philip in 1108. Ivo's reputation as a master of law, if not a precursor to Gratian, is somewhat overstated.[44] As Rolker has observed, Ivo did not self-consciously seek to codify law in the manner of Gratian. He instead, found himself in a very powerful position and through his involvements in the matters of state, began to reconcile some of the inconsistencies in canon law to resolve those issues.[45]

Ivo of Chartres' pragmatic view of ordeal is crucial to understanding this medieval legal practice. Ivo, despite his status, as a father of modern law and rationale, did not adopt a wholly negative view of ordeal, in certain circumstances he countenanced its use, if other forms of proof were lacking. There are four such examples extant where Ivo permitted the use of ordeal. Most interestingly in *Epistola 232,* a letter, to Hildebert

[44] See, R. Helmholz, *The Spirit of Classical Canon Law* (London, 1996), p.4 Helmholz actually uses the phrase 'great compilers,' to discuss pre-Gratian commentators.
[45] C. Rolker, *Canon Law and the Letters of Ivo Chartres* (Cambridge, 2010), p.24 and G. Austin, *Shaping Church Law Around the year 1000 the Decretum of Burchard of Worms* (Farnham, 2009), p.51.

Bishop of Le Mans, he acquiesced to its use in the case of a man who was suspected of fornicating with the mother of his soon to be bride.[46] In general, however, he was sceptical of its use but conceded that if other forms of proof were unavailable then ordeal could be countenanced.[47] Here we can see that despite some strong criticisms of ordeal, Ivo could not dispense with the usefulness of having a full form of proof in occult cases. Ordeal for Ivo validated its socio-political legitimacy through its epistemic features. To explore Ivo's negative opinion of ordeal, we shall examine *Epistola 74,* in which Ivo explicitly told Hildebert, to reject the demand of King William Rufus that Hildebert be subject to an ordeal.[48] This example is not only useful to demonstrate Ivo's objection to ordeal, but also demonstrates the tautology of socio-political usefulness ordeal occupied. As noted above, it was William Rufus who angrily railed against the judgment of God in the case of his poaching barons,[49] yet here the King was willing to subject Hildebert to such a judgment. Both King William and Ivo demonstrate the unique socio-political context of ordeal. Ivo found usefulness in its epistemic features, King William found usefulness in its seemingly limitless potential to provide prosecution in occult cases. Both were uneasy, however, when they were unable to control its manifestation of proof. This is the crucial point for understanding the changing nature of proof in the long twelfth century. The rejection of ordeal hinged, not on the rationality of its epistemic features, but in that its mode of proof was a dangerous tool against authority. Especially, as that authority became ever predicated on a written conception of law, the very anthesis of which was communal judgment.

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[46] Ivo of Chartres*, Epistolae,* N.232 in PL Vol. 162, col 235.
[47] See, S. Grelewski, *La Reaction contre les ordalies en France depuis le XI Siecle jusqu'au Decret de Gratien*, (Strasbourg, 1924), pp.70-83.
[48] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96.
[49] Eadmer, *Historia Novorum,* in PL vol. 159, col 412.

When analysing *Epistola* 74*,* written to Hildebert critiquing ordeal, it would be quite easy to portray Ivo's critique as being one grounded in rationality. That is, making reference to the epistemic features of ordeal and inferred nature, a position Ivo adopted stating, 'no legitimate accusation can be brought against you, but perverse accusation disguised (through) inferred divination.' [50] Such a portrayal, however, disguises two crucial factors. Firstly, that Ivo was happy to use the inferred nature of ordeal in certain circumstances and secondly that the main argument proposed against ordeal in *Epistolae* 74 is its lack of canonical authority. It is of greater importance to Ivo's argument that the practice itself was 'not established in canonical authority,'[51] than that it was based on abstract judgment. To further this view Ivo draws on a number of authoritative sources, no less than two popes and a saint. Making reference to Alexander II (d.1073) whose decretal, *Menam,*[52] was a general censure of the clergy prohibiting them from engaging in the secular oath.

Menam holds particular relevance to this case because the trial King William wished to orchestrate would have been a secular affair. Ivo goes on to use the letter of Nicholas I in his ruling in the affair of King Lothar.[53] Ivo, again, attacks ordeal here on socio-political grounds making specific reference to 'false criminal accusations,'[54] a critique, which rather neatly addresses the fundamental problem with ordeal as a proof, its susceptibility to abuse. Ivo links the false accusations of King William Rufus to those of

[50] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96, '*nulla adversum te legitima accusatione prolata, sed pravorum delatione conjecturarum divinationibus palliate*,'.
[51] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96, 'nec canonica auctoritas instituit,'.
[52] Gratian, *Decretum,* C.2 Q.5 C.7, *'quod clericus debet iurare laico set hoc fuit factum hic auctoritate superioris quia aliter non licet,'.*
[53] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96, 'Nicolaus in causa regis Lotharii et Thebergae de falsis criminibus impetitae,'.
[54] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96, 'falsis criminibus impetitae,'.

King Lothar. It was not the system that was wrong, but the authority under which the system operated. Ordeals, he argued were subject to personal abuse.

Ivo (ca.1090) also used St. Augustine of Hippo. Ivo argued, 'Augustine says in *libro Quaestionum* concerning the Book of Genesis: When man considers (trial by ordeal) he should not bring about the temptation of his God,'[55] with the appendage that, 'whilst one still has rational means at one's disposal.'[56] Interestingly, Augustine's criticism is perhaps not as acute as first thought. Augustine does not critique the judgment of God *per se* but instead admonishes anyone who tries to discern what that judgment might be. Furthermore, Augustine does not directly reject the unilateral ordeal and believes it to be useful, if no other recourse is available, a view shared by Ivo and Gratian. It is not obvious from reading Ivo's discussion of ordeal precisely where the parameters of acceptability lie. In many ways the censure of Augustine, could well be used to support the use of ordeal in certain cases.

In sum, Ivo's criticisms of ordeal fall within a literate understanding of law, to the exclusion of customary practice. That is, they do not directly attack the epistemic legitimacy of ordeal because to do so would question the Christian conception of God. Instead, Ivo attacks the written authority underpinning its use, stating that, ordeal is not subject to the authority of canon law and furthermore draws on authoritative sources to evidence his case. Ivo's literate and authoritative critiques of ordeal best exemplify the way in which law and legal practice were changing throughout the long twelfth century. Ordeal derived its socio-political legitimacy from its populist nature, but legal

[55] Ivo of Chartres*, Epistolae,* N.74 in PL vol. 162, col 95-96, '*Dicit autem Augustinus in libro Quaestionum super Genesim: Quando habet homo quod faciat, non debet tentare Deum suum*,'.
[56] St Augustine, *In questionum* Genesis, quest. 26, *'Scriptum est enim: non temptabis dominum deum tuum, et hoc intelligas dum habent quod rationabili consilio faciant,'.*

systems would no longer be vested in custom and were to be codified into written authoritative law, which could be more easily controlled by the literate elite. Ivo's ambivalent relationship with ordeal, highlights the tension offered by its system of proof. Whilst ordeal was beyond the control of a literate class existing outside the written confines of codified systems of law, it could also provide a useful mechanism by which to prosecute the *occult*. Until this tension could be resolved those in power were simply resigned to countenance its use.

3.5.2 Gratian's *Decretum*

Gratian's *Decretum* exemplifies best the changing nature of law throughout the long twelfth century. Not only is it an authoritative text solely designed to propagate a literate understanding of law, but also draws its authority from previous written sources to the marginalisation of custom. It is this basing of Gratian's understanding of law, within the confines of the previous canons and roman law, that is one of the most significant reasons for dispensing with the rational progress theory. Outlined by a belief that the new dialectic method taught at universities enabled a more rational critique of the world, facilitating intellectual and cultural growth.[57] This theory of rational progression has been critiqued and outlined before most strongly by Moore and Brown.[58] Equally, Susan Reynolds labels it the 'traditional teleology of legal history,'[59] and seeks to critique the intellectual foundations of the legal reforms taking place in

[57] See, Robinson, *Authority and Resistance,* p.7; Milsom, *Historical Foundations of the Common Law,* pp.410-11; Morris, 'Judicium Dei,'p.110; Tierney, *The Crisis of the Church and State,* p.2; Ho, 'The Legitimacy of Medieval Proof,' p.262 and F. McAuley, 'Canon Law and the End of the Ordeal' in *The Oxford Journal of Legal Studies* 26 (2006), pp.473-513, p.476.
[57] Baldwin, 'The Intellectual Preparation,' p.614.
[58] See, Moore, *First European Revolution,* p.167 and Brown, *Society and the Holy,* p.324.
[59] S. Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century,' in *Law and History Review* 21 (2003), pp.347-366, p.347.

long twelfth century, favouring procedural reforms instead.[60] The reality lies perhaps somewhere in between the legal schools of Paris and Bologna and the lowly shire courts of England, which are the focus of Reynold's article. For example, the procedural reforms necessitated by the rejection of ordeal were the result of the canonical criticism, highlighting a blend of procedural reform and high intellectualism generating change in the long twelfth century. Oddly the rejection of the ordeal itself was underpinned by the prohibition of its procedural features, but this was more a way for Church canonists to sidestep some worrisome issues about previous decretals, which allowed certain forms of ordeal, than genuine revulsion for the spilling of blood.

Turning back to the *Decretum*, it seems rather absurd that Gratian's thoughts are more rational than those upon which his arguments are based simply by virtue of the time Gratian happened to be writing, as defined by the rational progress theory.[61] Gratian gathered into *Decretum* a range of rulings both for and against ordeal and tried to harmonise these into one unified paradigm in opposition to ordeal. Gratian drew upon the following decretals, Pope Nicholas I *Monomachiam* (867),[62] Pope Stephen V *Consuluisti* (886),[63] and Pope Alexander II *Mennam* (1063),[64] in order to ground his critique of ordeal. These three rulings prohibit ordeal in some measure, for quite rational reasons, drawing into question the ability of ordeal to produce proof. These arguments against ordeal were longstanding and reiterated numerous times by many

[60] Procedural reforms here is used to describe the physical manifestation of the law itself, that is, the way in which trials operated.
[61] See, Ho, The Legitimacy of Medieval Proof,' p.291-295 for a detailed case of rational progress theory.
[62] Gratian, *Decretum,* C.2 Q.5 C.22. Forbidding the use of bilateral ordeal in the case of King Lothar and Teutberga, who was accused of adultery.
[63] Gratian, *Decretum,* C.2 Q.5 C.20. Prohibited unilateral ordeals in case of infanticide.
[64] Gratian, *Decretum,* C.2 Q.5 C.7. A general prohibition to the Clergy forbidding them to bless iron or water.

commentators, but as the long twelfth century developed one line of attack in *Consuluisti* began to take on greater significance. It stated, '[ordeals] are common law and not canonically sanctioned.' [65] In isolation, this constitutes a rather elitist attack on the common, customary roots of ordeal, but its inclusion into the larger work, *Decretum*, takes on a heightened significance, in a way that other critiques, concerning the epistemic features of ordeal do not. Censure against, what we may call, the miracle of ordeal fall within a critique of its epistemic features. Such critiques attack the way in which proof is formed, whereas during the long twelfth century the argument had shifted to a discussion of what constituted proper proof. Critiquing the epistemic features of ordeal remained an important part of this process, but the boundaries were subtly shifting to an understanding of proof, which could be prescribed and controlled. It is through this paradigm that we should best understand *Decretum*. Yes, it was a tool for teaching,[66] but the ethos of this work was to codify canons. This process created a written authority whose power to be understood as law, developed from the laws themselves. Such a process left little room for the ambiguity of ordeal. It is this shift in understanding of proof that drove the post-Gratian debate concerning ordeal. Gratian's position did not uniformly reject ordeal. There remained a significant ambiguity regarding the specific use of some ordeals, especially those pertaining to the clergy, namely the ordeal of bread, as generally this had been granted canonical sanction by Council of Worms (868).[67] In brief the issue pertained to whether or not there existed a

[65] Gratian, *Decretum,* C.2 Q.5 C.20, '*vulgarem denique legem ac nulla canonica sanctione*,'.
[66] See, A. Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000), pp.144-45.
[67] See, *Sepe contingi* and *Si episcopo* both canons of the council of Worms, allowing for the judicial use of the Eucharistic ordeal, but only in ecclesiastical affairs. In, W. Hartmann, *Daz Konzil von Worms 868* (Göttingen, 1942).

general censure of ordeals or just a ban on those specifically outlined in the decretals.[68] As the century progressed, the issue came to be resolved by numerous commentators whose critiques of ordeal became increasingly grounded in distinguishing the populist nature of ordeal, stressing its lack of canonical sanction. This process created a literate conception of the law, where the rule of law was subject not to an abstract concept of justice but a prescribed notion of the literate elites, tailored to marginalise popular practice.

3.5.3 Commentaries on the *Decretum*, Distinguishing Between Common and Ecclesiastical Use

As the long twelfth century took hold across Europe, diverse and numerous canonists, like those listed below, began commentating on the *Decretum* hoping to resolve the ambiguity that had been bequeathed to them by Gratian. Rufinus (ca.1157), Stephen of Tournai (ca.1160), Hugh of Bologna (ca.1188), Bernard of Pavia (ca.1191) and Peter the Chanter (ca.1190) all came to critique ordeal in a growing body of dissent, which eventually culminated in the eighteenth canon of the Fourth Lateran. canonists commenting on *Decretum's* position concerning ordeal struggled to reconcile the discord between its use in the secular law courts and that of the church.

Rufinus first introduced a distinction between what he termed the *purgationes vulgares* and the *purgationes canonicae* in his *Summa decretorum*.[69] That is, despite both of these practices broadly falling under the category of unilateral ordeal, Rufinus began to critique the secular use of ordeal because it did not align with his literate conception of

[68] *Dictum Gratiani post* C.2 Q.5 C.20.
[69] Rufinus, *Summa Decretorum*, in H. Singer, (Padeborn, 1902).

authority. Rufinus came to justify his distinction stating, 'the vulgar purgation (ordeal) therefore is another common practice, [like] hot iron or boiling water, different only is the canonical oath….it [the vulgar purgation] is not natural to the canons.'[70] Two core concepts are crucial here; firstly, that there is a distinction between the ordeals used by the church and those of the lay populace. Secondly, that such a distinction is based upon the authority of canon law. The literate authoritative position adopted by Rufinus is crucial to understanding his development of canon law. If, for instance Rufinus sought to critique the epistemic procedural features of ordeal, he would admit no distinction between the common and ecclesiastical use of ordeal. He had though no such intention. His *Summa* seeks to understand law only through a written paradigm. Rufinus' inconsistency is derived from his disdain of the lay practice, which he views as not canonically sanctioned and therefore lacking written authority. That is, ordeal as a popular practice is disdainful to Rufinus, not because the procedural features of ordeal are incapable of constituting proof, but because its popular use falls outside the parameters of his literate conception of what the law and therefore proof can be.

As the twelfth century progressed, criticism of ordeal began to focus ever more closely on its common or vulgar origins. The object of the canonists became a sharpening of the distinction between the high-literate elites of urban education centers and the parochial agricultural communities, who were to be controlled. This would be achieved, via the subsuming of their popular traditions into a common expression of authority, inherent in the written word. Take for instance, Stephen of Tournai (ca.1160) who roundly

[70] Rufinus *Summa Decretorum*, C.2 Q.5 in H. Singer, (Padeborn, 1902), pp.248-249, '*Purgatio igitur alia est vulgaris: ut candentis ferri, ferventis aque; alia canonica, ut solummodo iuramenti… ab ingenuo autem non nisi canonical*,'.

critiqued the popular practice and nature of ordeal. Stephen states, 'the common ordeal, was introduced by the common people, not subject to the usual laws or canon laws.'[71] Stephen's attack does little to besmirch the ambiguous nature of the procedural features of the unilateral ordeal, but it does seek to negate its socio-political legitimacy. The canonists of the mid twelfth century were trying to segregate society, into those who could legitimately exercise power, and those who could not. They sought to do this by referencing textual authority, like *Decretum*. The canonists of the mid to late twelfth century, however, still could not address the most vexing questions associated with ordeal, namely its use for the prosecution of the *occult.* Both Bernard of Pavia[72] and Richard of Mores[73] concluded, ordeals were a necessary evil, if no other form of proof was available. To progress the canonists had to dispense not only with their belief in the ecclesiastical ordeal but produce a new mechanism to prosecute *occult* cases.[74]

3.5.4 Hugh of Bologna

Towards the end of the twelfth century, Hugh of Bologna (ca.1188) transformed the debate concerning *Decretum* by rejecting all forms of ordeal, even those which were confined to the realms of ecclesiastical justice. Hugh not only strengthened the criticisms of the common ordeal but considered redundant those canons which permitted some form of ordeal, or ordeal in certain instances. Adding to the already strong critique of popular ordeal, Hugh concluded, 'One may know the common

[71] Stephan of Tournai, *Summa decretorum* to C.2 Q.5 C.7 Mennam in J.F. Von Schulte (Gissen, 1891), p.170, '*vulgarem, a vulgo et non a legum vel canonum peritis introductum et usitatam,'.*
[72] Bernard of Pavia, *Summa decretalium*, 12 and 17, E.A.T. Laspey (Ratisbon, 1860), pp.43-44 and pp.51-52.
[73] Richardus Anglicus, *Summa de ordine iudi ciario* in L. Wahrmund, *Quellen zur Geschichte des rimischl-kanonischen Processes im Mittelalter* (Insbruck, 1905), pp.39-41.
[74] Kamali, 'Trial by Ordeal,' pp.66-68.

purgation (ordeal) is prohibited here because it is not of the sacred canon laws…understand that each purgation (i.e. all ordeals) is prohibited because it is certainly vulgar.'[75] Hugh, once again reiterates the common critique of canonists that any practice outside the statutes of canon law must self-evidently be wrong and a peculiarity of the common people. Such an argument grounds itself in the socio-political aspects of ordeal, trying to delineate a barrier between the written and customary practice of law. Hugh goes on to critique the procedural manifestation of ordeal, that is, he attacks the epistemic features of ordeal too. Hugh links a mixture of epistemic and socio-political into his critique, stating that, '[ordeals] are three kinds of invention, that is, superstition, fateful and practical. They contain more superstition than anything established by the canons.'[76] Critiquing the epistemic nature of ordeal, by attacking the mechanism of its proof, claiming it to be superstation, developed the critique of ordeal in an interesting way. Whilst, Hugh moves the debate beyond the realms of written record, he still very much grounds his critique within the authority of the church. The miracle necessary for ordeal to occur was superstation, not because God was incapable of manifesting his presence in such ways, but because to do so placed the sacred in the hands of those thought unfit to use it. Here, Hugh is creating an artificial barrier between common and elite society, via the issue of the interpretation of the supernatural. Hugh is not merely stating that to produce a miracle through ordeal is not consistent with canonical practice but that when done so by the commoners it constitutes superstition,

[75] Hugh, *Summa* to *hoc autem,* C.2 Q.5 *post* C.20, Paris. Bibl. Nat. Lat. 15396, fol.144 VA, '*Scilicet prohibitio hic facta de purgatione vulgari que canonum documento sanctia non est. Purgationis, vulgaris scilicet, ut quelibet prohibita intelligantur*,'.

[76] Hugh, *Summa* to *superstitiosa*, C.2 Q.5 C.20 *Consuluisti*, Paris Bibl. Nat. Lat. 15396, fol. 114 VA, '*Est enim triplex adinventio, scilicet, superstitiosa, necessaria, utilis. Superstitiosa est cum super id, de quo canones aliquid statuerunt,'.*

as opposed to the proper miracles defined by religious authority. An authority vested in their monopoly on literate power and sole claim to be the purveyors of all things sacred. It seems almost irrational to state, a belief in the proof of God, superstitious in one instance and not in another because it falls within the parameters of your mode of thinking. As D'Avray comments, 'status groups have a collective cunning in whitewashing their own motives in their own eyes.'[77]

Armed with arguments criticising the epistemic and socio-political features of ordeal, Hugh produced a paradigm shift, by critiquing those canons which permitted some form of ordeal. Whereas Gratian had tried to reconcile discord between conflicting canons by claiming some had ecclesiastical sanction, Hugh sought to override those canons which did not align to his model of proof. Hugh's arguments began to transform the literate conception of canon law. Literate authority became self-generating, not solely based upon the authority of previous canons. Hugh expanded the scope of the dissenting argument beyond the ambiguity of authoritative texts, by arguing that the once authoritative (sacred) texts permitting ordeals, were incorrect. To this end Hugh declared, 'therefore detracted are those articles which appear to proclaim the vulgar/common ordeal.'[78] Arguing that common practice and papal toleration did not make ordeal's use any less odious, stating, 'it can be excused nor defended by habitual practice, since it is contrary to reason.' [79] Hugh, towards the end of the twelfth century had started to lay the foundations for an unequivocal rejection of all forms of ordeal.

[77] D.L. D'Avray, 'Lay Kinship Solidarity and Papal Law' in ed. P. Stafford, J. Nelson & J. Martindale '*Law, Laity and Solidarities Essays in Honour of Susan Reynolds*' (Manchester, 2001), p.190.
[78] Hugh, *Summa* to *Prohibemus,* C.2 Q.5 C.7 *Mennam*, Paris Bibl. Nat. Lat. 15396, fol.114 VB, *'Ergo derogate sunt illa capitula que videntur indicere vulgarem purgationem*,'.
[79] Hugh, *Summa* to *temptare*: C.2 q.5 c.22 Monomachiam, Paris Bibl. Nat. Lat. 15396, fol.114 VB, *'nec potest quis defendi vel excusari consuetudine, cum sit contraria rationi*,'.

Critiquing a previous distinction which had sufficed other canonists regarding the use of ordeals in certain instances, Hugh had paved the way for their ultimate rejection. As Baldwin argues, Hugh was the 'first significant canonist to take a rigorous and uncompromising line against ordeals.'[80]

3.5.5 Peter the Chanter

Peter the Chanter continued the arguments of Hugh. He was firmly resolved that ordeal had no place in the transforming society of the twelfth century. Peter's name is irrevocably linked to that of Paris, the elite centre for study in the twelfth century. Particularly pertinent to the query posed by this piece, is the question; did Peter teach a young Lothar of Segni at Paris, before the latter became Innocent III?[81] Certainly, Lothar and Peter were residents of Paris at the same time (ca. 1187). More concretely, the rejection of ordeal in 1215 appears to be more closely linked to the arguments of Peter than any other canonist. Unfortunately, it is impossible to tell with certainty if these two great church figures were acquaintances.[82]

Undoubtedly, however, Peter's influence and strong criticism of ordeal did much to influence the prevailing attitude of posterity. Peter wrote extensively critiquing ordeal, the most sustained attack being, 'Against the strange judgment of the white-hot iron

[80] Baldwin, 'The Intellectual Preparation,' p.626.

[81] See Baldwin, 'The Intellectual Preparation,' pp.635-636, Baldwin heavily suggests that Peter had a direct influence on the learning of Lothario. Similarly, Edward Peters states the relationship between the Chanter and Innocent as a matter of fact. I, however, would be more cautious. E. Peters, 'Lotario dei Conti di Segni becomes Pope Innocent III: The Man and the Pope,' in ed. J. Moore *Pope Innocent III and his World* (Ashgate, 1999), p.10.

[82] I hope the reader will find it as amusing as I, that the question of Peter's tutelage of Innocent is rather like an *occult* case. There exists significant *fama* for the supposition, but to say conclusively would be a value judgment on the strength of the evidence.

and cold or boiling water.'[83] In this, Peter subjects both the theoretical and practical underpinnings of ordeal to a multitude of stringent attacks. Herbert Grundman's explains, the Chanter 'waged a dramatic, open polemic against the nonsense of the ordeal.'[84] Firstly, Peter outlines his belief that scriptural sources contradict the very nature of ordeal, quoting both Deuteronomy 6:16[85] and then Mathew's verbatim admonishment 4:7,[86] 'One shall not tempt the lord your God.'[87] Quoting these verses, demonstrates the Chanter's extreme opposition to ordeal.

The Chanter, like Hugh, sought to impose his own literate authority by traducing Biblical precedents of ordeal, like the test of bitter waters and David overcoming Goliath.[88] Peter ruled that such instances were the preserve of a special few and could not constitute a precedent in law.[89] Peter's use of biblical sources exemplifies the changing nature of the long twelfth century, that is, his written authority subsumes all those dissenting voices merely by virtue of his esteemed position.[90] Peter's arguments are no more rational than those of Bishop Agobard (840), nor the modified stances of Ivo, Gratian, Rufinus, Bernard or Richard, but Peter, like Hugh before him, began to modify the authority of the written word form a dialectic to a prescribed exercise of power. In

[83] Peter the Chanter, *Verbum abbreviatum*, Ch.78 PL vol.205, col 226-233, '*Contra peregrina judicia ferri candentis, et aquae frigidae, vel bullientis*,'.
[84] H. Grundman, *Religious Movements in the Middle Ages* (Notre Dame, 1995), *trans*. S. Rowen, p.79. Reflecting upon one of the themes of this chapter, note how Grundman characterises the ordeal as 'nonsense,'.
[85] Vulgate, Deuteronomy, 6:16 'non temptabis Dominum Deum tuum sicut temptasti in loco temptationis,'.
[86] Vulgate, Mathew, 4:7 'ait illi Iesus rursum scriptum est non temptabis Dominum Deum tuum,'.
[87] Peter the Chanter, *Verbum,* Ch.78 PL vol 205, col 226A, 226C.
[88] See, Numbers 5 where in the case of adultery an ordeal of bitter waters is described and 1 Samuel 17, David and Goliath, perhaps the clearest precedent for trial by combat.
[89] Peter the Chanter, *Verbum,* Ch.78 PL vol. 205, col 227C, *'privilegia paucorum non sunt trahenda ad consequentiam, et in legem commune,'.*
[90] See, J. Baldwin, *Masters Princes and Merchants the Social Views of Peter the Chanter and his Circle*, 2. Vols. Vol.1 (Princeton, 1970), pp.12-16, to understand the nature of Peter's teaching roles and Chapter 1 more generally to understand his august position.

this area of canon law a microcosm of the long twelfth century was being played out, Peter's argument subsumed the dissenting voices of the bible, canon law and practice not on the strength of his argument, but by virtue of his own authority because he believed his position to be correct.

Peter's literate authority, however, was unable to bring about the end of ordeal. In order to achieve this goal, Peter sought to critique the procedural features of ordeal, by prohibiting the clergy's involvement in the popular practice. Peter sought to censure the clergy's role in ordeal, by referring to the general prohibition against churchmen being involved in the shedding of blood. Peter makes numerous references to this. Most obviously the bilateral ordeal was particularly susceptible to this kind of criticism, as combatants would literally try to kill one another.[91] Peter was able to extend this censure to ordeals where blood could be drawn through punishment after the fact; making reference to Archbishop Samson of Reims (d.1161), who forbade most kinds of ordeals because they resulted in the shedding of blood.[92] Although Samson did permit the use of the water ordeal if blood was not drawn or a limb mutilated.[93] Peter, however, was to permit no such exemptions. Resolutely, he concluded that all forms of ordeal should be prohibited whether or not blood was to be spilt.[94] Peter became unequivocal in his critique of ordeal and stated, 'even if the universal church under penalty of anathema commanded me as a priest to bewitch the iron or bless the water,

[91] Peter the Chanter, *Verbum,* Ch.78 PL vol. 205, col 232C.
[92] Peter the Chanter, *Verbum,* Ch.78 PL vol. 205, col 230A.
[93] Peter the Chanter, *Verbum,* Ch.78 PL vol. 205, col 230A, '*nisi prius praestita cautione sacerdoti benedicturo aquam a principibus de non mutilando membro, et de sanguine non effundendo*,'.
[94] Peter the Chanter, *Verbum,* Ch.78 PL vol. 205, col 227B.

I would quicker undergo the perpetual penalty than perform such a thing.'[95] Whilst this final point is certainly not grounded in argument. Its demonstrable tone emphasises how important this battleground had become in elite church circles. Peter's writings became the seminal point of attack for the church concerning ordeal, leading to its rejection at the Fourth Lateran, ultimately it was not the irrationality of ordeal that was rejected at Lateran IV but the clergy's involvement. After four centuries of debate concerning its use, ordeal finally ceased to be tolerated not because the populace at large could be convinced as to its epistemic irrationality or vulgar origins, but because literate elites had cunningly outmanoeuvred their subjects with reference to their own authority.

3.6 The Fourth Lateran (1215)

The significance of the Council of the Fourth Lateran should be viewed as a marker for the culmination of the long twelfth century. Written *lex* and an unwavering commitment to its power, is the legacy of the council of the Fourth Lateran, not a rejection of rationality. Primarily, it set forth an explicit statement by Pope Innocent III to create a homogeneous Catholic society through the virtue of written law.[96] Resultantly, the Church felt confident to dismiss popular custom, presenting for the first time an unequivocal position for the church.

[95] Peter the Chanter, *Verbum,* Ch.78 PL Vol. 205, col 543A. This particular quote is only found in the third and final version of Peter's works. The providence of which is not clear, see Baldwin, 'The Intellectual Preparation,' ft.80.

[96] J. Sayers, *Innocent III Leader of Europe* 1198-1216 (London, 1994), p.96; H. Tillmann, *Pope Innocent III Europe in the Middle Ages Selected Studies* 12 (Oxford, 1980), pp.63-65 and A. Hauck, Innocent III Desired to Rule the World in J. Powell, *Innocent III Vicar of Christ or Lord of the World?* Ed.2nd (Washington, 1994), p.15.

Significantly, the canon rejecting ordeal at the council of the Fourth Lateran makes no mention of the epistemic features of ordeal. The popular custom came to be prohibited in canon 18, which reads, 'neither shall anyone in judicial tests or ordeals, by hot or cold water or hot iron, bestow any blessing; the earlier prohibitions in regard to duelling remain in force.'[97] This represented something of a *fait accompli* for the church canonists. Including the prohibition of ordeal within the confines of one supressing the shedding of blood, they were able to sidestep the precarious issue of canonical sanction offered by previous rulings. By relying on the critiques proffered by Peter the Chanter the church had resolved the quandary presented by Gratian, namely, how could the church produce harmony and overrule previous laws. For this reason, the censure of ordeal presented by canon 18 makes no mention of canonical or theological sources. It was far easier for the canonists of the Fourth Lateran to present a general prohibition of ordeal by concentrating on removing the clergy's role in the ordeal process, not by critiquing its epistemic features, as all previous critiques had tried to do, but by its procedural manifestations. Therefore, Canon 18 attacked the socio-political legitimacy of trial by ordeal. By removing the mechanism of trial, the Church was able to remove the rather confused form of epistemic proof upon which ordeal operated. God's judgment is not being directly called into question, nor is God's ability to make his power manifest. Ultimately, in spite of the many glosses, numerous *summa* and previous canons against ordeal the invocation of the priest's blessing came to an end because of

[97] Lateran IV, Canon XVIII, in N.P. Tanner, *Decrees of the Ecumenical Councils Volume One Nicaea to Lateran V,* (London, 1990), p.244, '*nec quisquam purgation aquae ferventis vel frigidae seu ferri candentis ritum cuiuslibet benedictionis aut consecrationis impendat, sal vis nihilominus prohibitionibus de monomachiis sive duellis antea promulgates,'.*

the spilling of blood, without mention of vulgarity, barbarism or irrationality. The Chanter's position had come to reign supreme via the use of canon 18.

Demonstrating a clear link between the arguments of Peter the Chanter and the Fourth Lateran is not self-evident, except that, it was his criticism of the drawing of blood, which was used to stop the process of ordeal after 1215. It is credible, also, to argue that Peter the Chanter may have taught a young Innocent at Paris. This has been discussed above, so I will not revisit it in detail. The clear theoretical link between the Chanter's view and the rejection of ordeal at the Fourth Lateran would imply some form of connection between the two men. This may, however, have been a conduit via Stephen Langton, a student of the Chanter, who also, tutored Lothario.

Canon 18 would not have been written, however, unless the socio-political legitimacy of the ordeal could be replaced. In order to reject ordeal there needed to be a credible replacement. *Inquisitio* became that replacement. Expanding the written the form of law had been a long-term goal of the glossators since the time of Gratian.[98] Through the rejection of ordeal they were not only able to marginalise popular custom, but too, replace it with written forms of proof and procedure. It is arguable that 1215 signified the ultimate victory for the literate elites of Christendom, what remained to be decided was how to make this newfound power manifest.

3.7 Replacing Ordeal: The Road to inquisition

It has been argued, the longevity of ordeal owed in large part to the intertwining of both populist custom and its functionality in *occult* cases. The Fourth Lateran created

[98] Helmholz, *The Spirit of Classical Canon Law,* p.33-34 and Dawson, *The Oracles of Law,* p.138.

something of an epistemic crisis for the prosecution of the *occult.* No longer could proof of a crime be vested in God. There persisted, however, a need for the prosecution of *occult* crime. The answer to this conundrum lay in the process of *inquisitio*. *Inquisitio* would help combat both the use of ordeal and the rather impotent nature of the purgatory oath in Church proceedings.[99] The purgatory oath was a rather ineffectual form of ecclesiastical trial in which the defendant simply had to swear their innocence on a copy of the *vulgate*. Leaving the ultimate judgment to God at a much later date.[100] Obviously, such a system was susceptible to abuse by unscrupulous persons. *Inquisitio's* replacement of ordeal is the final and most important piece in the puzzle of the rejection of ordeal. No matter how much power became centralised, unless elites were able to devise new methods for establishing proof, the use of ordeal could not be rejected. The banning of ordeal necessitated the use of *inquisitio*.

Inquisitio would have been familiar trial procedure in 1215 because it had first been introduced by Lucius III (1159-1185) in *Ad abolendam* (1184). Initially this *inquisitio* was to be conducted by Bishops, who would go out and seek error in their dioceses, hence this period of *inquisitio* is referred to as the episcopal inquisition. Significantly, this process was *ex officio* and used *fama* as a proctor for prosecution. The significance of both these things is that the prosecutor would seek out wrongdoing and the burden of proof fell on the accused, they had to proof themselves innocent against the *fama*. This system was an unequivocal failure. It relied too heavily upon overburdened bishops who were unwilling or unable to spend time traipsing round their dioceses in search of

[99] See McAuley, 'Canon Law,' p.485-486; Helmholz, *The Spirit of Classical Canon Law*, pp.296-297 and H.A. Kelly, 'The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy' in ed. D.S. Prudlo, *A Campion to Heresy Inquistions* (Leiden, 2019), pp.76-80.
[100] McAuley, 'Canon Law,' p.485.

heretics who may or may not exist.[101] Despite its failure *Ad abolendam* had bequeathed a legacy of *ex officio* prosecution on the grounds of *fama*.

Episcopal inquisition, however, was not the same legal mechanism that replaced ordeal at the Fourth Lateran. The early procedure and formation of *inquisitio* came to be developed during Innocent's pontificate, most likely a reflection of his tutelage at Paris.[102] The end point of this development is fairly explicit with the eighth canon of the Fourth Lateran (*Qualiter et quando*), which created a novel form of trial procedure.[103] What is less clear are the antecedents of this canon. Historians broadly agree that Innocent began formulating a new procedure for investigating *occult* crime during his pontificate. The consensus is lacking, however, on precisely which of his canons created the *Ordo inquisitio*. McAuley highlights the importance of four decretals to the formation of *inquisitio*.[104] These were, *Ut nostrum* (1198)*, Inter sollicitudines* (1199)*, Generales inquisitors* (1206) and *Inquisitionis negotium* (1206).*[105]* Kelly builds upon *Inter sollicitudines*, but also incorporates *Licet Heli* (1199), *Litteras vestras* (1206) and an earlier version of Qualiter *et quando* (1206).[106] Arnold would also include *Vergentis in senium* in his discussion of early inquisitorial practice, but this point most likely reflects

[101] B. Hamilton, *The Medieval Inquisition* (New York, 1989), pp.35-36.
[102] J. 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 ed. U-R. Blumenthal, *International Congress of Medieval Canon Proceedings of the Twelfth International Congress of Medieval Canon Law: Washington, D.C. 1-7 August 2004* (Vatican, 2008), pp.780-794.
[103] Lateran IV, Canon VIII, in Tanner, *Decrees,* p.237. See, McAuley, 'Canon Law,' p.490 and A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France* (Boston, 1913), *trans*. J. Simpson, pp.80-85.
[104] See, McAuley, 'Canon Law,' p.490 and W. Trusen, 'Der Inquisitions prozess: Seine historischen Grundlag und frühen formen,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 74 (1988), pp.168-230.
[105] Innocent III, *Ut nostrum,* in A. Dadine d'Autesserre, *Opera Omnia,* Vol.3 (Napoli, 1777); Innocent III, *Inter solicitudenis*, Dadine d'Autesserre, *Opera Omnia,* p.868, Innocent III, *Generales inquisitores* in PL Vol. 215, Col.779B p.557, Innocent III, *Inquisitionis negotium* in PL Vol.216, Col.716D.
[106] Kelly, 'The Fourth Lateran,' pp.76-80.

his heresy based approach to the topic of *inquisitio*.[107] It is beyond the scope of this thesis to provide a synthesis of this research, but an outline of the differing views can be sketched. Broadly, these decretals exhibit tentative moves by Innocent towards the establishment of a system that came under the greater influence of a codified system of law, basing itself in the authority of written word, especially written testament. Innocent through a desire to create a more uniform church invoked an authority granted to him by an abstract conception of the Catholic community, which allowed him to subsume local and popular practice through literate and bureaucratic means.[108] It is worth highlighting, however, that this process of bureaucratic centralisation was primarily viewed by Innocent as an in house method of trial for the church used to combat the problems of the purgatory oath, not necessarily to replace ordeal.[109]

These decretals paved the way for Innocent to introduce a new form of investigatory procedure in canon 8 of the Fourth Lateran. This canon primarily concerns itself with church affairs being specifically addressed to 'prelates.'[110] It does, however, go onto list the process via which inquisition would operate, it states, 'there can be a threefold course of procedure, namely, by accusation, by denunciation, and by inquiry.'[111] This three-stage process arose from Innocent's previous decretals, but it was in 1215 that

[107] Arnold, *inquisition and Power,* p.31.
[108] This is the traditional model see, J.A. Watt, 'The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists,' *Traditio* 20 (1964), pp.179-317; W. Ullman, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (London, 1965), pp.262–309; K. Pennington, *Pope an Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia, 1984); H.J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (London, 1983). For a more revisionist tone, see the recent C. Rolker, *New Discourses in Medieval Canon Law Research Challenging the Master Narrative* (Leiden, 2019); especially, G. Austin, 'New Narratives for the Gregorian Reform,' pp.49-55.
[109] Kelly, 'The Fourth Lateran,' pp.76-80.
[110] Lateran IV, Canon VIII, in Tanner, *Decrees,* p.237.
[111] Lateran IV, Canon VIII, in Tanner, *Decrees,* p.238 '*esti tribus modis possit procedi, per accusationem videlicet, denunciationem et inquisitionem eorum,'.*

the *inquisitio* process can be said to have been given form.[112] Inquisition, however, did not start with the inception of this new legal process, after all, it was originally conceived purely as an in-house mechanism for the church. The process of *inquisitio* had to be forced into general usage by other factors. The most important of which was the rise of popular heresy in the twelfth century. The rise of popular heresy had irked the church for decades and varying popes with varying degrees of success had tried to solve the problem. This issue was given new impetus by the impact of the third canon of the Fourth Lateran. After 1215 a plethora of new heretical crimes into existence, and heresy began to be viewed in an ever more pernicious manner. The church had to find new ways in which to combat the menace it had created. Initially individual inquisitors were granted licence to investigate specific regions of Christendom, the system, however, was extremely decentralised and ad hoc, resulting in ignominy.[113] Inquisitorial practice and procedure developed steadily from its initial failures, into a codified system of operation. To propel inquisition into, the sole method for heresy repression would necessitate the placing of the individual firmly at the centre of the church's understanding of heresy during the post-millennial transformation. The significance of individualisation and individual criminal culpability was the single most important factor in cementing *inquisitio* as a recognisable feature of ecclesiastical justice.

3.8 Conclusions

By exploring the development of canonical opposition to ordeal throughout the post millennial transformation, this chapter has sought to demonstrate that the rejection of

[112] Evans, 'Notoriety: A Medieval Change in Attitude,' p.632.
[113] See, K. Sullivan, *The Inner Lives of Medieval Inquisitors* (London, 2011), for Conrad of Marburg, pp.91-98 and C. Haskins, 'Robert Le Bougre and the Beginnings of the Inquisition in Northern France,' *The American Historical Review* 7 (1902), pp.631-652, for Robert Le Bourge pp.632-636.

ordeal at the Fourth Lateran should fundamentally be viewed not as a progression of jurisprudence and rationality, but as an expression of literate authority, which sought to understand law, and in this instance proof, as being codified and expressed only through a written medium. Take for instance Ivo of Chartres and Gratian's *Decretum,* these first explorations of what should properly be defined by canon laws, were grounded in literate authority and tried to formulate a response towards legal questions by harmonising and resolving conflicting texts. Both Ivo and Gratian use a dialectic approach towards the problems posed by ordeal, as they understood both its usefulness and canonical sanction. As the twelfth century, progressed canonists exploring Gratian's work sought to more clearly define the literate authority of canon law, by distinguishing between varying types of ordeal, one common the other ecclesiastical. Such a distinction, first developed by Rufinus, was designed to segregate the literate from the non-literate as the distinction between these groups was grounded in canonical authority. Canonical authority based itself in the idea that the ordeals of the church were to be respected because they had been granted precedence by previous canons, namely at the Council of Worms, whereas the common ordeal had been granted no such provision.[114] This distinction existed despite the same epistemic and procedural mechanisms occurring in both forms of ordeal. Really, such an artificial distinction was a façade for a position that canon law should be codified and the populist practice of religion of which ordeal constitutes, on some level demanded a belief in God, should be subservient to the literate elites of the church. Finally, the long twelfth century came to fruition through the writings of Huggucio and Peter the Chanter, their conception of law

[114] See, *Sepe contingi* and *Si episcopo* both canons of the council of Worms, allowing for the judicial use of the Eucharistic ordeal, but only in ecclesiastical affairs in Hartmann, *Daz Konzil von Worms 868.*

was also based upon literate authority, but this authority was their own, derived from their positions within the Church hierarchy. These canonists sought to make authority self-generating. They chose to position their views above dissenting voices by negating previously authoritative texts. Whilst such actions were not intentionally pernicious, they align with the way in which medieval society was transforming in the long twelfth century, authority and power were being removed from customary practice by literate elites solely with reference to the rather abstract concept of that authority and power, which could find greater expression through a proliferation of literacy. This desire for authority and power was made manifest at the council of the Fourth Lateran in 1215, where Innocent IV, permeated in the spirit of the long twelfth century, sought to impose his vision of society across the diverse peoples of Europe by referencing an ideological unity and authority abstractly derived from the institution he headed.[115] It was with the written word that ordeal, a practice which had endured for more than a millennium, ended at the Fourth Lateran, showing a direct link between literate authority, power and the way in which the long twelfth century made itself manifest.

[115] See, C. Morris, *The Papal Monarchy the Western Church from 1050 to 1250* (Oxford, 2001); R. Bartlett, *The Making of Europe: Conquest, Colonisation and Cultural Change 950-1350,* (St. Ives, 1993), pp.243-268; J. Powell, *The Deeds of Pope Innocent III by an anonymous author* (Washington, 2004), p.XVI; B.E. Whalen, *Dominion of God Christendom and the Apocalypse in the Middle Ages* (London, 2009), pp.9-41; Ullmann, *The Growth of Papal Government,* pp.262–309 and W. Ullmann, *A History of Political thought: the middle ages*, (Harmondsworth, 1965), pp.100-129.

4.0 Corporate Theory

4.1 Roman Law and Corporate Theory

The following chapter outlines how over the course of a roughly thirty-year period, from the death of Innocent III in 1216 to Innocent IV's bull *Rommana Eclissia* (1245), canon law came to be predicated increasingly on the recognition of individual criminal culpability. Towards the end of Innocent III's reign (ca.1210) his views of corporate theory, being as they were derived from a theological perspective, were to contemporary canonists archaic and irked their more individuating (Romanised) sensibilities. Canonists soon began to critique his understanding of corporate theory and reached a radically differing opinion to that of their Pope. The precise date of a schism between a Roman and a theological influence in canon law is impossible to discern, but certainly towards the end of Innocent's pontificate there was a growing current of dissent, which questioned the ability of a corporate body to commit crime. Such criticism developed from a growing appreciation of Roman jurisprudence in canon law.

The revival of Roman jurisprudence in the high middle ages stemmed from the (re)discovery of Justinian's *Digest* around 1070.[1] The narrative of the *Digest*'s transformation upon European legal culture has already been outlined in this work, but briefly, it's rediscovery facilitated the widespread teaching of Roman law at newly emerging European universities, at which Bologna was the first. By the end of twelfth century there was a palpable European legal culture being taught across Europe, in both secular and canon law. What makes the transformation of corporate theory in canon

[1]R. Swanson, *The Twelfth-Century Renaissance* (Manchester, 1999), pp.7-8

law during the early thirteenth century so remarkable is the shifting emphasis in perspective from theology to Roman based jurisprudence. This permeation of canon law by Roman jurisprudence can only be accounted for by the reading of the *Corpus Juris Civilis*.

Corporate theory in the Codex of Justinian is outlined in four Fmaxims, all of which seem to support the idea of individuation and criminal culpability on an individual basis. In the Digest these four rulings read, 'penalties ought to bind their authors,' 'nobody ought to be deprived of his right without guilt,'[2] 'the deeds of some may not prejudice others' and 'one person's wrongs ought not result in a Church's loss.'[3] These principles illustrate an ethos of Roman law that challenged the notion of corporate punishment, but not necessarily the idea of corporate liability. From these rulings of the Codex there was clearly the notion that a corporate body could exist, but it was not seen as proper for a collective punishment to be used in cases where a corporate body was involved. Collective liability could be an accepted form of legal operation, but collective punishment was not. Punishments, to quote the first and most important legal principal, had to be bound to their authors. A view not reflected in canon law, which was happy to accept the notion of both corporate liability and punishment, with precedence from the Bible.

Ulpian, a Roman Lawyer of antiquity (d.223), whose writings are contained within the digest, when discussing corporate theory gave a rather confused position reflecting the

[2] Codex of Justinian, *Digest*, Codex. 9.47.22 '*peccatta suos debent tenere auctores*,'.
[3] These final two maxims are glossed by Richard Anglicus. For a thorough discussion see, V. Piergiovani, *La punibilità degli innocenti nel diritto canonico dell'età classica,* 2 Vols. Vol.2 (Milan, 1971-74), pp.1-19, and P. Clarke, *The Interdict in the Thirteenth Century* (Oxford, 2007), p.14.

ambiguity that legal minds could draw out of the principals posed above. Ulpian at *Digest* 4.2.9[4] admitted that a people or collegiate could be found guilty of intimidation, however, he also supplied at 4.3.15[5] a stipulation that a corporate body could not commit fraud. If, however, the leaders of the corporate body could have been proven to act fraudulently, or if the corporate body had gained from the fraudulent action, then Ulpian conceded that a corporate body could be held responsible for the crimes of its leaders. Ulpian's position seemed to allow for the possibility that a corporate body could commit a crime but set clear prohibitions on how such a community could be punished, restricting liability to the higher echelons. Ulpian's legal precedents informed Roman lawyers of the high middle ages who tried to answer his question, '*Quid enim municipes facere possunt*?' When answering this legal conundrum, the general principle subscribed to, was an understating that corporate bodies took little or no action with ease.[6] Roman lawyers, as the long twelfth century progressed, allowed for the prosecution of a corporate body, but with a strict understanding that such a body could not act easily. Azo (d.1220) in his *Summa* on the *Codex* stated that a corporate body could not act easily because of man's natural ability to disagree.[7] A line of argument which found a great appeal to medieval Roman lawyers.[8]

What follows is an exploration of how, what today we term, corporate theory was virtually revolutionised in the space of thirty years in canon law. Beginning with a

[4] Justinian Digest Vol.1, Book.4 Tit.2 Acts Done Under Duress, 9. Ulpian, Edict, Book 11. '*et ideo siue singularis sit persona, quae metum intulit, uel populus uel curia uel collegium uel corpus.'* In A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985).
[5] Justinian Digest Vol.1, Book.4 Tit.3 Malice or Fraud, 15. Ulpian, Edict, Book 11, '*quid enim municipes dolo facere possunt?*' In A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985).
[6] Accursius, *Glossa* to *Digest* 4.3.15 v. *facere possunt.*
[7] Azo, *Summa super Codicem* (Turin, 1966), on Cod.2.20, p.42b.
[8] Clarke, *The Interdict,* pp.22-23.

detailed breakdown of Innocent III's view of corporate liability and punishment and how he sought to manifest these beliefs in the world. Progressing onto the counter current emerging in canon law, reflecting a more Romanised attitude towards the problems posed by corporate theory. Ultimately, this growth of Roman jurisprudence sought to reflect individual criminal culpability through the process of *inquisitio*, when addressing the problems of corporate theory in canon law. The growth of the inquisitorial process is as intertwined with the Romanisation of canon law as it is with the heretics of the Languedoc.

4.1.1 *universitatis*

This chapter grapples with the legal complexities of collective guilt, responsibility and punishment. In modern legal parlance issues related to these topics are termed corporate theory. Corporate theory, however, was not a term used in the middle ages. Even to articulate a collection of people as a corporate body was unheard of. When conceptualising the bonds that existed between groups of people in association, medieval canonists used the term *universitatis*. *Universitatis* denoted a group of association like a guild.[9] *Universitatis*, however, was a poor lexical term to explore the nuances needed to fully engage with the challenges of heresy prosecution. Such issues were exacerbated by the way in which Innocent III engaged with the complexities of the problem.

Innocent III firmly was a firm believer in corporate liability and punishment. Numerous instances can be given to demonstrate this. Below we shall explore the most pertinent

[9] F. Heer, *The Medieval World Europe 1100-1350* (London, 1998), *trans*. J. Sondheimer p.196.

of these examples, the bulls *Vergentis in senium* (1199), *Dilectus filius* (1201) and the interdict on England in 1208.

Vergentis in senium is a good indicator of Innocent's attitude towards corporate liability and punishment because it dates from an embryonic stage of his pontificate. *Vergentis in senium* was delivered to the people of Viterbo on the 25th of March 1999, this date was slightly over a year after Innocent was first elected to the Papal throne. The bull concerns the Patarene heresy and outlines the punishment heretics would receive if found guilty. Patarenism was one of a plethora of apostolic reform-based movements that came into being during the twelfth and thirteenth centuries.[10] These movements called for a return to the faith as understood in the idealised time of the apostles, fundamentally they rejected Church hierarchy, which they viewed as exploitative.[11] Crucially, *Vergentis in senium* legislated for corporate punishment and liability. It was, for Innocent, the first foray into the murky realms of both heresy prosecution and corporate theory.

Through *Vergentis in senium* (1199) Innocent III expressed his understanding of collective guilt, responsibility and punishment. *Vergentis in senium*, however, was not designed to conceptualise a corporate body the size of a *universitatis*. *Vergentis in senium* reflected merely the familial ties of generations, explicitly sons and fathers. Innocent's understanding of the totality of corporate theory, was to have grave implications for the prosecution of heresy and canon law.

[10] D. MacCulloch, *A History of Christianity* (London, 2010), p.127.
[11] H. Fichtenau, *Heretics and Scholars in the High Middle Ages 1000-1200* (Pennsylvania, 1998), *trans*. D.A. Kaiser pp.123-125; R.I. Moore, *The War on Heresy* (London, 2014), pp.77-80.

4.2 Corporate Theory in Canon Law before Innocent III

When discussing the establishment and dissemination of Inquisition, scholars will point to such causes as the rise of popular heresy, the Albigensian crusade and the enlargement of scope of papal power, often to the neglect of the legal roots of the inquisitorial process.[12] The narrative of repression in the Languedoc seems like a simple one, progressing from the unsophisticated hammer of warfare to the finely tuned scalpel of the Inquisition. While the larger picture of inquisition can be discerned from events outside of canon law, we should not forget that *inquisitio* was as much a product of developments in canon law as it was developments in the Languedoc.

Take for instance the role of Innocent III, as Pope he oversaw the larger spiritual and strategic goals of the Crusade. One of these goals, arguably the most important, was the punishment of the guilty for the crime of heresy.[13] It is perhaps understandable then, that the ethos of the Crusade was one of retribution.[14] Especially given that the impetus for the entire Crusade had been the assassination of the papal legate Piere de Castelnau. The guilty, however, were an ambiguous mass. No doubt it was asked, who were the truly guiltless in a region so bound up with heretical networks? As the inhabitants and

[12] Sackville offers a detailed examination of the legislation that created the Inquisition, but it is framed within a discussion of the spreading fear of heresy. See, L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011), p.90. Arnold, identifies three themes stemming from the Albigensian crusade, 'the preservation of peace; repression of heresy; and the control of the confessing subject.' See, J. Arnold, *Inquisition and Power Catharism and the Confessing Subject in Medieval England* (Philadelphia, 2001), p.34. The rise of the inquisition in Arnold's work is far more complex but there is a strong link to the Albigensian crusade. See also, M. Lambert, *The Cathars* (Oxford, 2004), p.1 and R.I. Moore, *The War on Heresy Faith and Power in Medieval Europe* (London, 2014), pp.331-334.

[13] L. Marvin, *The Occitan War a Military and Political History of the Albigensian Crusade, 1209-1218* (Cambridge, 2008), p.4 Marvin, does not articulate this sentiment precisely as the guilty. He uses instead the term heretics, but there is a clear expression that the Crusades main target were those guilty of heresy.

[14] S. Throop, *Crusading as an act of Vengeance* 1095-1216 (Aldershot, 2011), p.119.

refugees of Béziers discovered, the crusading army did not readily distinguish between foe, heretic, guilty, innocent or Catholic. The first major punishment for heretical crime during the Albigensian Crusade was the corporate slaughter of the townspeople of Béziers (possibly numbering some 20,000).[15] The massacre would not have been surprising to those familiar with Innocent's understanding of collective liability and punishment. Innocent was a lifelong believer in the actuality of corporate bodies and condoned the use of corporate punishment. To Innocent III those put to the sword at Béziers represented a group of association whose guilt was collective, and whose punishment was acceptable. It is telling that no reprimand was issued for the massacre.

Innocent III's view of corporate liability and punishment reflected a strong theological current that dealt with guilt and corporate bodies in draconian manner. How Innocent formed his views, is explored below. Curiously, despite being versed in some Roman jurisprudence, Innocent garnered his opinions exclusively from the theological sources included in the *Decretum*. This point may seem startling, however, it is understandable when put into the context of Adam Vetulani's research concerning the development of the *Decretum.* In this he argued that most texts citing Roman juris prudence had been added after the first recension.[16] This was then adopted by Stephan Kuttner. Kuttner identified forty-six such passages, a remarkably low figure.[17] Winroth argues that what should draw our attention is not the limited use of Roman rulings, but why they were so ignored? The answer, Winroth argues is that Gratian was as well versed in Roman

[15] Arnaud Amalric letter to Innocent III, (1209), PL 216, col.139 '*Ad arma, ad arma, quasi sub duarum vel trium horarum spatio, transcensis fossatis ac muro, capta est civitas Biterrensis, nostrique non parcentes ordini, sexui, vel aetati, fere viginti millia hominum in ore gladii peremerunt*.'
[16] A. Vetulani, 'Gratien et la droit romain,' *Revue historique de droit français et étranger* 4 (1946), pp.11-48, p.46.
[17] S. Kuttner, 'new studies on the Roman law in Gratian's Decretum,' *Seminar* 11 (1953), pp.12-50, p.33.

law as could be expected, for a jurist of his time. Winroth goes onto argue that the Roman influence upon canon law was a slow percolation over time.[18] This broadly conforms to the arguments presented by Clarke in his work *The Interdict in the Thirteenth Century.*[19] That is, Innocent neglected Roman jurisprudence when discussing corporate liability and punishment because the *Decretum* lacked Roman law citations when discussing the topic. Once Innocent had ruled on the subject so decisively in *Vergentis in senium* canonists soon began arguing against his extreme position, aided by Roman jurisprudence.

Clarke's analysis of Innocent's view of corporate theory has two crucial features, integral to this chapter. Firstly, that Innocent formed his views concerning corporate liability whilst still at student at Paris. Expressed by Clarke as, 'all of innocent's important rulings on this matter (consent to another's sin) are from the first year of his pontificate, which shows that his views were already formed when he became pope.'[20] Secondly that corporate theory in canon law was neglected until Innocent III pressed the issue with his draconian punishments of heresy, first outlined in *Vergentis in senium* (1198). The debate became increasingly Romanised during his pontificate.[21] As Clarke comments, 'canonists did not confront the question of corporate liability until after 1200, perhaps because only then did Romanist corporation theory fully open their minds to the complexities of the problem.'[22] In brief, the contestation of this section is that Innocent's views concerning corporate liability and punishment were derived from a

[18] A. Winroth, *The Making of Gratian's Decretum* (Camebridge, 2007), p.147.
[19] Clarke, *The Interdict,* p.22.
[20] Clarke, *The Interdict,* p.30.
[21] Clarke, *The Interdict,* p.22.
[22] Clarke, *The Interdict,* p.22.

canonical position exploring theological debate rather than Roman jurisprudence, and that as the thirteenth century progressed a growing number of church officials and canon lawyers were attuned to the arguments of Roman law which contested the reality of corporate liability.

When deciding upon his position, Innocent III enjoyed a wealth of theological source materials. Numerous examples litter the Bible where God took vengeance upon communities and groups of people. The Bible, however, does not use the term corporate body or even *universitatis*, although, for theologians and latter canonists such liturgical examples would suite well. Take for instance Genesis 19, which details the destruction of Sodom and Gomorrah, or Genesis 6, where God, so appalled, flooded the world to stop its corruption. Both are clear examples of corporate liability and punishment. Exodus 20:5 provides a further example where God can be seen to understand guilt and punishment through a corporate motif. God in this passage threatens 'the transgression of fathers by dealing with children to the third and fourth generations of those who reject me.'[23] This passage offers a natural starting point to a discussion of corporate theory because it is where Gratian begins his discussion in the *Decretum*. Gratian poses this question 'was it licit for a son to be punished for his father's sins?'[24] Note the *Decretum* favouring Exodus over Genesis, as a liturgical example of corporate discussion, is naturally limiting to the idea of a *universitatis*. It is little wonder that canon law was ill-equipped to deal with the problems of long twelfth century when its conceptual outlook remained so limited. This framing of familial ties

[23] Vulgate, Exodus 20. 5, *'non adorabis ea neque coles ego sum Dominus Deus tuus fortis zelotes visitans iniquitatem patrum in filiis in tertiam et quartam generationem eorum qui oderunt me,'.*
[24] Gratian, *Decretum* C1. q.4 *'Nunc ergo de quarta questione est pertractandum, an paternum crimen huic inputetur, quod eo ignorante constat admissum?'.*

and collective guilt represents the only framework via which Innocent would have been exposed to the complexities of corporate theory, the implication of this can be seen directly in *Vergentis in senium*.

It is arguable that Innocent was left impoverished by Gratian's discussion of corporate theory, especially regarding Roman jurisprudence. Innocent, however, was not solely educated at Bologna. He was also a student of the theological school of Paris. Being well versed in theology would only have narrowed his understanding of corporate theory even further, in effect constructing a theological echo chamber.

Gratian understood corporate responsibility in terms of imitation. Sons, Gratian concluded, were to be punished only if they made their father's crimes their own through imitation. Gratian wrote, 'by these examples none are proven to be held responsible for the sins of others except in imitation of their wickedness.'[25] The example Gratian refers to is a biblical exegesis of St. Augustine of Hippo on Exodus 20:5, where Augustine concluded that God had in fact showed mercy because God's punishment was suspended until crimes were repeated up until the third and fourth generation.[26] Gratian here does not directly affirm the use of corporate punishment or liability. The reader of the *Decretum*, however, had been provided with an affirmative answer that Sons could be punished for the crimes of their fathers. Such an interpretation of Exodus

[25] Gratian, *Decretum,* C.1 q.4. dictum post c.11, §12 *'Sed his exemplis non probantur teneri peccato aliorum nisi imitatores nequiciae eorum,'.*

[26] Gratian, *Decretum* C1. q.4 c.IX *Ei, qui imitatur, inpietas alterius nocet*, *'In tertia et quarta generatione peccata patrum se Dominus comminatur in lege filiis redditurum, non inequalitate iudicii, ut alii peccent et alii puniantur, sed magnitudine clementiae, dum semper expectat penitentiam et quod in prima generatione delinquitur non prius corrigit et emendat, nisi tertia et quarta generatio euenerit,'.*

gave a rather limited scope for understanding what a corporate body could be, limiting it to a body no larger than a family.

Elsewhere in the *Decretum,* Gratian articulated in greater detail the limits and scope of corporate association by using Origen (b.185 AD). Origen was an early third century theologian, who wrote, 'a lone sinner can pollute a people, as a diseased sheep can infect a flock.'[27] Interestingly, this understanding of disease and pollutants articulates behavioural immune theory, which is the power of the individual to pose a danger to the greater whole.[28] In terms of corporate theory, this warning may not address corporate punishment directly, but it does allow for the notion of a corporate body outside the most obvious ties of a familial setting. Sin, guilt and culpability were understood by Gratian as communal Issues. Culpability could transcend the individual and implicate others, in legal principle, what remained opened to legalistic interpretation were the limits of that transcendence. What constituted a corporate body? How culpable were members of a community? How far were punishments to stretch? These were the questions that arose for a student of canon law, like Lotahrio, after studying Gratian's *Decretum*, during the long twelfth century.

Now explored is the theological position taught at Paris during the long twelfth century, which Innocent would have been exposed to. Paris was the preeminent educational institution of its day, where Innocent studied between 1187 and 1189. Whilst there he would have been, potentially, exposed to the teaching of Peter the Chanter.[29] As to the

[27] Gratian, *Decretum*, D.45 c.17, '*Polluitur enim ex uno peccatore populus. Sicut ex una oue morbida uniuersus grex inficitur,'.*
[28] R. Kurzban & M. Leary, 'Evolutionary origins of stigmatization: The functions of social exclusion,' *Psychological Bulletin* 127 (2001), pp.187-208, p.189.
[29] This is certainly the line taken by J. Baldwin in 'The Intellectual Preparation for the Canon of 1215 against Ordeals,' *Speculum* 36 (1961), pp.613-36, pp.635-636.

conclusiveness of such a statement, we can only speculate. It is beyond doubt at least that Innocent was taught in some capacity by Stephen Langton. Innocent made Stephen a cardinal in 1207 in gratitude for the impact he had on his formative years. As discussed above, Peter the Chanter (d.1197), established a towering intellectual position for himself at Paris teaching in the theological school. Peter's commentary on Genesis 19, Sodom and Gomorrah, concluded that God's actions were indeed merciful because he had spared the eternal damnation of the souls of the Sodomite's children, unless they followed their parents example.[30] An opinion not dissimilar from that of Gratian. Remember, Gratian argued that it was imitation which condemned members of a corporate body, not a shared belief in corporate liability. A point of view taken up by one of the Chanter's students Stephen Langton.[31] Even if Innocent had not been taught by the Chanter directly, he would have been imbued with an understanding of corporate theory in which collective liability and punishment was a reality, a point of view of which the study of Canon law at Bologna would not have disavowed him from.

Further to this, the footprint of Langton's teaching can be felt in *Vergentis in senium* with its stipulation that, 'life having been spared to their children out of mercy alone.'[32] This is a direct reflection of his gloss of Deuteronomy 24:16 which stated that human judgment was incapable of killing a son for his father's crimes.[33] Langton believed that

[30] Peter the Chanter, Genesis 19: 25, Paris, Bibliothèque de l'Arsenal MS 44, p.29b *'Et habitatores urbium ey cuncta terre virencia… Infantes cum parentibus in Sodomis cremati sunt… et provisum est illis ne diu viventes parentum exemplum sequerentur et sic sevius puirentur. Parentes quoque tam pro eis quam pro se rei sunt. Mors enim filiorum est parentum, ideo futuri sunt accusatores eorum… Quomodo cum parvulis Sodomorum actum est misericorditer? Sed pena ibi accipitur pro dampno. Nullum maius dampnum est homini quam non videre deum,'.*

[31] Stephen Langton, Genesis 19: 25 *Gloss*, V. *parvuli pro peccatis parentum,* Oxford, Trinity College MS 65, fol. 48rb.

[32] Migne, PL, vol.214, col.539B Innocent III, *Vergentis in senium 'eorum filiis vita solummodo ex misericordia conservata,'.*

[33] Langton on *Deuteronomy* 24:16, Durham Cathedral, MS A.I.7, fol.91rb *'Non occidentur patres pro filiis,'.*

a Corporate body could be punished for a crime, however, both he and Innocent agreed that the use of capital punishment was to be restricted in cases of corporate liability.[34]

The theological position taught at Paris in the latter half of the twelfth century allowed for the punishment of a corporate body. From the teachings of the Chanter and Langton, we can start to understand why Innocent's view of collective responsibility and punishment, based as it was in theology, was so at odds with his contemporary Canonists versed as they were in Roman law. For Innocent the issuing of *Vergentis in senium,* interdicts and waging Holy war against the people of the Languedoc were all justifiable.

4.3 Innocent III: Corporate Theory in Practice

Corporate theory is a very complex area of law. No single ruling of Innocent's deals with it in its entirety. The first theme of corporate theory we shall explore is that concerning punishment for another's crime, and we shall do this through the bull *Vergentis in senium,* which was addressed above. *Vergentis in senium* offers a good vehicle for exploring the themes of this piece because it intertwines the overarching thread of heresy alongside that of corporate theory and Innocent's early reign and education. *Vergentis in senium* provides an interesting starting point for the exploration of individuality in Church thought, because *Vergentis in senium* denies the recognition of individual criminal culpability. *Vergentis in senium*, punished children for the sins of their parents. *Vergentis* reads,

[34] C.C. Anderson, 'Bonaventure and the Sin of the Church,' *Theological Studies* 63 (2002), pp.667-689, pp.680-681.

> 'For when, following the lawful sanctions the guilty, having been injured through capital punishment, the goods of those should be confiscated, life having been spared to their children out of mercy alone: How much more [those] who wavering in [their] faith offend Jesus Christ son of the Lord God, ought to be cut off completely from our spiritual leader, who is Christ, and ought to be deprived of their worldly goods, since it is far greater to injure the divine majesty than the temporal.'[35]

There can be no doubt that *Vergentis in senium* marked a new era of heresy prosecution. What made its legislative approach noteworthy is that the text of *Vergentis in senium* is modelled on Justinian's *Corpus juris*.[36] This establishes a marker for the Romanisation of canon law during the long twelfth century. Innocent equated the crime of heresy to that of treason. Citing the issue of *Lèse-majesté*.[37] Symbolically the allegiance owed to the Emperor was being transposed to Christ and his representative on earth, the Pope. *Vergentis in senium* is a microcosm of the totality of change that the long twelfth century encapsulates.

Vergentis in senium directly answers the question, 'could the innocent be punished for another's sins,' which frames Gratian's *Decretum*.[38] Innocent had provided a rather

[35] Innocent III, *Vergentis in senium*, *PL* vol. 214 col.0539B Innocent III, *Vergentis in senium* '*Cum enim, secundum legitimas sanctiones, reis laesae majestatis punitis capite, bona confiscentur ipsorum, eorum filiis vita solummodo ex misericordia conservata; quanto magis, qui, aberrantes in fide Deum Dei Filium Jesum Christum offendunt, a capite nostro, quod est Christus, ecclesiastica debent districtione praecidi, et bonis temporalibus spoliari, cum longe sit gravius aeternam quam temporalem laedere majestatem,'.*

[36] A. Watson, *The Digest of Justinian* 4 Vols. Vol.4 (Philadelphia, 2011), p.317.

[37] K. Kendall, 'Mute Dogs, Unable to bark,': Innocent III's call to arms to Combat to Heresy,' in W. Muller & M. Sommar, *Medieval Church Law and The Origins of the Western Legal Tradition* (Washington, 2009), p.175.

[38] Gratian, *Decretum* C1. q.4 *'Nunc ergo de quarta questione est pertractandum, an paternum crimen huic inputetur, quod eo ignorante constat admissum?'.*

comprehensive answer in the case of heresy, but other questions and topics remained. The Most pertinent of these was undoubtedly, did a family constitute a corporate body, proper? Certainly, *Vergentis in senium* allows for communal punishment, but it had a rather limited scope. Familial ties are restrictive and the legislation of *Vergentis in senium* is specific to one generation. When dealing with medieval attitudes towards corporate liability and punishment it is best to recognise the limitations of *Vergentis in senium*. When trying to define what constituted a community Innocent IV (1243-d.1254) would conclude that a community existed through privileges it exercised through a town charter or a guilds' charter, or some other legal mechanism via which a group could be legally recognisable.[39] In this Innocent IV argued that the concept of a community, legally, simply represented the right to association not a legal actuality and therefore could not be accused of a criminal offence. The legal definition is more in line with the concept of *universitatis* than of blood. Innocent III, however, did not grapple with the issues in quite such a structured manner as Innocent IV, and his views were outlined in numerous rulings which we shall progress onto.

When expanding upon the intricacy of corporate responsibility further questions arose for Canonists. The most pressing being, could a corporate body be punished for the sins of a few of its members? This is, subtly different from the question posed above because *Vergentis in senium* had restricted liability to families, specifically generations, whereas the question posed here sought to expand the liability of punishment to an entire corporate body. Innocent provided an answer in *Dilectus filius*, in which he outlined that

[39] Innocent IV, *Apparatus* on X 5.39.53 V. *consiliarios*.

a Church could be accused of simony and the members of its corporate body be punished.[40] By this ruling Innocent had expanded the scope of communal punishment.

Vergentis in senium had facilitated the punishment of the innocent for the guilt of others but in a very limited fashion, here in *Dilectus filius* a whole corporate body could be punished for the actions of a few guilty members. These two rulings, *Vergentis in senium* and *Dilectus filius*, provided a definitive position for the church concerning corporate liability, stressing two important factors, that corporate punishment was licit and that it could extend to an entire corporate body. Firstly they addressed the fundamental issue of corporate theory, that one could be guilty and punished only on grounds of association, and secondly the church had defined just how far the reach of that association could stretch, from the limited ties of family (especially father to son) to an entire community or socially structured group, like a monastic community, guild hall, dioceses or even realm.

Explored below is the Interdict placed upon England by Innocent III in 1208. The interdict is used as a case study because it demonstrates the totality of Innocent's view of corporate liability and punishment. Innocent through his use of interdict was willing to punish one of the largest corporate bodies imaginable, a kingdom, for the crime of its most important member, the king. This interdict represented one of series of crises that punctuated King John's turbulent reign (b.1166-d.1215). The crisis resulted from a disputed election for the See of the Archbishop of Canterbury. The former Archbishop, Hubert Walter, died in July 1205 and members of the monastic order at Canterbury held

[40] *Corpus Juris Canonici emendatum et notis illustratum Gregorii XIII pont. Max. iussu editum* (Rome, 1582), Gloss on X.5.22.6 col.1750-1.

two irregular elections for the office, before finally seeking resolution for their quandary, as well as recognition for their elected candidate, from Rome in 1206.[41] Their plan, however, was disrupted by the manoeuvrings of Innocent III. Innocent refused to recognise both their elections and choice of candidate. He instead persuaded the delegation of Cistercians to accept his choice as Archbishop, Stephan Langton. Innocent's choice of his former tutor is a further demonstration of the deep connection between the two men. Stephan, however, was wholly unpalatable to John. John was sceptical of Stephan's close affiliation to the French crown and furthermore believed that it was his royal prerogative to choose and invest the occupant of the highest position in the English Church.[42] The underlying theme of the conflict in this instance was more than John wished to see his candidate recognised as Archbishop. Certainly, this was the impetus for the dispute, but for John the rights of the English Crown were at stake, as was his reputation. [43] The nature of the conflict can be reduced thematically to the consistent tumult of the medieval period, the conflict between *sacerdotium* and *regnum*.

To illustrate the principles discussed in this chapter, we shall focus upon a papal letter of Innocent III written to the most prominent members of the English clergy explaining the interdict and its importance. In effect, this letter is a decree of Innocent's placing

[41] C. Cheney, 'King John and the Papal Interdict,' *Bulletin of the John Rylands Library* 31 (1948), pp.295-317, p.296.
[42] R. Turner, *King John* (Harlow, 1994), p.159.
[43] See, C. Cheney, 'King John's Reaction to the Interdict of England 1208,' *Transactions of the Royal Historical Society* 31 (1949), pp.129-50 and C. Cheney, 'King John and the Papal Interdict,' pp.295-317. For more recent works on King John and the interdict see, G.E. Seel, *King John: An Underrated King* (London, 2012), pp.100-105 and J. Baldwin, 'Master Stephen Langton, Future Archbishop of Canterbury: The Paris School and *Magna Carta*,' *English Historical Review* 123 (2008), pp.811-846, this is particularly useful for understanding the relationship between Innocent III and Stephen Langton, *passim*.

England under an interdict, which formulates his *raison d'etre* for not only this interdict but also the use of corporate punishment in general. The letter was written on the 27th of August 1207 and addressed from no other place than Viterbo, the very same town against which *Vergentis in senium* had been issued nearly ten years earlier.

Curiously, both *Vergentis in senium* and this letter contains the phrase 'and do not be of those who are mute dogs and cannot bark.'[44] Such a detail is not just mere coincidence or triviality, there is more than a thematic connection between this interdict and *Vergentis.* This is a section of Isaiah 56:10, which admonishes the leaders of Israel for neglecting their duties and leaving the kingdom vulnerable. Innocent's understanding of the passage has been detailed by Keith Kendall, who concludes that his regular usage was designed to inspire those under his influence to acquit their roles and duties with more vigour. Kendall concludes that the phrase became particularly important when dealing with church failings especially in cases of Church corruption and heresy.[45] Kendall's argues Innocent wished to rally the clergy of England to his cause and remind them that their higher loyalty lay with the Church and not their King. Innocent wrestled with the moral problems posed by the use of corporate theory, namely punishment of the innocent. He found justification for his actions by finding solace in a belief that to do nothing was of greater harm, less he become a mute dog unbale to bark.

[44] Innocent III, Letter to the Bishops of London, Ely and Worcester, *Selected letters of Pope Innocent III* (London, 1953), *trans*. in C. Cheney and W. Semple, p.95, in Vulgate Isiah 56: 10 '*speculatores eius caeci omnes nescierunt universi canes muti non valentes latrare videntes vana dormientes et amantes somnia*,'.
[45] K. Kendall, 'Mute Dogs, Unable to bark,': Innocent III's call to arms to Combat to Heresy,' in W. Muller & M. Sommar, *Medieval Church Law and The Origins of the Western Legal Tradition* (Washington, 2009), p.175.

The terms of the interdict and precisely what the spiritual punishments envisaged by Innocent entailed, shall be examined. Innocent's letter was addressed to the three Bishops of Ely, Worcester and London, and read 'you are to publish throughout England the general sentence of Interdict, permitting no ecclesiastical office except the baptism of infants and the confession of the dying.'[46] The first thing to note about this general proclamation is the sparseness of its length. It almost defies belief that a piece of canon legislation, affecting the lives of the entire English Kingdom, could be reduced to a two-clause sentence. The brevity of the interdicts' parameters shall be explored later. At present, we shall focus upon what is there and explain the significance of its inclusion. The most important stipulation within the interdict is the provision that sacraments of baptism and *viaticum* are still permissible despite a general censure of ecclesial office. The intention is obvious, to preserve the sanctity of the souls of the Christian community of England, in spite of the interdict. The reason behind such an intention is a direct reflection of Stephen Langton's exegesis of Deuteronomy 24:16, in which Stephen Langton outlined his case for forbidding the use of capital punishment in corporate cases. The foundation of this was an understanding that human justice was incapable of replicating God's,[47] taken in this instance as prohibiting the imperilling of souls which would have occurred if these sacraments had been forbidden in the terms of the interdict. The terms of the interdict, such as they are, reinforce our understanding of Innocent's views of corporate theory. That is, Innocent's understanding was solely informed by a theological perspective, taught to him at Paris by Stephan Langton, and possibly Peter the Chanter, the result of which was an almost absolutist position of

[46] Innocent III, Letter to the Bishops of London, Ely and Worcester, *Trans*. in C. Cheney and W. Semple, *Selected letters of Pope Innocent III* (London, 1953), p.94.
[47] Anderson, 'Bonaventure and the Sin of the Church,' pp.680-681.

corporate liability and punishment, which saw the use of collective punishment as permissible, hence here the use of interdict against an entire Kingdom.

Equally of importance is the way in which Innocent chose to justify the interdict. See, how closely it aligns to the theological position already explored. Innocent wrote, 'because the terror of it [the interdict] will descend to later generations, their rebellion will never become a precedent, but their punishment will strike fear into all mankind.'[48] Primarily the idea that an interdict would spread terror by its indiscriminate punishment, the means by which all forms of collective punishment operated. Further to this, there is a clear similarity between this justification of collective punishment and the use of Genesis 19 by the Paris masters when discussing corporate liability and punishment, with their understanding of corporate punishment on a generational basis. Equally Exodus 20:5 threatened punishment of the third and fourth generations and was used as a framework for discussion in the *Decretum*. Innocent justifies his use of interdict by referring to this theological current. Innocent's understanding of collective punishment is so clearly aligned to that of his Paris masters and Gratian, it is astonishing that a mere thirty years later the rise of Roman jurisprudence would completely reverse the situation.

Finally, before moving onto see how canonists came to disagree with the views of Innocent, the briefness of the interdict as formulated in the letter to the English Bishops shall be examined and used to highlight a strange facet of Innocent's legacy. Both Cheney and Harper-Biller make refence to the lack of codified canon law concerning interdict in 1207. Harper-Biller comments that 'no firm canonical definition of what an

[48] Innocent III, Letter to the Bishops of London, Ely and Worcester, *Selected letters of Pope Innocent III* (London, 1953) *trans*. C. Cheney and W. Semple, p.94.

interdict entailed,' existed in this period.[49] Cheney uses this observation to rather astutely critique the image of Innocent as a lawyer pope. He writes, 'there was as of yet no common law for interdicts: and is curious to observe that, despite Innocent III's reputation as a lawyer, he allowed his draftsman repeatedly to draw up mandates for interdicts which the administrators of those interdicts found to be insufficient.'[50] Kenneth Pennington agrees that Innocent was not a lawyer pope. He wrote 'scholars who simply assume that Innocent was a learned lawyer should pause for a moment before they repeat old platitudes.'[51]

These reassessments of Innocent provide for us a useful tool to highlight the dynamism of change occurring in the early thirteenth century. A core concept of this work has been the narrative of centralising, homogenous transformation during the post-millennial period. The changes described, however, did not automatically translate to a manifestly new model. Such a process was haphazard and contained elements of both the new and the old. Innocent was, in many aspects, a Janus type figure. He was a product of an older theological education yet wished to make full use of the new canonical powers granted by the renewed form of the *lex.* A theme explored by Richard kay. Kay's more recent scholarship, in which he discusses a sermon given to the Papal Curia a year after Innocent's election to Pope, asses our revised understanding of Innocent. Kay argues, 'Innocent emerges from this analysis, then, as a theologian who had spent a year conferring with canonists. He had learned much from them, but his field of professional

[49] C. Harper-Biller, 'John and the Church of Rome' in S.D. Church. *King John New interpretations* (Woodbridge, 1999), p.304.
[50] C. Cheney, 'King John and the Papal Interdict,' p.298.
[51] K. Pennington, 'Further Thoughts on Pope Innocent III's Knowledge of Law,' in his *Popes, Canonists, and Texts 1150-1500* (Aldershot, 1993), p.14. See also, K. Pennington 'The legal education of Pope Innocent III,' in *Popes, Canonists, and Texts 1150-1500* (Aldershot, 1993), pp.74-76.

expertise was nonetheless theology.'[52] Understanding Innocent through this paradigm helps inform the reader as to how Innocent found himself in conflict with King John. For Innocent, much like John, the issue surrounding the Archbishopric was not merely one of wishing to see his preferred candidate in office. It was a battle of rights and authority. Innocent believed that he alone, as Pope, had the authority to invest Church leaders.

In conclusion Innocent's view of corporate theory was well formed by the time he took Papal office in 1198. He had learnt, from his Paris masters, a theological paradigm that had instilled within him a belief in the legitimacy of corporate responsibility. This belief would make itself manifest across Innocent's reign most noticeably at the very start through *Vergentis in senium* (1199), again in *Dilectus filius* (1201) and the interdict on England in 1208. Each one of these papal actions furthered the degree and scope of corporate liability, from father to son, to member to association and finally on the largest stage of all, from King to Kingdom. Each reiteration merely solidified a belief and practice that grew in opposition to Roman jurisprudence, which were rapidly becoming the foundation of law in both Church and secular studies. The conflict of these two opposing views would soon come to a head and indeed had already started to do so during Innocent's lifetime. The next section examines precisely how those dissenting voices started to make an impact upon Canon law.

4.4 Shifting Paradigms: Canonists

Towards the end of Innocent's pontificate (ca.1210), Canonists began to engage more openly with the implications of corporate liability and punishment. The Canonical

[52] R. Kay, 'Innocent III as Canonist and Theologian: The case of Spiritual Matrimony,' in *Pope Innocent III and His World*, ed. J. Moore (Aldershot, 1999), p.49.

position established by Gratian, adopted by Peter the Chanter, taught to Stephan Langton and most importantly Innocent III, came to be seen as ever more incongruous with Roman jurisprudence as the thirteenth century progressed. Around the time of Innocent's death Johnannes Teutonicus and the anonymous author of the *Glossa Palatina* began formulating a Canonical opposition to the extreme position of Innocent III. Their dissenting view became contingent on the procedural impossibility of conducting a trial in criminal cases concerning a corporate body in canon law.

Due to the anonymous nature of the *Glossa Palatina* it is hard to provide a precise date for its completion, between the years 1210 and 1215 seem likely. Consequently, it is hard to gage if John Teutonicus' ideas develop from the *Glossa* or *vice versa,* but without doubt John's gloss was completed by 1215.[53] The almost simultaneous completion of these two works indicates a growing discomfort with the theological position canon law had adopted, under Innocent's direction. Indeed, the closeness in line of argument between the two texts suggest that an author of one may have been informed by other, but this is speculation at best.

The *Glossa Palatina* is a text which glosses the *Decretum,* significantly it was a canonical work discussing canon law, using as a frame of reference a text designed to teach canon law.[54] In spite of all this canonical discussion, the *Glossa Palatina* introduces Roman jurisprudence to this canonical debate, by referring to the Codex of Justinian and

[53] S. Kuttner, 'Quelques observations sur l'autorité des collections canoniques dans le droit classique de l'Église,' in ed. S. Kuttner, *Medieval Councils, Decretals, and Collections of Canon Law* Ed.2nd (London, 1992), pp.305-312.

[54] S. Kuttner, 'The scientific investigation of mediaeval canon law: the need and the opportunity' in ed. S. Kuttner *Gratian and the Schools of Law 1140-1234* (London, 1983), pp.493-501 and W. Hartmann & K. Pennington, *The history of medieval canon law in the classical period, 1140-1234* (Washington D.C., 2008), pp.293-317, see also Winroth, *The making of Gratian's Decretum*.

Ulpian's work's in that text.[55] The author of the *Glossa*, had a very radical approach to corporate theory taking a stance that a corporate body could not commit any action, criminal or otherwise. Furthering this point, the author of the *Glossa* sought to raise the procedural difficulties of trying to conduct a trail of a corporate body in Canon Law. Arguing that how a proctor would be needed to represent the accused party but was prohibited from doing so in criminal cases under Canon law. The *Glossa* did allow for the punishment of a communities' leaders if a community could be proven to have acted simonically.[56] Such a slight concession, however, was surely granted so as not to completely alienate this Gloss' view from that of Pope Innocent's, as it was his legislation in *Dilectus Filius* that had opened the possibilities of an entire Church being prosecuted for simony. It is telling that Johannes Teutonicus would reach a very similar conclusion to the ideas presented in the *Glossa,* but after Innocent's death in 1216.[57] John waited until 1217 before he would gloss *Dilectus Filius* and conclude that because communities acted at the behest of their leaders they would be solely culpable for any illegal action undertaken by the community.[58]

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[55] *Glossa Palatina* on C.12 q.2 c.58 v. *accusandi,* BAV, PL. MS 658, fol. 51va; BAV, Reg.lat. MS 977, fol. 145 va. In which both the *Codex* 9.6.1 and the *Digest* 4.2.9 §1 are referenced.

[56] *Glossa Palatina* on C.12 q.2 c.58 v.*accuandi,* BAV, PL. MS 658, fol. 51va; BAV, Reg.lat. MS 977, fol. 145 va; '*Non, propter iuris impossibilitatem et quia in crimine non posset se defendere per actorem. Utitur ergo verbi accusandi improprie pro verbo agenda. Vel hoc intellige cum episcopus vel actor ecclesie accusatur de aliquo crimine quod commisit consilio universitatis, puta rapina vel aliquo alio*. *Vel hoc intellige cum per inquisitionem proceditur contra universitatem, extra*,'.

[57] K. Pennington, *Johannis Teutonici Apparatus glossarum in Compilationem tertiam* (Vatican, 1981), P.XXV; K. Pennington, *Popes, Canons and Texts 1150-1550* (Aldershot, 1993), pp.183-194, examining the nuanced relationship between Innocent III and John. The overarching premise is that John did much to advance the rights of the Papacy, *vis a vis* secular authority*,* through his writings. He did not, however, support the authoritarian use of Legates. Legates could often act with a power that usurped the Bishop's prerogative to govern his dioecies. In general John was clearly a supporter of the Papacy. Even, Pennington cannot quite bring himself to call him an 'episcopalist' (p.184). This reflection highlights just how divergent John's views were from Innocent's and why Innocent's death marks a clear shift in Canon legal thought.

[58] Johannes Teutonicus on 3 Comp. 5.2.2 v. *officialibus* (http://faculty.cua.edu/pennington/edit501.htm).

The *Glossa Palatina* proposes an extreme position of corporate theory. The *Glossa* proposes that corporate theory as understood in canon law ca.1215, most importantly as understood and interpreted by the then Pope Innocent III, was wrong. The *Glossa* argued for an understanding of Corporate theory based not on collective liability but on executive liability. Yes, the *Glossa* agreed*,* a community could commit an action, although the scope of such criminal behaviour was severely restricted, but only its leaders were culpable for any crime committed. If collective justice was to be bestowed upon a corporate body, then it would be done so through a process of individuation. In reality, this meant through *inquisitio* because it was the only method of ecclesiastical trial left. From studying the *Glossa* a student would conclude that canon law, hitherto, had been grossly mistaken about the nature of corporate theory and that only a Romanised interpretation could produce a satisfactory understanding of corporate liability and punishment. Furthermore, the best way to reflect this new enlightened attitude was the process of *inquisitio* with its model of individual criminal culpability.

John Tuetonicus would reach similar conclusions to that of the *Glossa Palatina*. Differing from the *Glossa*, however, John recognised that a corporate body, namely a church, could be accused of simony as Innocent III had intimated with his bull *Dilectus filius*.[59] John, however, contrasted this with the views of Ulpian and the dissenting text of St. Augustine of Hippo, found in the *Decretum*.[60] The implication was clear, John doubted

[59] Johannes Teutonicus on C.12 q.2 c.58 v. *accusandi,* BAV, Vat. Lat. MS 1367, fol. 142vb, '*Ergo videntur quod alius posset accusare ecclesiam, ut scilicet accusatur quod simoniace elegit aliquem, ut extra.ii. de symonia,'.*

[60] This text is included by Gratian in conjunction with Augustine's exegesis of Exodus 20:5, i.e. the one that supported corporate punishment. The text is a letter written to another church member admonishing him for excommunicating a household when only the father of the house had sinned. Augustin's dualistic approach to corporate theory in these two instances are quite understandable. Exodus represents divine justice where God's actions cannot be wrong. *Ergo*, Augustin's exegeses reads more like that of an apologist, arguing that God had indeed shown mercy by using corporate punishment. Whereas, the

the actuality of corporate responsibility and punishment but he could not challenge his Pope's ruling so directly in a gloss. In order to challenge what John clearly thought of as wrong, he rather cleverly pointed out the procedural difficulty of conducting a trial of a corporate body under Canonical procedure. John observed that for a community to be prosecuted in court, it would have to defend itself through a representative or proctor, less the entire corporate body undergo cross examination. Such a representative or proctor, however, was not allowed to represent an accused party in criminal cases in canon law.[61]

John's position reveals a rather tortured view of corporate theory, being caught as he was between the views of his Pope and that of his conscience. Not wishing to so openly castigate the views of God's living representative on earth, he chose an alternate route highlighting the legal impracticalities of conducting corporate trials in canon law. John's view of corporate theory is essentially one learnt from Roman jurisprudence, hence his reference to Ulpian.[62] John does not deny the actuality of a corporate body, he clearly believes that such a body can be a legal construct, what John takes issue with is the idea of collective punishment. John's concluding thoughts on the subject best exemplify this and are also particularly pertinent to the overarching argument of this thesis. John concluded that to reconcile the procedural anomalies accrued by corporate theory in canon law the best solution was to conduct an *inquisitio.* An *inquisitio* John reasoned

admonishing of a contemporary for the seemingly draconian approach to justice, would coincide to Augustine's roll as a church father. Either way the general consensus in Canon Law was to view corporate punishment as licit.

[61] Johannes Teutonicus on C.12 q.2 c.58 v. *accusandi,* BAV, Vat. Lat. MS 1367, fol. 142vb, '*Preterea universitas per actorem vel procuratorem suum se defendere sed in crimine non interveniat procurator, ergo universitas non potest de crimine conveniri, quod verum est. Dicas ego hic poni verbum accusandi pro verbo agendi, vel intellige cum episcopus accusatur de crimine quod commisit de consilio universitatis. Item in modum inquisitionis potest agi contra universitatem prout legitur*,'.

[62] Johannes Teutonicus on C.12 q.2 c.58 v. *accusandi,* BAV, Vat. Lat. MS 1367, fol. 142vb.

balanced the need to bind penalties to their authors with a belief in corporate liability. Through an inquisition an entire corporate body could stand trial, but it would do so as a collective of individuals. *Inquisitio* provided a rather elegant solution for two of John's problems, firstly it removed the need for a proctor and secondly it could provide the individualising type of justice, which Roman jurisprudence strived for in corporate cases.

From the *Glossa Palatina* and John Tuetonicus there is an identifiable current of thought emerging in the latter years of Innocent's pontificate, which began to place the importance of individual criminal culpability as a basis for understanding the very nature of law. Collective punishment, which had been a staple of medieval secular and ecclesiastical, justice and thought, was being significantly challenged at the beginning of the thirteenth century, by a growing recognition of individual criminal culpability. Canonists came to conclude that the best way to acknowledge this emerging appreciation of individual criminal culpability was via the process of *inquisitio*. In the higher echelons of the Church and legal culture born out of the long twelfth century, a growing need for a recognition of individuation in criminal proceedings, especially in corporate cases, produced the perfect conditions for the process of *inquisitio* to flourish. These changes fostered a transition from parochial case-based mechanisms of law to a broadly Romo-European model of justice.[63] It is arguable that the process of *inquisitio* represents the quintessential dramatic shift occurring in European legal traditions at this time. Certainly, *inquisitio* was a product of the abandonment of ordeal, a reflection of the long twelfth century drive for centralisation and power. Furthermore, *inquisitio* as a response to canonical debate of corporate theory can only be understood as one

[63] J. Brundage, *The Medieval Origins of the Legal Profession, Canonsist, Civillians and Courts* (London, 2008), pp.489-90.

informed by Roman jurisprudence, placing as it did a greater emphasis on individual criminal culpability.

4.5 Paradigm Shift: The Emergence of the Criminally Culpable Individual

After the death of Innocent III in 1216 canonical debate concerning corporate theory radically shifted parameters. The debate was no longer between two opposing sides with fundamentally differing views on the nature of corporate theory, but instead one in which the agreed perspective was of the individualising nature of justice. The questions now arising concerned the limits and scope of a corporate body's liability and the intersection with its individual members. Numerous Canonists engaged with this debate, but it was finally concluded by Innocent IV in his decretal letter *Romana Ecclesia* (1245). Most noticeable about the way in which canonical debate progressed in the thirty years between Innocent III's death and Innocent IV's ruling was the ever-increasing reliance of canonists upon Roman law.

Alanus Anglicus (ca.1210) reached similar conclusions to that of John Tuetonicus and the *Glossa Palatina*. Alanus' view of corporate liability mixes pragmatism with the shifting perspective of canon law from theology to Roman based jurisprudence. His opposition to Corporate theory was not as pronounced as other canonists. He agreed that the procedural difficulties of conducting a criminal trial against a corporate body prohibited such action, but he did not so readily distinguish between collective liability and individual guilt. Alanus advocated the use of *inquisitio* as a procedural mechanism for bringing about a trial of a corporate body, not necessarily because he believed that it offered a more individualising course for justice, but instead because it allowed for

the legal prosecution of a corporate body under canon law. Consequently, if guilt could be established the entire community was to suffer.[64]

At first it would be prudent to assume that Alanus believed corporate theory was a viable method of punishment. This picture, however, is somewhat confused by his phraseology. Alanus uses the phrase 'as happens in practice,'[65] to justify his belief in corporate responsibility. This offers scope to interpret Alanus' position as one of dogmatic pragmatism, reflecting a view with which he was, perhaps, not entirely comfortable with. The use of collective punishment was a common practice but little could be done to stop it, especially because it was sanctioned by the then Pope.

In sum Alanus' view of corporate theory can be broadly put into in the canonical approach deriving its stance from Roman jurisprudence. Alanus pointed to the procedural difficulties of conducting a trial and instead offered the process of *inquisitio* as a substitute for the proctor,[66] yet, he deviated from a fully Romanised position and argued that whilst guilt could be proven individually it led to collective liability. Ultimately Alanus' position is a confused one, accepting the new premise of Roman law but still holding the old canonical position, most likely reflecting the chronology of his writings ca.1210.

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[64] Alanus Anglicus on 1 Comp. 1.10.4 v. *accusandi,* Munich, Bayerische Staatsbibliothek Clm 3879, fol.9rb '*Quod universitas non potest accusari, et ar.* VII *q.i. Sicut vir, extra. Ne clerici vel mona. Solutio: Cum iuris sollempnitate non potest accusari universitas, sed ea omissa de delictis eius potest inquiri et, si et culpa inventa fuerit, puniri, ut extra. Ne cleri. Uel mo. c. penult., et ita sepe de facto. Vel hic exponatur accusare, idest agree. Similis expositio C. de edendo. Qui accusari*,'.

[65] Alanus on 1 Comp. 1.10.4 v. *accusandi,* Munich, Bayerische Staatsbibliothek Clm 3879, fol.9rb '*et ita sepe de facto,'.*

[66] Clarke, *The Interdict,* p.24.

Integral to this debate was the date at which each canonist approached the topic. As a general rule the later the date the more pronounced the effects of Roman jurisprudence are. Similarly, the death of Innocent III acts a useful demarcation point too, because canonists were wary about challenging their pope so directly during his lifetime. This can be evidenced by the polar views of John and Alanus when addressing corporate punishment. Alanus whose complete work predates John's by about five years (ca.1210) is more closely attuned to the Theological arguments of Innocent III and the traditional views of canon law, whereas, John's views lean more towards Roman jurisprudence and after Innocent's death, John's gloss of *Dilectus filius* (1217) fully exposed just how committed he was to incorporating individual criminal culpability into canon law.[67]

Indeed, it was John's arguments that were to have the greater impact upon the canonical discussion. Tancred of Bologna around 1220 was so convinced by the arguments of John that he simply copied John's gloss of *Dilectus filius* into his commentary of that ruling.[68] This did not, however, mean that Tancred was willing to whole heartedly embrace John's position. Tancred to some degree still accepted that corporate liability could implicate an entire community, if, after the process of *inquisitio* guilt had been established. Tancred allowed for the punishment of an entire community but stipulated that those in charge were to be more severely punished.[69] Tancred's view represents a harmonising of the opposed views of John and Alanus.[70] It is doubtful that Tancred set out to harmonise the views of the two previous canonists directly, especially

[67] See ft.27, Johannes on 3 Comp. 5.2.2 v. *officialibus* (http://faculty.cua.edu/pennington/edit501.htm).
[68] Tancred of Bologna on 3 Comp. 5.2.2 v. *officialibus,* BAV, Vat. Lat. MS 1377, fol. 262rb.
[69] Tancred on 3 Comp. 5.2.2 v. *officialibus,* BAV, Vat. Lat. MS 1377, fol. 262rb '*Ego dico quod licet universitas non possit accusari, potest tamen inquisitio de excessibus universitatis vel collegii fieri et canonice puniri, sed maiores gravius sunt puniendi, ut supra.'*
[70] Clarke, *The Interdict,* p.24.

given that Alanus is not cited, it is far more likely that Tancred simply agreed with the views of John and wished to more fully incorporate those into his own understanding of the topic. Tancred's position allowed for the use of corporate liability, but it was qualified and understood in ever more individualising terms. Yes, Tancred agreed, a corporate body did exist and could act and be punished accordingly, however, such actions were only possible through individual members and so an inquest was needed to establish individual guilt. The use of *inquisitio* was not a mere nod to the procedural necessity of canon law but a self-conscious drive towards reflecting Roman jurisprudence. Furthermore, when deciding upon the punishment of a community Tancred argued that blanket corporate liability was an imprecise mechanism as it punished all equally. Tancred, like John, argued for stricter punishments for the heads of a corporate body, whilst this may not be an obvious manifestation of individual criminal culpability, it still reflects to a larger degree than the views of Innocent III or Alanus, a recognition of criminal individuation.

The Canonist most influenced by Roman jurisprudence was Zoën Tencarius (ca.1230). Zoën relied heavily upon the teachings of Roman law when he expounded his view of corporate theory. To inform his opinion Zoën used exclusively Roman sources to discuss corporate liability and punishment. Zoën drew solely on excerpts from the Digest.[71] His argument started with a question acknowledging the theoretical and procedural difficulties of a corporate liability. Zoën questioned how a community could be punished if according to Roman law it was incapable of sin. The answer he felt lay in the attitudes

[71] Zoën Tencarius on 5 Comp. 5.18.3 v. *communitas,* Tours, Bibliothèque municipal MS 565, fol. 41rb.

of contemporary Roman lawyers towards corporate punishment.[72] Zoën used the writings of Pilius to argue that a community could indeed act through its leaders and furthermore that a community could sin through collective decisions, although such instances were rare.[73] Zoën also notes that he garnered such an opinion from his masters at Bologna, indicating just how ubiquitous the Romanising influence had become in legal circles both canon and secular.[74] Zoën's work more than any other canonist demonstrates how influential the ideas of Roman jurisprudence had become since Innocent III's death. This change in inspirational current was not absolute, after all, first and foremost Churchmen were precisely that, Churchmen. The change, however, was significant enough to produce radically differing views from that of theology, especially regarding corporate liability and punishment. If, we seek to try to comprehend just how dramatic a change this was, contrast the works of Gratian and Zoën. One relied solely on theology to produce his response to corporate theory, the other well versed in Roman law, saw no need to include such antiquated references in his work. Zoën's commentary did little to advance the Canonical discussion besides reinforcing the position already voiced by Tancred, what is truly remarkable about his work is the heavily Romanised way it discusses the topic.

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[72] Zoën on 5 Comp. 5.18.3 v. *communitas,* Tours, Bibliothèque municipal MS 565, fol. 41rb '*Sed quomodo est quod communitas punitur cum non intelligatur peccare posse? Quid enim municipes dolo facere possunt, ut ff. de dolo. Nam quomodo peccare qui non potest consentire? Et universitas non potest,ut ff. de libertis univer. L. una* [Dig. 38.3]*, ergo nec peccare, quare ergo punitur cum non debeat protendi pena quam reperiatur delictum, ut supra de hiis que fiunt a ma. Par. c. Quesitum, et accedti, supra de regula. Et trans. ad relig. e. Que §Porro lib. e. et C. de pensis Sancimus* [2 Comp. 3.9.2; 2 Comp. 3.18. Cod. 9.47.22].'

[73] Zoën on 5 Comp. 5.18.3 v. *communitas,* Tours, Bibliothèque municipal MS 565, fol. 41rb *'Respondent quidam et dictum Pi[lius] quod communitas intelligitur tunc demum peccare quando peccat is qui universitati preest, de cuius facto communitas facit….Raritatem notat in possibilitate, naturalis est enim hominum ad dissenciendum facilitas,'.*

[74]Zoën on 5 Comp. 5.18.3 v. *communitas,* Tours, Bibliothèque municipal MS 565, fol. 41rb, '*Quod et nostri senciut preceptores,'.*

Innocent IV had the most dramatic impact upon corporate theory in Canon law. Innocent irrevocably changed the way in which canon law practitioners understood corporate theory, by his favouring of individual criminal culpability over communal association.[75] Innocent IV through his ruling *Romana Ecclesia*[76] (1245) would resolve the issues that had plagued canon law, since Innocent III had brought them to the fore during his pontificate. *Romana Ecclesia* was then split into ten sections, which were included in the collection of Innocent's legislation known as the *Novelle*.[77] Placing them into the *Novelle,* indicated that he saw this decretal as having general legal force (a *lex*) and not just a response to issues in Reims archdiocese, from where it originated. From the *Novelle* it passed into the *Liber sextus*, a collection of canon law that Boniface VIII commissioned in 1296 and promulgated in 1298.[78] The *Liber sextus* was divided into five books, each covering a broad area of canon law (for example, canonical crime and punishment). Each book was further subdivided into sections called *tituli* (titles). The various parts of *Romana Ecclesia* were arranged under different titles according to their content. the part of *Romana Ecclesia* beginning *Ceterum* (hence *Romana Ecclesia: Ceterum*) concerned excommunication and so was included in the *Liber Sextus* under the title on that subject at VI 5.11.5 (Book 5, title 11, chapter 5). We shall not be dealing with that text directly. Instead, we shall examine *Apparatus in quinque libros Decretalium* (c.1251). The Apparatus is Innocent IV's commentary of the *Liber Extra*, a

[75] J. Dewey, 'The Historical Background of Corporate Legal Personality,' *The Yale Journal of* Law 35 (1926) pp.655-73, P.665, M. Koessler, 'The Person in Imagination or Persona Ficta of the Corporation,' *Louisiana Law Review* 9 (1949), pp.435-449, p.438.
[76] Innocent IV, *Apparatus in quinque libros Decretalium* (Frankfurt, 1570), 563vb-564va.
[77] I am indebted to Professor Clarke for his invaluable assistance and insight into the formulation of *Romana Ecclesia*. See, Clarke, *The Interdict*, p.11-12 for a brief discussion of the *Novelle* and *Liber sextus*.
[78] Clarke, *The Interdict,* p.12.

canonical collection promulgated in 1234 by Gregory IX, which also included his own legislation and commentary of it.

Romana Ecclesia: Ceterum banned the excommunication of a corporate body, although it was still permissible to use interdict in certain instances. This distinction stemmed from the varying severity of interdicts and excommunication. Interdicts were considered less severe than an outright excommunication, because an excommunication damned the soul for eternity cutting off the recipient from God's grace. This is reminiscent of Stephan Langton's opposition to the use of capital punishment in corporate cases, one will remember that his objection to the death sentence stemmed from his belief that only God had the right to take life. As a result of this, he considered the eternal punishment of souls beyond human justice.[79] It is arguable that the interdict was viewed as a quasi-temporal punishment, by at least Innocent IV, if not Canonists in general, because in his gloss of *Romana Ecclesia Ceterum* he stipulated that it was acceptable for either a fine or an interdict to be brought against a community if collective liability could be proven.[80] The distinction being made by Innocent IV pertains to a very distinct feature of Christian theology, that of the soul. Especially as it pertains to an individuality, and the medieval perception of that enduring *anima*.[81] The medieval conception of individuality was irrevocably bound to the soul,

[79] Anderson, *'*Bonaventure and the Sin of the Church*,'* pp.680-681.
[80] Innocent IV, *Apparatus* on X 5.39.53 *consiliarios*.
[81] See, D. McCann, *Soul Health Therapeutic Reading in Later Medieval England* (Melksham, 2018), pp.4-16; L. Boyle, 'The inter-conciliar period 1179-1215 and the beginnings of pastoral manuals,' in F. Liotta, *Miscellanea Rolando Bandinelli, Papa Alessandro III* (Siena, 1986), pp.43-56; J. Baldwin, 'From the ordeal to confession: in search of lay religion in early thirteenth century France,' in ed. P. Biller & A.J. *Minnis, Handling Sin: Confession in the Middle Ages*, (Woodbridge, 1998), pp.200-205. See also, M.W.F. Stone, 'The care of souls and practical ethics,' in ed. R. Pasnau, *The Cambridge History of Medieval Philosophy* (Cambridge, 2009), pp.531-533.

hence later canonists and theologians would use the ideas of Innocent IV to supplement their own musings on the topic.[82]

Moving back to *Romana Ecclesia: Ceterum*, Innocent IV stated in the body of the text that the law was designed to stop the imperilling of innocent souls.[83] Furthermore, in his own gloss of this ruling he stated that it was absurd for infants and absent members of a community to be bound by the same punishment.[84] A view which stemmed from his belief that a chapter was merely a conceptual term[85] and that a corporate body could act only via its members.[86] Innocent IV, was outlining a canonical position in which collective punishment was increasingly becoming redundant. Innocent IV's position not only stresses the importance of individual criminal culpability but did so in a pronounced moralistic manner.

Through *Romana Ecclesia: Ceterum* Innocent IV decisively set Canon law on a path of individual criminal culpability. *Romana* was the product of nearly two centuries of influence of Roman jurisprudence on society and from the turn of the thirteenth century canon law also. *Romana* did not fully expel the notion of collective punishment from

[82] There are two prominent Canonists who would directly reflect the teachings of Innocent IV. The first Hostiensis (d.1266) simply used Innocent IV's views to reinforce his own position. Hostiensis not only copied Innocent's argument directly into his work but furthered them adding excommunication could only apply to individuals because only individuals had souls. See, Clarke, *The Interdict,* p.27 Johannes Monachus, writing much later in 1303 simply condescend all of Innocent's argument into one succinct gloss on corporate theory. He merged the opinions found in *Romana* alongside that of Innocent's gloss of *Apparatus*, into a position which believed that a corporate body existed in name only and since excommunication could only bind a person, use of collective excommunication was a procedural impossibility. Johannes Monachus, *Glosa* on VI 5.11.5 V. *universitatem* (fol.402 va).
[83] Innocent IV, *Apparatus,* on Coll. III 40.
[84] Innocent IV, *Apparatus,* on Coll. III 40.
[85] Innocent IV, *Apparatus* on X 5.39.53 V. *consiliarios*, in this Innocent argued that the concept of a community, legally, simply represented the right to association not a legal actuality and therefore could not be accused of a criminal offence.
[86]Innocent IV, *Apparatus,* on Coll. III 40 v. *culpabiles*.

Canon law, but it facilitated the rise of *inquisitio* as process via which individual criminal culpability became a basis of medieval justice.

4.6 Conclusions

This chapter offers an alternate explanation for the growth of inquisition outside of the traditional narrative intertwined with the conflict evolving in the Languedoc during the early thirteenth century. Highlighting instead, how the use of *inquisitio*, especially in heresy persecution, stemmed from a need to reflect individual criminal culpability. The process of *inquisitio* established in the wake of the rejection of ordeal in 1215, produced for the church a new method of *occult* prosecution. *Inquisitio,* however, did not benefit solely from being the only method of prosecution able to conform to models of centralised justice. Inquisition also offered for the church a novel way in which to conduct trials, placing as it did individual criminal culpability at the fore of its judicial process. This individual criminal culpability was able to intertwine itself with the growing concern and canonical debate concerning corporate theory. After the death of Innocent in 1215 conditions had naturally aligned for the criminally culpable individual and the process of *inquisitio* to become natural responses to the problems canon law faced. It is worth noting that from a very early period *inquisitio* was seen as a viable alternative to the challenges canon law faced when confronting corporate responsibility. Alanus Anglicus in 1210 stated that *inquisitio* would be a prudent method for ensuring justice in corporate cases.[87] He found much agreement. All his peers; John Teutonicus, the anonymous author of the *Glossa* and Tancred concurred that *inquisitio* offered for the church a way to peruse individual criminal culpability. Later canonists do not stress this

[87] Alanus Anglicus on 1 Comp. 1.10.4 v. *accusandi*.

point specifically, but by then consensus had been achieved. Later canonists chose instead to engage with what was left of the theological position of corporate theory and stress that a starker appreciation of individual criminal culpability was still needed in Canon law. It is no accident that as a backdrop to the roughly thirty years between Innocent III's death (1216) and *Romana Ecclesia: Ceterum* (1245) the Inquisition found itself at the fore front in the fight against heresy in the Languedoc. The proceeding chapter will discuss the initial character and nature of inquisitio, through the inquests of two men Robert le Bougre (1235-1244) and Conrad of Marburg (1231-33), as it became the institution of Inquisition through various regional councils, which codified the ethos of individual criminal culpability directly into anti-heretical Canon law.

5.0 Regional Councils

The Rhine is alight with pyres. In Champagne the cries of the guilty echo amongst the crowds transfixed by the purifying flames. Religious fervour straddles the Rhine in the form of two men, Robert le Bougre (1235-1244) and Conrad of Marburg (1231-33). Both of these men were given the powers of an Inquisitor to 'proceed everywhere throughout the kingdom of France against heretics with prelates'[1] and purify the lands of Christ. Robert began his inquisitorial duties in 1235 in north-western France at Châlons-sur-Marne. His first moment of historical infamy dates from 1236, where on the first Sunday in Lent he presided over the burning of twenty-one heretics at Douai. Robert's inquisitorial activities were eventually ceased in 1244 when Innocent IV ordered his arrest.[2] Conrad of Marburg's inquisitorial career was far bloodier and brief. Conrad was chosen by Gregory IX in 1231 to prosecute heresy in the Rhineland, a task he enthusiastically embraced. A detailed account of Conrad's inquisition is lacking, however, the German Chroniclers paint a particularly brutal picture of his inquisitorial duties. Ultimately, Conrad was assassinated by aggrieved family members of those he sought to prosecute in 1233.[3]

The litany of their justice will be described in greater detail below to capture, in some small measure, how they became legal authorities without remorse or consequence. How ultimately the head of the catholic faith, God's representative

[1] Gregory IX, *Dudum ad aliquorum murmur*, August 21 1235, A. Potthast, *Regesta pontificum Romanorum* Vol.1 (Graz, 1957), n.9993, p.107, '*qui per universum regnum Franciae passim contra haereticos cum praelatorum et aliorum fratrum religiosorum consilio procedant,*'.
[2] C. Haskins, 'Robert Le Bougre and the Beginnings of the Inquisition in Northern France,' *The American Historical Review* 7 (1902), pp.631-652, pp.634-640.
[3] K. Sullivan, *Medieval Inquisitors* (London, 2011), pp.75-98.

on earth, sanctioned and supported the systematic prosecution and punishment of countless individuals whose guilt was uncertain.

This form of prosecution was well beyond the limits of the emerging principles of Canon law. The procedure of these early inquisitors would present canon law with a complex set of questions, which would come to be answered through a greater procedural and legislative rigour, focussed upon individual criminal culpability. The Inquisition would establish itself through a series of regional councils, which would irrevocably unite the process of *inquisitio* to the prosecution of heresy forming the Inquisition. The procedures established would place the individual defendant at the fore of heretical prosecution. The screams of heretics would still be heard throughout Christendom in the decades after 1240 but the procedural ethos that placed them there was radically different. It is a hard question to answer, whether this shift in procedural ethos was better? Afterall, people were still dying for daring to think differently.

5.1 Robert le Bougre

On the twenty first of August 1235, Gregory IX reinstated *inquisitio* with a bull, *Dudum ad aliquorum murmur*, addressed to the provincial prior of the Dominican order in France. Further letters were also dispatched to the Archbishop of Sens and Robert le Bougre.[4] These men were called alongside, 'prelates and members

[4] *Dudum ad aliquorum murmur* can be found in multiple versions in Potthast, Vol.1 p.107. See, n.9993 for the version addressed to the Provincial Prior, n.9994 for the version delivered to the Archbishop of Sens and n.9995 for Robert's bespoke letter.

of other religious councils, [to] proceed everywhere throughout the kingdom of France against heretics.'[5]

In the letter addressed to the Archbishop of Sens, the term inquisition is specifically used. It is made clear to the Archbishop that whilst his co-operation is necessary, the main inquisitorial role will belong to the Preaching friars.[6] Most strikingly, these bulls are surprisingly brief, each no greater than three-hundred words, and do not innumerate, in any great detail, the specific heresies Gregory wished to combat, nor specifically do they address the way in which the process of inquisition should operate.

As was the case with Innocent III, when declaring the interdict upon England (discussed above), it seems incredible that a series of letters so significant could be so brief. One answer this question of brevity, may lie in the influence of the behavioural immune system. Behavioural immune theory argued for a general trend that as the twelfth century progressed, heretical crime became ever more 'actionable' rather than belief led.[7] Behavioural immune theory suggests, this was because actions, rather than thoughts, stimulate the disgust responses. More explicitly, it was the actions of heretics that disgusted church members, rather than the actual heresy that motivated their actions. Hence, Gregory was not overly concerned with which heresies were being committed but simply that

[5] Gregory IX, *Dudum ad aliquorum murmur*, August 21 1235, Potthast, Vol.1, n.9993, p.107, '*qui per universum regnum Franciae passim contra haereticos cum praelatorum et aliorum fratrum religiosorum consilio procedant.*' The letter addressed specifically to Robert can be found at, Gregory IX, *Dudum ad aliquorum murmur,* August 23 1235, in Potthast, Vol.1, 9995, p.107.
[6] Gregory IX, *Dudum ad aliquorum murmur,* August 22 1235, in Potthast, Vol.1 9994, p.107, 'ac per alios fratres Praedicatores procedat in inquisitionis negotio,'.
[7] L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011), p.100.

there was such a thing as heresy. This effect would be particularly prevalent, because by the 1230s the metaphor of heretical disease was well established. Therefore, any report in the bull of heresy could trigger a disgust response in the mind of the reader.

It is possible Gregory did not detail the exactitudes of *inquisitio*, because of the juncture between the process of *inquisitio* and the role of Robert as an inquisitor. This aperture between the theoretical process, which had initially been conceived as a response to the lacuna left by the rejection of ordeal, and the process of Episcopal inquisition was finally coming to an impasse, as a more stringent legal process developed to punish heresy. The long-standing Episcopal inquisition, the first formulation of an *inquisitio* process, was having to confront the greater demands of expanded anti-heretical legislation.[8] To compound this problem, the more radical form of the process of *inquisitio,* as outlined by the eighth Canon of the Fourth Lateran (1215),[9] began to be viewed as *de rigueur* by both Canonists and the Papal Curia.[10] There are three factors here, the new

[8] See, I. Bueno, *Defining Heresy Inquisition, Theology and Papal Policy in the Time of Jacques Fournier* (Leiden, 2019), *trans*. I. Bolognese, T. Brophy & S.R. Prodan, pp.15-30, for an interesting account of how Episcopal inquisition continued to function into the fourteenth century. Especially, for how it negotiated the competing claims of the Inquisition and secular justice.

[9] See above section '3.7 Replacing Ordeal: The Road to Inquisition,' for a fuller discussion of this new process. See also, H.A. Kelly, 'The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy' in ed. D.S. Prudlo, *A Campion to Heresy Inquistions* (Leiden, 2019), pp.75-107. Equally, here I have used the word radical whereas it may benefit the reader to picture this canon as more novel than radical. Either way there was certainly something original about this legalistic approach to *inquisitio* and its mode of proof.

[10] The distinction between these two groups by our period is questionably blurred. If we think about the dividing nature outlined in the previous chapter between Papal sanction and canonistic thought, we can make a reasonable argument that there were sufficient differences between canonists, especially glossators who we should consider as the elite thinkers, and those at the Papal court. As we move into the thirteenth century, however, such a distinction becomes less apparent, particularly because Popes themselves became more appreciable of canon law, if not outright canonists. Equally important to this assessment would be the growing recognition that the Curia itself became inundated with skilled canonists. See, section 3.3 'Innocent III: Corporate Theory in Practice' above for a more detailed analysis of this transition.

process of *inquisitio*, a growing anti-heretical legislation and the older episcopal form of inquisition that were aligning to create circumstances via which Robert could operate as an inquisitor, yet his activities did not constitute an Inquisition.

Put simply, Gregory did not provide huge amounts of detail because it did not occur to him that an inquisition would require such procedural minutiae. It becomes clear that there was a striking disparity between the older Episcopal nature of inquisition, and the more fleshed out process of *inquisitio* detailed in canon 8 of the Fourth Lateran. Gregory probably envisaged Robert's mandate to be more like the older Episcopal format. Robert, however, would use the more recent legislation of canon eight. This confusion not only created friction between the Pope and Robert but also with the growing corpus of anti-heretical legislation and Romanising influence upon canon law.

In sum, when writing to the three men, Gregory most likely believed that there was a consensus of understanding as to what form *inquisitio* would take, a blend of the older Episcopal with the *inquisitio* of canon eight. This would be manifest in the form of Robert, whose sole duty would be to discharge the role of inquisitor, unlike his episcopal counterpart, whose attentions and time lay elsewhere. Gregory had not, however, accounted for just how sparse such legislation was, especially when regarding procedure.[11] This was in turn exacerbated by how far it lagged behind the anti-heretical legislation it was designed to complement. As a result, we see over the 1230s and 40s an explosion

[11] K. Pennington, 'Due Process, Community, and the Prince in the Evolution of the Ordo iudiciarius', *Rivista internazionale di diritto comune* 9 (1998), pp.9–47 and 'Innocent Until Proven Guilty: The Origins of a Legal Maxim' *The Jurist* 63 (2003), pp.106–124.

in Canon Law, designed to more fully unite anti-heretical legislation and the process of *inquisitio*. It is possible to make this a microcosm of my thesis, with the caveat that the formation of this procedural unification was a recognition of individual criminal culpability. I am, however, aware of the natural deficiency of staking such a claim on the rather slender evidence that Gregory fails to describe *inquisitio* in any meaningful way.

These letters were the impetus for Robert le Bougre to begin nearly a decade of inquisitorial activity, the legacy of which is one of blood and burnings. Robert began to 'extirpate the heretical depravity,'[12] in Châlons-sur-Marne, a small town near Cambrai, where Pieron Malkasin, Matthieu de Lauvin, and Robert de Lauvin were resigned to the flames. Later at Heudicour four seigneurs (lords) were sentenced to death. [13] Robert's career as an inquisitor, up to this point had been relatively mediocre, the deaths of seven persons barely scratched upon the thousands who were pitilessly massacred at Béziers. Robert, however, would soon carve out an infamous name for himself on the first Sunday of Lent in 1236 where, at Douai, twenty-one people were condemned as heretics, eighteen more were imprisoned and three, more fortunate, were condemned to wear a cross of yellow demarking them as repentant criminals.[14] His inquest resumed two weeks later on March second, when at Cambrai ten heretics were burnt in the presence of the Countess of Flanders, the archbishop of Rheims, and the

[12] Gregory IX, no. 1253. in L. Auvray, *Les Registres de Gregorie IX Recueil des Bulles de ce Pape* Vol.1 (Paris, 1896), p.708-709.
[13] Philippe Mousket, *Chronicle of Mousket* Vers.28964-28965, in Frédéric-Auguste-Ferdinand-Thomas, baron de Reiffenberg*, Chronique rimée de Philippe Mouskes, publiée par le baron de Reiffenberg…* Volume 2. (Brussels, 1836-38), p.610.
[14] Philippe Mousket, *Chronicle of Mousket* Vers.28870-29025 in Reiffenberg*, Chronique rimée,* p.610

bishops of Arras, Cambrai, and Tournai. Robert progressed through Lille, Ascq, Lers, and Toufflers. We cannot know an exact number of how many people were brought to ultimate justice, but a figure in the low teens seems likely. Haskins places the figure at 'a score.'[15] After three months, Robert had overseen prosecutions in a large swathe of Northern France, resulting in the deaths of around fifty people.[16]

Robert's inquisitorial duties would continue for around a decade but reports of his activities are confused.[17] Certainly in 1239, at Mont-Aimé, nearly two hundred Cathars are reported to have been released to the secular arm, yet we know little more than this. Robert's inquisition was only stopped by his eventual imprisonment, in 1244, called for by, no lesser person thanPope Innocent IV. Mathew Paris explained that, 'great numbers of innocent people were infatuated by him and then handed over to their death.'[18] Robert's inquisitorial career had begun with papal blessing, ending in papal ignominy. An obvious explanation for the demise of Robert would be the transition in papal office from Gregory IX to

[15] C. Haskins gives an appraisal of the sources in his 'Robert Le Bougre and the Beginnings of the Inquisition in Northern France' in *The American Historical Review* 7 (1902), pp.631-652, p.634. See specifically p.632, ft.3. In the text itself he places the figure at 'a score,' p.634. See also, D. Traill, 'Philip the Chancellor and the Heresy Inquisition in Northern France, 1235-1236' *Viator* 37 (2006), pp.241-254, pp.243-244.

[16] Haskins, 'Robert Le Bougre,' p.634.

[17] Haskins, 'Robert Le Bougre,' pp.634-5, detailing the sources and associated problems. See, M. Lower 'The burning at Mont-Aime: Thibaut of Champagne's preparations for the Barons' Crusade of 1239' *Journal of Medieval History* 29 (2003), pp.95-108 for a history that details the involvement of the secular authority in greater detail. Lower's work is more revisionist in tone, but it does raise some crucial issues surrounding the necessity of secular authority in facilitating the prosecution of heresy, especially their involvement in carrying out the death penalty.

[18] Mathew Paris*, Chronica Majora* in H. R, Luard, *Matthaei Parisiensis, Monachi Sancti Albani, Chronica Majora* (London, 1882), p.520 '*Tandem abutens potestate sibi concessa, et fines modestiae transgrediens et justitiae, elatus, potens, et formidabilis, bonos cum malis confundens involvit, et insontes et sim plices punivit. Auctoritate igitur papali jussus est praecise ne amplius in illo officio fulminando desaeviret. Qui postea, manifestius clarescentibus culpis suis, quas melius aes timo reticere quam explicare, adjudicatus est perpetuo carceri mancipari.'* Mathew also explains here how a letter of Papal anger resulted in the arrest of Robert and his ultimate imprisonment.

Innocent IV. Indeed, there is certainly a cosmetic cogency in such an assessment, however, it fails to examine the underlying differences between the two Popes. That is to say, the transfer of power between the two men was crucial, but it was symptomatic of an underlying current, which was their respective attitude towards corporate responsibility. The previous chapter detailed the views of Innocent IV concerning corporate theory, and how he privileged the rights of the individual over the need for punishment. Innocent by imprisoning Robert further demonstrated his individualising attitude. Robert's style of inquisition became unpalatable to Canonical tastes not because of the enthusiasm by which he operated but because it did not conform to the new rationale of individual criminal culpability.

5.2 Conrad of Marburg

Conrad of Marburg's record of prosecutions exceeds that of Robert and his downfall was far bloodier and more dramatic.[19] We lack a detailed narrative of Conrad's inquisition.[20] There are an abundance of sources that can give a strong impression of the nature of Conrad's inquisition, yet these fail to provide an itinerary of his specific actions.[21] The sources left to us do, however, provide a rather thrilling account of Conrad's downfall and the resultant aftermath. Conrad's story manages to resonate so strongly with readers because his life is

[19] See, M. Bailey 'Conrad of Marburg' in *Encyclopaedia of Witchcraft: The Western Tradition*, 3 Vols. Vol.1 (Santa Barbara, 2006), pp.208-209 for a brief biography of Conrad and his inquisitorial record.

[20] K. Sullivan, provides a rather detailed account in *The Internal Lives of Medieval Inquisitors* (London, 2011), pp.75-98, but even she can provide no more detail than that 'untold numbers burn at the stake' p.76.

[21] Sullivan provides an exhaustive list in *The Internal Lives*, p.233, which is ft.5, from the main text. A potted summary of her research is: we have a single written account of Conrad's own work detailing his relationship to St. Elizabeth of Hungary. No less than seven chronicles, numerous letters, the most significant of which are from and to Gregory IX, and some accounts of the life of St. Elizabeth.

synonymous with the archetypal villain. This impression is reinforced by the rather striking visage of one of his companions and fellow inquisitor John. John was visibly disfigured, having lost an eye and hand.[22] Such a maleficent caricature, no doubt, stems from the German chroniclers, who wished to provide an adequate defence of Conrad's demise. This should not, however, denigrate the very real persecution, terror and, ultimately, death experienced by the peoples of the Rhine. I have refrained from using the word murder to describe the executions that took place. There was, after all, a semblance of legitimacy to his burnings, not least in the fact that he relied on secular authority to conduct his sentences.

Before moving onto to discuss the legal premises that help inform our discussion, is it worth exploring the historically contested nature of Conrad of Marburg. Contemporary accounts of Conrad fall into three broad categories with two divergent aims. Broadly, the sources divide into two camps, firstly, the chroniclers and secondly, the saints' lives and letters. Chroniclers and chronicles like the *Annales Colonienses Maximi,* Alberic of Trois-Fontaines *Chronicon, Annales Wormatienses, Gesta Treverorum, Annales Erphordenses,* provide for us a basic chronology of events.[23] Polemically, these chroniclers stress the heinous nature of Conrad and point to his many injustices. This is a deliberate tactic of defamation designed to justify his assassination. As argued above, if Conrad was

[22] Sullivan, *The Internal Lives*, p.76.

[23] Alberic of Trois-Fontaines, *Chronicon* in *Monumenta Germaniae Historica Scriptores* 23, *Annales Wormatienses* in MGHS, 17, *Gesta Treverorum* in MGHS 24, *Annales Colonienses Maximi* in MGHS 18, *Annales Erphordenses Fratrum Praedicatorum* in O. Holder-Egger, *Monumenta Erphesfurtensia* saec. XII. XIII. XIV, in Scriptores rerum Germanicarum in usum scholarum ex Monumentis Germaniae Historicis separtim editi (Hannover and Leipzig, 1899).

a villain, it would only be right for the German people to stand against him and his inquisitorial band. This group is opposed to the Saint's lives like the *Vita San Elyzabeth Lantgravie* and the *Processus et ordo canonizationis Beate Elyzabet propter quorumdam detractiones et calumpnias*. These texts positively rejoice in his draconian nature and unwavering penitential philosophy. To those who St. Elizabeth was a worthy of veneration, Conrad was a necessary evil in that veneration. Conrad was so formative to the figure of Elizabeth as a Saint that his character was indispensable. It is interesting that broadly the sources agree upon the events attributed to him, what is being contested is his character. Where the *Vita San Elyzabeth* praises his strictness, the *Colonienses Maximi* sees his uncompromising nature as directly contributing to his murder.[24] The dichotomy is simple but telling. Historiographically Conrad has been firmly cast as a villain.

There is a powerful resonance in understanding that none of Conrad's penitents were brought to the flames unlawfully. There is certainly a case to be made that Conrad acted *ultra vires* or with a skewed legal procedure, but it would be a very difficult legal prosecution to define his actions as murder. Conrad's heretics were burnt with the blessing of the nobility, no matter how tacit that consent was. As to the appropriateness of this to understanding inquisition, it raises some troubling indictments of law and human morality, which are undoubtably legacies of the legal transformation of the long twelfth century.

[24] *Annales Colonienses Maximi,* 843, '*nullum locum venie vela apud ipsum invenietibus, iuxta Marburg est occisus,'.*

A core narrative of transformation within this thesis is this long twelfth century, specifically the transformation of law. We addressed above how the English language has been so affected by the victory of the medieval states when conceptualising law, that today it is axiomatic to conceptualise the law as a *lex*.[25] Conrad's role as an inquisitor is, however, a useful illustrative tool to explore precisely how this battle of long twelfth century was won. When, canonists of the high middle ages ruminated upon the nature of the law, they found as a basis three Roman legal terms, as a *lex*, a *mos* or a *jus*.[26] Below, we explore in great detail how the *jus* and the *lex* competed with one another in the case of Conrad. Here I feel it best to reflect, briefly, how the law operated as a *mos*. The *jus* and the *lex* were (and are) understood as reflections of human authority. The written word needs power to be enacted and the will of the people is self-evidently an expression of common power. The *mos*, however, has an abstract authority operating outside the prescribed boundaries of what is, or is not, permissible. The *mos* has a claim to obligate people beyond authority. A law constructed by a *mos* will view actions as either licit or not. This is what makes the case of Conrad so intriguing.

Do we feel abhorrence for Conrad because killing is wrong (a principle derived from a *mos*)? If so, then we deploy a position almost unworkable when constructing society. A harsh reality reflected within medieval polities. Medieval culture, if the reader will permit the use of such a concept, facilitated the use of

[25] K. Pennington, 'Between Naturalistic and Positivistic Concepts of Human Rights' in eds. S. Grodziski, D. Malec, A. Karabowicz and M. Stus *Vetera Novis Augere: Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi* (Krakow, 2010), p.832.
[26] K. Pennington, '*Lex Naturalis* and *Ius Naturalis*' *The Jurist* 68 (2008), pp.569-591, pp.569-575.

capital punishment in many forms.[27] Medieval society actively gloried in warfare.[28] Why then, was this instance so unpalatable to certain sections of medieval society? Was it, the scale of the killings, the targets, or method used to bring the victims (guilty) to their deaths? Clearly the answer is larger than the simple denying of the principle posed above. Killing may be wrong, but it is necessary in some instances. The questions Conrad's *inquisitio* raises, are where and who should draw the boundaries. For a canonist, the questions posed by the *mos* were only answerable through the *lex* and the *jus*. Conrad's story is a working out if precisely how these complex legal ideas manifest themselves in political discourse.

5.2.1 *Excommunicamus*: The Anti-heretical Legislation of Gregory IX

Gregory IX gave his blessing to the inquest of Conrad through a papal bull dated, eleventh of October 1231. It urged Conrad to 'find guilty and defamed persons…[and] proceed against them in accordance with statutes recently

[27] See, G. Coulton, *The Death Penalty for Heresy: from 1184 to 1921 A.D.* (London, 1924) and J.J. Megivern, 'Capital Punishment: The Curious History of Its Privileged Place in Christendom,' *Proceedings of the American Philosophical Society* 147 (2003), pp.3-12, for a concise history of capital punishment in Christian theology. Especially, p.5 for a discussion addressing the need of capital punishment stemming from heresy. Interestingly, one of the first recoded events of Christian leaders permitting execution resulted from doctrinal issues, p.4. Also, E. Dutton & G. Maddison, 'Execution and Violent Punishment and Selection for Religiousness in Medieval England,' *Evolutionary Psychological Science* 4 (2018), pp.83-98, p.83 & pp.84-85, this explores why societies might turn towards a use of capital punishment and J. Baker & S. Brookes, 'Outside the gate: Sub-urban Legal Practices in Early Medieval England,' *World Archelogy* 45 (2013), pp.747-76, pp.760-761 and J. Coolen, 'Places of Justice and Awe: The Topography of Gibbets and Gallows in Medieval and Early Modern North Western and Central Europe,' *World Archeolgy* 45 (2013), pp.762-779, pp.773-774 for a discussion of the fundamentally visible nature of Medieval Capital punishment.

[28] See, N. Saul, *For Honour and Fame Chivalry in England, 1066-1500* (London, 2011), pp.178-182; M. Keen, *Chivalry* (London, 1984), p.219; R.W. Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford, 2001), pp.163-165.

promulgated against heretics.'[29] This bull of 1231, is slightly more detailed than those received in France (1235). This greater detail, however, comes only from the refence to other anti-heretical legislation, the formulation of Conrad's remit is, once again, remarkably similar to the instructions given to Robert. Both men were told simply to 'proceed against the heretics,' once again, demonstrating how the disparity between procedure and legislation facilitated moral and legislative ambiguity in which unregulated passion could produce tyranny.

The anti-heretical legislation Gregory wished Conrad to make use of was undoubtedly *Excommunicamus* dating from February earlier that year (1231).[30] *Excommunicamus* is an interesting source and better typifies some of the ideas explored above, namely the disconnect between procedure and legislation. *Excommunicamus* fell within the growing corpus of anti-heretical legislation, which had been emerging in canon law, since the council of Toulouse (1119). Specifically, this legislation was designed to disrupt the everyday practices of heretical life, attacking not only the heretics but the networks upon which they relied.

With this goal in mind, the third canon of the council of Toulouse (1119) speaks of *defensores* of heretics.[31] It is an ambiguous term but we can see here the crystallisation of the categorisation needed to combat heresy. Twenty years later, at the Second Lateran (1139), this understanding of heretical division was

[29] Gregory IX, *Epistola* 11th October 1231, in J. Kuchenbecker, *Analecta Hassiaca* (Marburgi, 128-41), 3:73 '*culpabiles et famatos inveneritit… procedatis contra eos iuxta statua nostra contra haereticos noviter promulgata,*'.
[30] Gregory IX, *Excommunicamus* February 1231, 539 in Auvray, *Les Registres de Gregorie* IX, p.351-352.
[31] Mansi, XXI, Col.226-7.

once more affirmed as the twenty third canon of that council.[32] The council of Tours (1163) introduced new heretical categories, but they were still vague, when compared to those established by the council of Tarragona (1242). At Tours the notion of a *participes* was first articulated in canon law (those who shared or participated in heresy). They did this, however, not by an obstinate belief in error, but by allowing heretics onto their property.[33] Therefore they were not observing the communal ban upon the heretics. Arguably this use of communal exclusion, could be viewed as a manifestation of the behavioural immune system because there is a conceit that the perpetrators of this crime were not directly heretics themselves. The legislation is written more to maintain the boundaries between the pure and the corrupt, than directly punish those culpable of heresy. Legislation designed to categorise heresy had its roots in the council of Toulouse (1119). It would be most explicitly outlined and recognised, however, at the council of Tarragona (1242). The distinctions made by canonists, at this early stage of anti-heretical legislation, were designed more to facilitate the punishment of persons who supported heretics, than recognise individual criminal culpability. Only after serious engagement with corporate liability and punishment was undertaken by canonists did anti-heretical legislation stratify and codify heretical categories.[34] Hence the vagueness and relative sparseness of categories established by these early councils.

[32] Mansi, XXI, c.532.
[33] Mansi, XXI, c.117-1178 '*ne receptaculum quisquam eis in terra sua prebere aut presidium impertire presumat…tanquam particeps inquitatis eorum.*'
[34] P. Clarke, *The Interdict in the Thirteenth Century* (Oxford, 2007), p.22.

Arnold points to the significance of three pieces of canon law, in particular. These were, *Ad abolendam* (1184), *Vergentis in senium* (1199) and the Fourth Lateran (1215). He argued, these rulings created the conditions necessary for the prosecution of heresy in the Languedoc by the inquisition (N.B. Arnold uses the lower case, inquisition. I do not).[35] Certainly, the legislation included in these canons signified an awareness of the growing threat of heresy that the church perceived as the long twelfth century drew to a close. Such legislation, however, was concerned more with punishment than procedure. This is not surprising; most laws concern the regulation of societal norms not the operations of their legal system. This caused a problem, however, when it emerged alongside the changing nature of medieval proof and court procedure arising after the rejection of ordeal.[36] *Excommunicamus* is a relatively lengthy bull, with just over eight hundred words, but its detail is necessary to outline how heretics and those relating to them were to be punished, rather than outlining how that guilt was to be decided. The bull provides no greater detail, as to how this procedure will operate than stating, 'those who are found to be truly guilty by the church ought to be relinquished to the secular arm observing the appropriate punishment,'[37] yet it categorises with great care those who could be prosecuted.

These categories of prosecution demonstrate a theoretical approach to individuation, yet to be explored in this thesis. Throughout the thesis, it has been argued, the driving force of the inquisition was a recognition of individual

[35] J. Arnold, *Inquisition and Power* (Philadelphia, 2001), pp.29-31.
[36] R. Bartlett, *Trial by Fire and Water* (Oxford, 1999), pp.141-143, for a discussion of medieval proof and *inquisitio*.
[37] Gregory IX, *Excommunicamus*, '*Dampnati vero, per ecclesiam seculari iudicio relinquantur animadversione debita puniendi,'.*

criminal culpability, and that one of the more obvious examples of this individuality was the categorisation and expanding definitions of heretical crime. That is, as the Church became attuned to peoples' individual criminal culpability, it began to legislate recognition of this. Such recognition fundamentally stemmed from a belief in individual guilt, but additionally there was a tremendous functionality in defining these categories, because it facilitated the prosecution of all levels of heretical networks. Canon law had long defined heresy as the obstinate belief in false doctrine.[38] It would have been very difficult to change that definition, to reflect more contemporary needs. Equally, the Albigensian Crusade had made it clear that anti-heretical legislation could not adequately break heretical networks, and mass slaughter ran counter to the new individualising maxims of church thought.[39] As a result, the best way to criminalise heresy and the networks, which supported it, was to simplistically expand the definition of heretical crimes. The new heretical categories demonstrate both individuality and functionality in law. These two things were not separate, because individuality produced the categories, but they certainly have a distinctness that should be appreciated.

Equally, behavioural immune theory can help explain why these definitions are action based and generalised rather than defined through thought.[40] This idea has been introduced before, but can now be better maped this onto our source base. The bull begins with the standard formulation listing all the heresies the

[38] Sackville, *Heresy and Heretics,* p.190.
[39] See above section '3.6 Paradigm Shift: The Triumph of the Individual'.
[40] Sackville, *Heresy and Heretics,* p.100.

bull would hope to counter. These included, 'Cathars, Patarenes, the Poor of Lyon, Passagines, Joseppines, Arnaldists, Speronists.'[41] Indicating that Gregory, clearly, had some specific concrete stimulus in mind, when he formulated this bull. The bull, however, unites these heresies in a generalised way. It has been noted, by Sackville that the imagery of disgust seems to bind diverse heretical groups together.[42] Behavioural immune theory would suggest, Gregory cannot divorce the disparate groups because they are capable of triggering his disgust response. They all commit heretical acts, therefore, they are all disgusting and fall under the same behavioural immune response, as can be seen in this bull, which seeks to deal with them all, as a systemic whole.

Gregory extended the provisions of the bull to all 'others by whatever name they are known; indeed their appearances are different, but they are united by their false beliefs, with their tails tied to each other.'[43] Conceptually the problem was not with the specific heresies themselves, but that heresy existed at all. The heretics were indeed united by their false beliefs, but only in the minds of the Church elite because they stood in opposition to Catholic purity. The system of persecution emerging, in the thirteenth century, was founded upon the behavioural immune system. Societal disgust sensitivity and conformity to the operation of the behavioural immune system was heightened through pathogen stress. This is demonstrated through Conrad's inquisition because his remit was

[41] Gregory IX, *Excommunicamus*, '*Catharos, Patarenos, Pauperes de Lugduno, Passaginos, Joseppinos, Arnaldistas, Speronista,'.*
[42] Sackville, *Heresy and Heretics,* p.199.
[43] Gregory IX, *Excommunicamus*, '*alios quibuscumque nomnibus censeantur; facies quidem habentes diversas, sed cuadas ad invicem colligatas de venitate conveniunt in id ipsum.*' Note the use of the metaphor of the 'tails being tied together,' this was a well-established trope by Gregory's pontificate. See, '1.6,2 *Cum Unnus Dominus* (1198)'.

not to operate against the named heretical groups in *Excommunicamus*, because such groups did not exist in the Rhineland. Instead, his inquisition was directed against a general sense of heresy. The operation of the behavioural immune system managed to homogenise heresies into behavioural abnormalities that were simply not Catholic. The behavioural immune system motivated Gregory IX,[44] and his bureaucratic persecutor Conrad,[45] to prosecute those who could trigger a disgust response. What we see in *Excommunicamus* is a formulation of precisely what degree of behavioural action was required to trigger the behavioural immune response.

In *Excommunicamus* Gregory organised his categories into deviations from behavioural norms and their consequential punishments. He started by equating believers of heretics with the heretics themselves. The formulation ran, 'similarly, we pass judgment on those who believe in heretics or their errors. (That is, supporters of heretics would be subject to the same punishment as the heretics themselves.)'[46] Gregory was so disgust sensitive that in his mind simple followers of heresiarchs were as polluting as the heresiarchs themselves. Therefore, they deserved to be eradicated in the same way, through burning. Gregory's threshold of disgust did not stop at those who could confidently be defined as heretics. He extended his desire for purity to those whose relationship to incorrect doctrine, through choice, was oblique at best. This broad category of actionable association became defined as 'those who conceal, defend, or

[44] See above my discussion of *Vox in Rama,* '1.7 Gregory IX Vox in Rama,' for a fuller explanation Gregory's disgust response to heresy.
[45] Sullivan, *The Internal Lives*, p.76.
[46] Gregory IX, *Excommunicamus*, '*Credentes autem eorum erroribus hereticos similiter judicamus,'.*

honour heretics' who, if found guilty, would be 'subject to the sentence of excommunication.'[47] Gregory's disgust sensitivity was so high that it engorged his conception of heresy and what he determined as an appropriate punishment for it.[48] It is interesting that Gregory's punishment and categorisation of heresy may have been so extreme, simply because he was more disgust sensitive. Gregory's categories of heretical crime do display an individualising ethos and approach to justice, although, the graduations of punishment do not to the same degree. Excommunication from the Catholic faith is Gregory's standard punishment. Conceptually, Gregory wished to isolate all those he thought of as diseased from his pure in-group.

There is evidence to suggest that Gregory was not completely unattuned to the contemporary debate of Canonists, concerning individual guilt. *Excommunicamus* does outline a procedure for those to whom great suspicion would attach, but guilt could not be established. Gregory tried to formulate a working procedure that could establish guilt to his desired threshold of suspicion, which due to a higher disgust sensitivity was markedly lower than other Popes, let alone Canonists. This stipulation was expressed as,

> 'those who are found to be infamous only on suspicion, unless following consideration of the suspicion as well as the quality of the person, they demonstrate their innocence by a fitting penance, shall be struck with the

[47] Gregory IX, *Excommunicamus*, '*Item receptatores, defensatores, futores hereticorum excommunicationis sententie dicernimus subjacere,'.*

[48] There is interesting research between disgust stimulus and harsh moral punishments. See, Y. Inbar, D. Pizzaro and P. Bloom, 'Conservatives are more easily disgusted than liberals' in *Cognition and Emotion* 23 (2009), pp.714-725, p.723.

> sword of anathema, and are to be shunned by all until they make appropriate satisfaction. If this shall continue until they have persisted in their excommunication for a year, from then on they are to be condemned [as] heretics.'[49]

The formulation of this final category is unusual, to say the least. The logic behind it seems evident, the Pope was sure that heretics existed, but they would surely avoid prosecution if the law could not establish their guilt. Hence, notable suspicion could condemn them, if the prosecuted party could not prove themselves innocent. This procedure may seem like that of *inquisitio*, but it is not, at least not in the traditional canon legal sense. There could be an argument that this was Gregory's interpretation of *inquisitio* and that certainly as Pope (Ulpian's *Princeps*) he had the right to abrogate and derogate laws, even to the point of bringing about prosecution relating to *fama*. [50] In *Excommunicamus*, however, there are some crucial differences to the way *fama* relates to procedure and proof.[51] Firstly, Gregory chooses not to use the word *fama*, but prefers instead the term '*suspicione notabiles*'. Such a legal distinction is subtle

[49] Gregory IX, *Excommunicamus*, '*Qui autem inventi fuerint sola suspicione notabiles, nisi juxta considerationem suspicionis qualitatemque persone propriam innocentiam congrua purgatione monstraverint, anatematis gladio feriantur et usque ad satisfactionem condignam ab omnibus evitentur ita quod, si per annum in excommunicatione perstiterint, extune velut heretici condempnentur,'.*

[50] See, C. Morris, *The Papal Monarchy the Western Church from 1050 to 1250* (Oxford, 2001); R. Bartlett, *The Making of Europe: Conquest, Colonisation and Cultural Change 950-1350* (St. Ives, 1993), pp.243-268; J. Powell, *The Deeds of Pope Innocent III by an anonymous author* (Washington, 2004), p.XVI; B.E. Whalen, *Dominion of God Christendom and the Apocalypse in the Middle Ages* (London, 2009), pp.9-41; W. Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (London, 1965), pp.262–309 and W. Ullmann, *A History of Political thought: the middle ages*, (Harmondsworth, 1965), pp.100-129; Justinian Digest Vol.1, Book.1 Tit.4 Concerning the constitutions of the Emperors, Ulpianus, Institutes, Book I. '*quod principi, legis habet uigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat,'.*

[51] Bartlett, *Trial by Fire and Water,* pp.141-143.

and allows Gregory to cast a far wider net when trawling for his heretics, as the threshold for initiating a legal process is somewhat reduced by the usage of notable suspicion. Secondly, the function of *fama* is very different here. In the process of *inquisitio, fama* is used as a proctor for an accuser, whereas in Gregory's formulation '*suspicione notabiles*' not only fulfils the accusatorial function but also can be used as proof of heretical crime if the defendant cannot establish innocence. This is markedly different from the process of *inquisitio* that Canonists had been developing in the preceding century.[52] *Fama* could not condemn. Furthermore, *fama* had a clearly established legal definition of which Gregory took little regard because it could not provide for him the clear divisions between Catholic in-group purity, to the diseased heretical other.

The operation of the behavioural immune system can be further demonstrated in the provision concerning the exclusion of those suspected of infamy. Gregory effectively sought to quarantine those he suspected of heresy. So explicit is his intention that he formulates it as, the 'shunn[ing] by all' for a year. Gregory believed that alienation from society would reduce the risk of contamination, as well as provide a strong motivator to prove one's innocence. Furthermore, it could be used as a mode of proof, establishing guilt in heretical cases. The establishment of guilt may have been Gregory's ultimate goal. As mentioned previously there had a been a dramatic shift in Canonical thought about the need to establish individual guilt.[53] Gregory as a successor to Innocent inherited the

[52] A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France* (Boston, 1913), *trans*. J. Simpson, pp.80-85.
[53] See above, section '4.5 Paradigm Shift: The Emergence of the Criminally Culpable Individual'.

debate addressing corporate liability and punishment. His definition of heretical categories and this rather loose stipulation of notable suspicion may simply be Gregory's way of formulating a response to heresy that gratified his disgust response and satisfied the new Canonical trend.

This rather lengthy detour from the main subject of this section, Conrad of Marburg, has been necessary to examine *Excommunicamus*, to outline the legal framework within which Conrad would have been expected to operate. That is, under a heightened framework of persecution moulded to the high disgust sensitivity of Gregory IX. Practically, this manifested itself through a gradation of heretical categories, which ranged from true heretical believers, to their followers and adherents, to a wide range of people, whose belief in improper doctrine was not theologically apparent but their actions in some manner supported heresy. These people were defined as those who 'conceal, defend, or honour heretics.' These were people who helped heretics in some form. Imagine having to face Conrad's inquisition, simply because you had sold bread to someone, who later was to be condemned as a heretic. Below this division, there existed the rather ill-defined category of the notably suspicious. This represented a legal ambiguity, where one could risk the wrath of Conrad, either through a trial to prove innocence, as the Count of Syan did, or perform a penance as an admission of heretical guilt. Ultimately, if one did not feel confident in this legal process, then after a year of suspicion and social exclusion, one would be condemned as a heretic anyway, a bleak prospect to say the least. [54] It is quite

[54] Gregory IX, *Excommunicamus*, '*si per annum in excommunicatione perstiterint, extune velut heretici condempnentur,'.*

easy to see how *Excommunicamus* could lead to a system of ever widening prosecution and because of its draconian nature, obscure the emerging ethos of canon law that punishments must reflect individual criminal culpability.

5.2.2 Conrad's Demise: Accusation and Murder

Conrad armed with his Papal decree and *Excommunicamus*, began a campaign of prosecutions with such energy that Dietrich of Apolda, a Dominican friar, remarked Conrad was 'a zealot of the Catholic faith and the strongest exterminator of heretical depravity.'[55] Alberic of Trois-Fontaines, a Cistercian, gives us a vivid snapshot of just how this zealot operated, 'so many heretics were burned throughout Germany that their numbers were incomprehensible.'[56] In his enthusiasm Conrad 'condemned many who in the hour of death invoked our lord Jesus Christ with their whole heart and implored the help of the holy Mother of God and all of the saints in the fire with a powerful clamour.'[57] It would appear that Conrad when discharging his duties, brought many innocent Catholics to their ultimate punishment. It is hard to describe this process as an inquisition, let alone one recognisable as a trial. It cannot, however, be ignored that on some level a trial did take place,[58] guilt was established,[59] and certain secular powers

[55] Dietrich of Apolda, *Vita San Elyzabeth* in M. Rener, *Der Vita def heiligen Elisabeth* (Marburg, 1993), p.59 '*zelator catholice fidei et expungator validissimus heretice pravitatis,'.*

[56] Alberic of Trois-Fontaines, *Chronicon,* 931 '*per Alemanniam vero facta est tanta hereticorum conbustio, quod non possit numerus comprehendi,'.*

[57] *Annales Wormatienses*, 39 '*Et Multos condempnabant qui in hora mortis dominum nostrum Jesum Christum toto corde invocabant, et auxilium sancte Dei genitricis et omnium sanctorum etiam in igne valido clamore implorabant,'.*

[58] See A. Patschovsky, "Zur Ketzerverfolgung Konrads von Marburg," *Deutsches Archiv für Enforschung des Mittelalters* 37 (1981), pp.641-93, in particular pp.651-665 detailing precisely how Conrad's inquisitorial procedure operated.

[59] Alberic of Trois-Fontaines, *Chronicon*, 931 '*accusatum oportuit confiteri se hereticum esse, buffonem, cattum, pallidum virum et huiusmodi monstra diffidente pacis in osculo salutasse,*' notice in this passage the clause that 'it was necessary for the accused party to confess to be a heretic.' This is not definitive

were happy to support the actions of Conrad and his inquisitorial party.[60] The *Annales Wormatienses* makes it clear that such noble support was indispensable for the operations of the inquisitors, specifically Jon and Conrad of Tors who were numbered amongst Conrad's party. The *Annales* states, 'The Lords attending them rejoiced greatly, leading them into their cities and towns, digging pits and [making people] fall into them.'[61] Initially the inquisitorial activities of the men were not abhorrent to the landed elite of the Rhine and as we shall see, Conrad's justice was impotent without their help.

In spite of the judicial framework Conrad operated within, there should be no doubt in the mind of the reader that it lacked the procedural rigour, which Canon law had been developing and German defendants would have been accustomed to. Ultimately, it was a blending of these two factors that aligned to cause Conrad's fatal confrontation with Henry II the count of Syan. Conrad's prosecutions were notorious for the spurious nature of the proof, upon which his convictions would rest. The *Chronicon* relates a specific example of a woman called Alice who 'fashioned herself as a heretic alongside her husband as members of a secret sect.'[62] She then used this confession to exact revenge upon her extended family, who had disinherited her.[63] Interestingly, through the

proof of guilt but does hint at the fact that Conrad was not completely oblivious to the need for an admission of guilt as a form of proof.

[60] See, Sullivan, *The inner lives,* p.77. Her list includes no lesser persons than Henry VII, the then king of Germany, his father, Emperor Frederick II, Siegfried III of Eppenstein, the Archbishop of Cologne, Heinrich I of Mülenark and of course the Pope.

[61] *Annales Wormatienses,* 39, '*Et gavisi sunt domini assistentes ipsis, et ducentes eos in civitates et villas suas, fodentes foveas et incidentes in eas,'.*

[62] Alberic of Trois-Fontaines, *Chronicon*, 931 '*fixit se hereticam, secte illius fuisse suum virum,'.*

[63] Alberic of Trois-Fontaines, *Chronicon*, 931 '*cognatos et notos et affines, qui eam exheredare videbantur,'.*

twenty fifth canon of the council of Tarragona (1242), defendants would be able to dismiss testimony on the grounds that it was malicious. Conrad's threshold of proof was so indiscriminate that one witness responded 'I do not know whom to accuse. Tell me the names of those who you suspect.'[64] This may strike us as blatant example of leading the witness, and indeed it is, however, it may also be a rather flagrant use of *Excommunicamus* and its clause of '*suspicione notabiles,'*in which, such suspicion could form a mode of proof or be used to begin criminal proceedings. Indeed, the *Annales breves Wormatienses* claims that he operated 'with no contradiction.'[65] He was a legal force unto himself, as the *Gesta Treverorum* relates, 'so great was his zeal of all that no excuse or counterplea would be accepted from anyone, even though they were merely under suspicion, nor would any exception or testimony be admitted, [nor] would an opportunity for defence be granted.'[66] Clearly there was a tension between the expected legislative norms and the way in which Conrad sought to operate. Conrad wished to believe the rather dubious testimony presented to him as irrefutable proof of guilt, which as an inquisitor, was his prerogative. Such was his role as judge and prosecutor, however, what we must assess is why Conrad was willing to accept this testimony?

Sullivan argues that Conrad habituated as a penitential preacher was predisposed to believe that sin existed within us all and he equated it to guilt.[67]

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[64] Alberic of Trois-Fontaines, *Chronicon*, 931 '*Nescio quem accusare; dicite mihi nomina, de quibus suspicionem habetis*,'.
[65] *Annales breves Wormatienses,* 75 '*nullo contradictente,'.*
[66] *Gesta Treverorum,* 400, '*tantusque fuit omnium zelus, ut nullius, qui tantum propalatus esset, excusatio vel recusatio, nullius exceptio vel testimonium admitteretur, nec defendendi locus daretur,'.*
[67] Sullivan, *The Inner Lives,* p.90.

Hence those being punished 'may not have been guilty of this particular sin, [yet they] were guilty of some sin,'[68] and deserved to be punished. This view of punishment had been long held by theologians.[69] Like corporate theory, however, this theological position was to come under serious critique by Innocent IV, who was directly influenced by Roman ideals.[70] Sullivan's argument is certainly convincing and can help provide a motive as to why he so eagerly accepted confessional testimony that would have raised the judicial eyebrows of his contemporary Canonists. Whilst Sullivan's explanation certainly offerss a credible answer as to why Conrad would be predisposed to accept dubious testimony as proof, because he believed that we were all guilty of some sin and should serve a penance for that fact, it does not quite answer why Conrad would believe this to be true. Conrad's proclivity to assign harsher moral punishments to what may seem relatively innocuous breaches of moral norms indicate a high disgust sensitivity.[71] If this was the case, his high disgust sensitivity would cause an easy triggering of his behavioural immune response, even if there was only a suggestion of such activity, '*suspicione notabiles,*' would justify any resultant punishment. This explanation builds upon Sullivan's penitent theory and offers a more concrete insight to the inner life of Conrad of Marburg. That is, the psychological model outlined better helps to explain the cultural practices of this historical figure.

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[68] Sullivan, *The inner lives,* p.90.
[69] See, Clarke, *The Interdict,* p.29.
[70] Clarke, *The Interdict,* p.29.
[71] See, Sullivan, *The Internal Lives,* pp.74-85 for a discussion of Conrad's draconian and almost masochistic use of penances, especially against St. Elizabeth. For harsh moral punishment being linked to disgust see, S. Schnall, J. Haidt, G.L. Clore, & A.H. Jordan, 'Disgust as embodied moral judgment,' *Personality and Social Psychology Bulletin* 34 (2008), pp.1096–1109 *passim.*

The inquisitorial practices of Conrad could not long be sustained, and on July 25th 1233 the first crack began to emerge, which would eventually topple the entire inquisitorial edifice in a dramatic moment of violence and revenge. For nearly twenty months, Conrad had conducted an inquisition that had been moderated solely by his temperament, and the secular authorities willingness to indulge his justice. Such circumstances were to shift dramatically, however, when he accused the Count of Syan, Henry II, of heresy. This marked a departure from his usual *modus operandi*, as hitherto his inquisition had been entirely concerned with the lower orders. This is perhaps why his victims are so non-descript in the sources. Conrad's shift in prosecution did not go unchallenged, for the Count demanded that Siegfried III, the Archbishop of Cologne, hold a Synod to establish the credibility of the charge of heresy brought before the Count. Legally, the Count wished for the more traditional and familiar process of *accusatio* to be used rather than *inquisitio*. I suspect that he felt, he would fare better against a more rigorous legal procedure and its mode of proof than the low threshold Conrad used in his court. The legality of holding a separate Synod for the Count raises some interesting questions for the Canonists. Namely that there was clearly a juncture between, the Episcopal power and that of the Pope, and by marginalising the *inquisitio* process and the Pope's representative, the Archbishop risked a confrontation, which could throw the Church structures back to the tumultuous times of the investiture contest.

In spite of the qualms of judicial jurisdiction, the trial went ahead and for the first time Conrad and his party had to comply with the rigorous procedure of canon law and the accusatorial method. It was a disaster for Conrad. The *Gesta*

Treverorum recounts, 'accusers and witnesses withdrew. Some claimed that they had been forced or goaded into saying malicious things about the count, and others were discredited (branded) with presumptive hatred of him.'[72] The prosecution fell apart and the Archbishop of Trier, Dietrich, pronounced 'I declare to you [, the Synod,] that the Count of Syan goes from here not convicted, as a good Catholic man.'[73] This was only a setback for Conrad, who was determined to continue his inquisition. Bitterly he left the Synod to continue his work in Marburg, mumbling, 'if he had been convicted, it would have been a different matter.'[74]

News of the trial made its way to the Papal Curia through Conrad the *scholastics* of Speyer, who went to Rome to present the case of the German peoples before the Pope. The account left to us comes from the *Annales Erphordenses*. Gregory would have been reluctant to cede the judicial rights, his predecessors had cultivated for the position of Pope, *vis a vis,* their Episcopal underlings, which would have had to occur if he would have disavowed Conrad. As a result, he chose the prudent path, chastising Conrad but still leaving the *inquisitio* in place. Such a delicate solution would hopefully sooth tensions between the two sides and leave Papal supremacy intact. Gregory during his audience with Conrad the *scholasticus* sought to admonish his 'zealot of the faith.'[75] Gregory said of his

[72] *Gesta Treverorum*, 402, '*accusatoribus et testibus resilientibus, aliis se coactos vel circumventos in comitem mala dixisse se fatentibus, aliis de odioso presumptive notates,'.*
[73] *Gesta Treverorum*, 402, '*Denuncio vobis, quod comes Seynensis hinc recedit pro homine catholico et inconvicto*,'.
[74] *Gesta Treverorum*, 402, '*magister Conradus submurmurando ait "si convictus esset, alia ratio est,"*'.
[75] Gregory in a letter to Siegfried III and other German prelates, dated October 21 1233, bemoaned that Germany had lost its 'Zealots of the faith' and asked 'where [was] the zeal of Moses,' '*fidei zelatores*,' '*ubi est zelus Moysis,*' in G. Pertz and C. Rodenberg, *Epistolae saeculi XIII e regestis pontificum romanorum, MGHS* (1883), Vol.1:451.

inquisition that 'the procedures of Master Conrad of Marburg [were] invalid.'[76] Notice, it is the procedures of Conrad that make his prosecutions invalid, rather than the implicit innocence of any of his victims. In other words, those condemned as heretics or tonsured as penitents remained guilty through his procedure, although such procedure was invalid. Presumably any penitent or family of a condemned person could seek a Papal pardon or retrial. Ultimately, if Gregory had acted through a more defined legal procedure then his prosecutions would have been far more palatable to medieval society. Such analysis helps to understand the wider argument of this chapter and the thesis as a whole. It is precisely the realisation that procedure became the focus of the inquisition, and that procedure became founded upon a recognition of individual guilt. Ultimately, Gregory sought to diffuse the situation through this legal quagmire by accepting that Conrad needed to reform his procedure, whilst leaving a man who was quite clearly inappropriate for the role in position.

5.2.3 The *Lex* and the *Jus*

The precarious position in which Gregory's solution left the Rhineland was not sustainable. Emboldened by Conrad's turn of fortune at Frankfurt (on the 25th), five days later, a group of knights, on the banks of the Lahn, at a place called Hof Kapelle, attacked Conrad and his party. Approaching him with swords unsheathed, their intention was clear, murder. A devotee of Conrad, Gerrard, faithfully clung to his master so that the knights could not come between them. Unable to separate the two, the group hacked away at the unarmed men slicing

[76] *Annales Erphordenses,* 85-86, '*magistri Cunradi de Marburc formam… irritam,'.*

through bone and flesh, killing them both. The German chroniclers make clear that such actions were justified because Conrad refused to acknowledge individual guilt and condemned people as if they were a corporate body.

Conrad's failings as an inquisitor are most explicit in the *Annales Wormatienses*, which relates 'some people who [Conrad] had defamed and condemned, as much in their relatives as in their own persons, [murdered him].'[77] This chronicler wrote in order to demonise Conrad, however, if we divorce the rhetoric of the chronicle from its claims, it is illuminating to see what charges were laid at Conrad's feet. In my interpretation, the *Annales Wormatienses* relates that Conrad's *inquisitio* resulted in his murder because of the *fama* he brought against families, by treating them as a corporate body. Such a view is not explicit, and certainly the motivation of revenge by families who had been disrupted by Conrad's inquisition was strong. This said, however, there is a clear allusion to the notion of corporate liability being a factor. If, for instance Conrad had chosen a more individualising ethos towards heresy prosecution, would avenging family members have been roaming the countryside calling for his head?

Two points can be made here. Firstly, Conrad's harsh moral punishments for heretical crime strongly reflect a high disgust sensitivity and resultant enforcement of the behavioural immune system. Secondly, the precepts of redemption were taken up by later inquisitors to help them in their inquisitorial duties.[78] Such a redemptive influence is best exemplified by the period of grace,

[77] *Annales Wormatienses*, 40, '*quos ipsi tam in parentibus eorum quam in propriis personis famaverant et dampnificaverant.*' See also, *Annales Colonienses Maximi,* 843, '*nullum locum venie vela apud ipsum invenietibus, iuxta Marburg est occisus,*' for a similar critique of Conrad.
[78] See below, section '6.2.2 Conducting and Inquisition and Constructing the Texts'.

a system actively designed to encourage co-operation and redemption in the inquisitorial process. Ultimately, Conrad was killed because he was not well suited for the role of an inquisitor.

The Pope reacted badly to the news of his assassination, demanding that Conrad's murderers be brought to justice. The German prelates and ecclesiastical authorities were hardly swift to react. Eventually, six months after Conrad's death, on the second of February, during the Diet of Frankfurt, six knights came forward to be tried for the murder. The Diet, however, would not rule on the innocence of the men, as proceedings appear to have been overtaken by the pageantry of Conrad's victims appearing before the Diet. They streamed into the hall in a grand procession of tonsured heads, led by a cross, filling the space and disrupting the hearing, or at the very least seemed to have swung ecclesiastical favour towards the defendants. As the *Annales Erphordenses* recalls 'their loud complaining voices having risen up pitifully against the late Conrad, so suddenly did a tumult and turbulation begin to rise up that those who had been on the side of Master Conrad despaired of evading the hands of their adversaries.'[79] The visceral nature of the law, as an act of violence, can be dramatically felt in this brief episode. First and foremost was the very real threat and use of violence integral to this case. The most obvious manifestation of this would be the killing of Conrad by his accusers. The reader should also be reminded of the violence that was needed to assure Conrad's prosecutions, as well as that required to

[79] *Annales Erphordenses,* 86, '*insuper de defuncti Cunradi factis clamosis vocibus miserabiliter querelantibus, tantus subito cepit oriri tumultus et turbatio, ut hi qui ex parte magistri Cunradi exstiterant se manus adversariorum desperarent evader*,'.

carry out his sentences. In a grander sense this Diet was trying to establish the legal limits or interpretations of these two very violent, and therefore powerful, actions. Who had the *potestas* (lawful power) and who the *vis* (unlawful use of force)?[80]

The Diet turned upon the complexities of that question, who had used their power lawfully and who had not? The potential threat of violence posed by the massed crowds of Conrad's victims forced the issue favourably for the knights in this instance, but larger forces, with the greater potential to do more violence, would soon be at play to redress the issue in favour of the Pope and Church at large. What, however, should really draw our attention is, that it was the threat of violence that carried the legal argument at the Diet of Frankfurt, not the spectacle of the wrongfully accused coming before the Diet to give evidence. Conceptually, the Diet as a judicial body had regressed to the old use of ordeal. That is, judgment by the consensus of the people.[81] Public opinion was undoubtedly against Conrad. The procession of wronged individuals would have only reinforced this notion within the minds of the ecclesiastical members present. The Diet was a weather vein of public opinion, which had ruled in favour of the knights. Power to make the law, in this instance, came from the people. This direct rule of the people is a classic example of *jus*: the common law being made from the people by the people subject to their collective morality. It is no exaggeration to assert that the Diet of Frankfurt turned back the tide of Roman

[80] The sources do not use these terms, but there is certainly a utility to understanding the case before the Diet through these Roman legal terms.
[81] Bartlett, *Trial by Fire and Water,* p.142.

law to the days before the Fourth Lateran and the rejection of ordeal. The Diet once again vested judicial power within the hands of the common people. It is even arguable that the Diet represents an appeal to the days before a pre-codified legal system and the (re)discovery of Justinian's Digest, especially the notion that a *lex* could be the whim of the *Princeps* derived from his authority.[82] Such analysis, however, perhaps stretches the point too far. It is certainly better to see the Diet as a type of jury system, by which the knights, clearly guilty, abrogated their criminal culpability to a common sense of injustice, which they were righting. Are we then, seeing in Conrad's story a rallying against the use of *lex* and the developments of the long twelfth century?

The resolution of the friction, between the use of written authoritative law, *lex*, and a common law of the people, *jus*, is a useful concept for to analysis of Conrad's demise. Firstly, there is an argument that the entire raison d'être of the Catholic Church was to impose its *lex* of Christianity upon the world and that conversely, popular heresy was a rejection of that *lex* in favour of a common *jus.* Therefore, the conflict at large contested Catholic orthodoxy against the heresies of the German people, although, it is doubtful even a small minority of Conrad's penitents were heretics. More concretely, Conrad's inquisition, his death and the Diet, were violent resolutions of the tensions caused by the long twelfth century. Both the Diet and his death were manifestations of the *jus*. That is, the power to make justice manifest itself through an expression of the common will.

[82] See above, section '3.1 'Seeing is Believing' for a discussion of Ulpian's thoughts Concerning the Rights of *Princeps*.

Such a stark example of the *jus* runs counter to the transformative nature of the long twelfth century. The central themes of this thesis coalesce around the concentration of authority into the hands of a narrow elite, whose authority was derived from the imposition of law, which became a self-fulfilling form of legitimisation.

Ultimately, the conflict surrounding Conrad's inquisition stemmed from the legal ramifications of the Pope making law. Popes had long been seen as law makers.[83] During the long twelfth century this role became increasingly seen as one in which a pope had the right to produce codified and prescribed law. A principle that ultimately came from Ulpian.[84] The most obvious markers of this were Gratian's *Decretum* and the deluge of Lateran councils, we see after the (re)discovery of Justinian's Digest. Conrad's inquisition and his demise allow us to explore the question, could the Pope make law? Was it possible for Gregory to dictate law to the German people concerning Christianity based solely upon his conception of proper behaviour? Conrad's case proves an authoritative, tyrannical use of the *lex* could not be tolerated. This, however, did not denigrate the principle that the Pope could make law. Fundamentally, the right of the *princeps* to create law would not be relinquished. What was needed, was some regulation between the contrasting notions of the *lex* and the *jus*. What, apart from tyranny, could make changes palatable to the people? The answer lay within the operation of the law, within its procedure. If we recall the principle of

[83] See, K. Rennie, *The Foundations of Medieval Papal Legation* (2013, Basingstoke), p.4.
[84] Justinian Digest Vol.1, Book.1 Tit.4 Concerning the constitutions of the Emperors, Ulpianus, Institutes, Book I. '*quod principi, legis habet uigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat,'* in A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985). Ed. T. Mommsen and P. Krueger, *trans*. A. Watson.

Ulpian, which establishes the right of the *princeps* to create law, we should remember that such authority stemmed from the people.[85] Hence, implicitly, there was some form of arbitration between the will of the people and their ruler. Conceptually the *lex* stemmed from the *jus* of the people, via the medium of the *princeps*. It is arguable that procedure developed as a means to mitigate the centralising effect of the long twelfth century.[86] As justice became more elitist and the remit of a more concentrated, learned legal profession, procedure developed to inhibit an unbridled authoritative *lex,* which placed at its fore the criminally culpable individual.[87] The contrast between Conrad's inquisition and later inquisitorial practice lays this bare. Defendants after the regional councils of the mid-1240s were far more willing to accept the practices of inquisition. Such acceptance stemmed from the creation of a more acceptable procedure, which better harmonised the two competing principles of Roman law the *jus* and the *lex*. That is, Conrad's murder was not simply the result of his prosecutions but that such prosecutions fell outside of the bounds of the *jus*. The *lex* contrasted sharply with the German peoples' conception of law. There was no

[85]Justinian Digest Vol.1, Book.1 Tit.4 Concerning the constitutions of the Emperors, Ulpianus, Institutes, Book I. '*quod principi, legis habet uigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.'* In A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985), Ed. T. Mommsen and P. Krueger *trans*. A. Watson, (the translation here is my own) 'Whatever the Emperor has decreed has the force of law; since by a Royal ordinance which was passed concerning his sovereignty, the people conferred upon him all their own authority and power,'.

[86] See, K. Pennington, 'Innocent until proven guilty: The origins of a legal maxim,' *The Jurist* 63 (2003), pp.106-124, p.112, although Pennington does not use the term long twelfth century it is quite clear that both he and I are referring to the same process. Also, Pennington, 'Due Process,' in particular section 2 *The Jurisprudence of the ordo iudiciarius*.

[87] See, Pennington, 'Innocent until proven guilty,' p.113 and his discussion of Paucapalea and his influential gloss of Gratian's Decretum. Once again Pennington does not use the term criminally culpable individual, however, the principal that criminal proceedings must be brought against a litigant to establish guilt developed from Paucapalea and his gloss. This thesis tracks a more palpable expression of this developing notion through the developing process of inquisition.

other way to redress this than via the use of force. If Conrad's inquisition is symptomatic of the unrestrained use of *lex* then his murder and the Diet were symptoms of an unrestrained form of the *jus.*

5.2.4 Triumph of the *Princeps*

Two months after Conrad's assassination, justice returned to supporting the Papal view. The men responsible for Conrad's assassination were excommunicated by another Diet at Mainz and instructed to travel to Rome, where they would be received by the Pope. Gregory assigned to them a penance of appearing 'barefoot and naked, with a halter around their necks and a rod in the hands, at all the large churches in the vicinity of their crime, to chant the penitential Psalms and confess their guilt publicly, to have themselves scourged by priest,' before making a pilgrimage to the Holy Land the following March as part of the crusade.[88]

It is clear, however, that the Diet and its punishment resulted from the Pope's dissatisfaction and resultant political pressure, which he displayed by writing a series of rather scathing letters to the Lords of Germany. The first, *Vinee Domini cultores,* read '[people] observe the perpetrators of such crime… To have escaped immune from their due reward… [hence] a powerful example is granted, contrary to presumed devotion, to those of inferior rank.'[89] The line of argument taken by Gregory, in this letter, demonstrates a rather instrumental approach to

[88] Sullivan, *The Inner Lives,* pp.93-4.
[89] Gregory IX, *Vinee Domini cultores, 545*, '*Dum tanti sceleris patratores…immunes a stipendio meritorum evasisse conspiciunt... minoribus,.. exemplum validum presumendi contraria devotioni conceditur,'.*

law, which further exhibits his behavioural immune response because it stresses punishment rather than redemption (or even justice).

Note that Gregory conceptualises the law as a series of behavioural norms, which regulate the lives of ordinary people and society at large. The law and justice were not abstract conceptions balancing the morality of right and wrong, but rigid lines of which one could either fall foul of or obey for the betterment of society. Hence, the issue may be Conrad's murder, yet the way in which Gregory frames this is not so much that Conrad was murdered but that his murderers will go unpunished. That means, it is not that wrongful action has occurred, which offends Gregory sensibilities, it is that wrongful action was allowed to occur and not be punished, which causes him grief.

In addition, the behavioural immune system can be demonstrated by the way in which Gregory frames his view of punishment. Gregory relates in an another letter, *Cum interfectores,* that punishment is necessary as a deterrent 'so that the immensity of the penalty, made known to the world, will terrorise similarly pestilential people, so that these people will not only hold back their hand but even avert the thoughts from such deeds.'[90] Firstly, note the use of the term 'pestilential people,' it is unclear if Gregory means this to be heretics or lawbreakers in general, either way it is clear that his disgust response is projecting onto people who transgressed moral norms. Further to this, note that Gregory conceptualises a punishment, not as a mechanism via which the guilty

[90] Gregory IX, *Cum interfectores, 547*, '*Ut pene immensitas, diffusa per orbem terreat pestilentes, non solum manus a similibus cohibens set etiam cogitationes avertens,'.*

party pays an appropriate recompense for their crime, but as a deterrent designed to regulate behavioural norms.

These letters allow us to explore a different aspect of behavioural immune theory, so far, our understanding has focused upon disgust response and behavioural norms to the detriment of demonstrating precisely how this can affect the law. The law for Gregory, as both *lex* and *jus,* due to his high disgust sensitivity and his pronounced engagement with the behavioural immune system, existed not to regulate the complex intricacies of society, but as a mechanism for control and imposition of authority. Behavioural immune theory is crucial to understanding Gregory's conception of what the law was and could be. There was undoubtedly a great juncture between the legal thinking of Gregory and his contemporary canonists. Gregory had a very rigid conception of, not only why the law existed, but how it should operate. *Cum interfectores* reflects Gregory's deeper motivation for why laws exist. Gregory believed that the punishing of moral or behavioural transgressions was its primary function, rather than conflict resolution. Equally, *Vinee Domini cultores* demonstrates the way in which Gregory views an individual's relationship to the law that is the imposition of moral norms on society through behavioural action. After the long twelfth century, Gregory had, via the *lex,* an enhanced mechanism for imposing his power and vision of behavioural norms upon those people who have previously been subject to a less stringent form of *lex*.[91] The law whether written or implicit controlled people's behaviour, it mattered little to Gregory how

[91] R., Helmholz, 'Cannon law and Roman Law' in ed. D. Johnston, *The Cambridge Companion to Roman Law* (St. Ives, 2015), p.411.

people felt about the law, what was important to him was that the law was there to be obeyed. It has been discussed previously how disgust sensitivity is a key indicator of conservativism and how orderliness can predict conservativism.[92] These letters demonstrate the interplay between these two markers of conservatism. The law for Gregory, not only regulated people's behaviour to fall within the confines of the behavioural immune system, but also provided order through a clear set of regulated, delineated and explicit set of behavioural rules.

Conrad's inquisition and death were resolutions of competing ideals about what justice, law, authority and power could be. Ultimately, the tide of transformation could not be turned, the will of the Pope had to be supreme. Medieval society since the beginning of the first millennium had incorporated so much change into its systems of life and operation that the murder of one individual could not redress the balance. The German people, as represented by the knights, had to accept the authority of the Pope. The Pope (as *princeps*) had learned from this incident that his right to make law was not absolute, he had to mediate between the will of the people and his own. Procedure developed as this method of mediation. Inquisitorial practice and procedure developed to place the criminally culpable individual at the heart of the inquisitorial process as a reflection of the common *jus*.

5.3 Themes, Reflections and Threads

[92] J. Graham, C. Joseph & J. Haidt, 'Above and Below Left–Right: Ideological Narratives and Moral Foundations' *Psychological Inquiry* 20 (2009), pp.110-119, p.113.

It may have puzzled the reader that a chapter entitled regional councils has, for more than ten thousand words, yet to mention a single thing about these councils and instead focused upon the inquisitorial activities of two men, whose credentials as inquisitors were oblique at best. Robert and Conrad had no relation to the developments of regional councils that occurred more than a decade later. Why then has this chapter focused in such detail upon the narratives of these two men? The aim of this was to demonstrate how these early inquisitors operated within a system that was ill-defined and regulated entirely by their individual sense of justice.[93]

There were numerous reasons as to why Conrad and Robert were able to operate as they did. Primarily, papal approval was the most important factor for their inquisitorial careers. Without the blessing, impetus and support of Gregory IX, neither of these two men would have been inquisitors. Certainly, Robert's career came to an abrupt end with the changing of the papal guard and Conrad, had he not been murdered, would have found little support from Innocent IV. As mentioned above, however, to merely point to a new papal successor masks the fundamental differences between the two popes, Gregory was far more disgust sensitive than Innocent IV. Gregory IX was far more supportive of Robert because of his higher disgust sensitivity and heightened behavioural immune response, which also affected his view of the law, forcing him to adopt a draconian view the law purely as a mechanism of chastisement. His letters, written to the German people, in the wake of Conrad's death, demonstrate how he thought

[93] Lea, *A History of the Inquisition,* Vol.2, p.336.

about the law and how his views radically differed from those of his contemporary canonists.[94] In brief, Gregory's conception of the law was very much as an instrument with which he could suppress improper behaviour. Interestingly, he did not do this in a tyrannical manner, but in order to better society through regulated behavioural norms. It is arguable that it may have simply been incomprehensible to Gregory that people did not wish to follow his behavioural norms. Consequently, there was a disconnect between the theoretical nature of the law as it was taught at law schools across Europe and the most influential lawmaker within Christendom. Contrast this figure to Innocent IV, who was more attuned to the precepts of Roman law, as demonstrated in the previous chapter. He could not contemplate an inquisition that did not conform to an ethos of Roman law. As the long twelfth century progressed it became more evident that the legacy of Roman law would not only be felt practically through the use of Justinian's Digest, formulation of law into codices and the use of Latin terminology but also through a reception of its jurisprudence and underlying principles. The most important of these principles was the necessity of establishing guilt through a trial. Practically, the impetus of the judicial system was shifting towards the protection of an individual against a tyrannical use of the *lex*. For the inquisition and this thesis at large, this manifested itself as a recognition of individual criminal culpability, which was borne out through a stipulation of procedure generated by the regional councils.

[94] See, K. Nörr, 'Institutional foundations of the New jurisprudence' in eds. L. Benson, G. Constable and C. Lanham, *Renaissance and Renewal in the Twelfth Century* (1982, London), p.327 and R. Benson 'Political *Renovatio*: Two Models from Roman Antiquity' in eds. L. Benson, G. Constable and C. Lanham, *Renaissance and Renewal in the Twelfth Century* (1982, London), p.340, for the new spirit of law emerging during the long twelfth century.

A second explanation as to why Conrad and Robert were able to operate without appropriate oversight developed from the way in which legal thought concerning heresy had surpassed the legal mechanisms in place to prosecute it. There are two distinct themes here, the vastness of anti-heretical legislation and the ambiguity of inquisitorial practice, yet these two factors combined into one systemic problem. Since the re-emergence of popular heresy in the eleventh and twelfth centuries both secular and Canon law had been developing anti-heretical legislation, which by the mid-1230s had become a burgeoning corpus of law. Heretical categories existed not only to detail specific heresies, of which there are numerous examples, but also to mirror the complexities of heretical networks. As was observed in Gregory's bull *Excommunicamus* these categories had become well-defined. Heresy was no longer defined as an obstinate theological position contrasted to the Catholic faith but a series of behavioural actions whose grounding in theology or improper belief was not immediately apparent. As Robert and Conrad began their inquisitions there was a wealth of anti-heretical legislation at their disposal, however, the procedural requirements for such prosecutions were woefully lacking. This problem of procedure had been compounded since the Fourth Lateran and its rejection of ordeal as a mode of proof in 1215. *Inquisitio* had been renewed and updated as a process by which trials and guilt could be established but other than a broader concept of what purpose the *inquisitio* would fulfil its procedural functions remained vague at best and lacking at worst. Such discrepancy between the law and procedure could be plainly seen in the practices of Robert and Conrad. Simply put, who was to say that their inquisitions were not proper if there was no framework by which

they should operate. The murder of Conrad and consequential Diets have here been argued to represent a form of communal response to a perceived injustice resulting from an inquisition that was insufficiently informed by procedure, a show of popular will, which was labelled as a manifestation of the *jus*. That is to say, such a proscriptive form of the *lex*, as had developed since the long twelfth century necessitated a myriad of procedural norms, which regulated the implicit singular authority of the *princeps*, which had been made possible by the application of Ulpian's principal. If the *lex* was not able to regulate its authority through reasonable procedure, then the *jus* of the people would once more usurp the legal monopoly of violence that had been slowly removed from its hands as the long twelfth century progressed. This had happened in the case of Conrad.

One final point to consider, before moving on to explore precisely how procedure would come to be established in the inquisitorial process, are the remarks made by Conrad's travelling companions and fellow inquisitors John of Worms and Conrad of Tours. The *Annales Wormatienses* reports that both men said, 'we like to burn one hundred innocent people among whom there is one guilty person.'[95] Upon first reading this we are naturally drawn to the horrifyingly indiscriminate nature of this comment and it surely reaffirms in the reader's mind the downright malevolence of Conrad's inquisition. Certainly, there is great value in perceiving the inquisition in such a manner, however, remember that in a relatively short time period, the thirty years, more or less, between Innocent III's death (1216)

[95] *Annales Wormatienses, 39* '*Vellemus comburere centum innocents inter quos esset unus reus,'.*

and Innocent IV's ruling *Rommana Eclissia Ceterum* (1245), Canon law underwent a radical paradigm shift in which corporate liability faded as acceptable practice and instead was replaced by greater emphasis on individual forms of justice. The above quote from Conrad's inquisitorial colleagues clearly runs counter to this, which is surprising given the fact that his remark was made of the height at Canonistic debate. Even more remarkable is that the Canonistic consensus had already swung in favour to the prevailing view of individual criminal culpability. We can certainly point to this being an instance of disjuncture between intellectual elitism and operation on the ground, and indeed it was, however, what will we see in the following sections are precisely how that juncture and the ethos of John of Worm's statement were completely transformed within the process of inquisitio, and how the criminally culpable individual became the focus of inquisitorial procedure.

5.4 Towards Procedure

Throughout this thesis the central method of approach, outlining the transformative narrative, has been to muse upon the massacre of Béziers and contrast this with the individualising method with which the inquisition operated. Individualisation has been the focus of the approach, in this thesis, to understanding the rise of a legal process identifiably labelled as Inquisition. Both, Robert le Bougre and Conrad of Marburg, however, are a binary opposite to this projected narrative. As late as the 1230s, the very height of the corporate theory debate discussed in the previous chapter, Conrad and his counterpart Robert were wilfully bringing slaughter to their respective areas of operation, with only

the scarcest resemblance to canonical procedure in operation. Law, order and individualisation had succumbed in North Western Europe to a tyranny of power removed only from evil by semantic choice.

Despite the fact that both of these men operated with official sanction from the Pope, and laboured under the title of Inquisitors, few historians would confidently label their operations as inquisitorial practice.[96] Dossat writes 'the date 1233 does not therefore mark the birth of the inquisition, but a simple step in its organisation. At the same time the institution standardised itself.'[97] The operations of these men were far removed from what we can confidently identify as inquisitorial procedure. Such a process was developing at this time but came to be linked to strict procedural rules and a homogenising procedure emphasising recognition of individuality. This process of standardisation shall be explored in this section to demonstrate how the criminally culpable individual made itself manifest in inquisitorial legislation during this time. Instrumental to the legal development of the criminally culpable individual were the plethora of regional councils that standardised and regulated inquisitorial practice during

[96]See, Arnold, *Inquisition and Power*, p.80 in which the phrases 'overzealous and completely insane,' are used to describe the actions of the two men. There is a sense that Arnold is not completely convinced as to this argument of anomaly, but he does not labour the point. Also, R.I. Moore, *The War on Heresy* (London, 2014), p.278-284. Moore, the most militant of modern anti-inquisition historians, bar say Pegg, fails to label these men as inquisitors. Moore does use the term 'Conrad's inquisition (*inquisitio*)' (p.280) to describe the activities of their operation, yet this term is clearly meant as a descriptor of the legal process juxtaposed to the traditional accusatorial process normally used in criminal cases. H.C. Lea, *A History of the Inquisition of the Middle Ages,* Vol. 2 (London, 1922), p.336, states that 'the process of the inquisition had not yet been formulated… [however] the accused was allowed simply the option of confessing…or being burned for denial- which, in fact, was the essence of the inquisitorial process.' Lea's attack is the most pointed but it is a strong affirmation that even he cannot quite bring himself to label Robert and Conrad as genuine inquisitors. C. Haskins, 'Robert Le Bougre and the Beginnings of the Inquisition in Northern France' in *The American Historical Review* 7 (1902), pp.631-652. Haskins, unapologetically uses the term inquisitor to describe the activities of Robert and Conrad, although, he does characterise their actions as a type of 'mania.' (p.636).

[97] Y. Dossat, *Les Crises de Inquisition Toulousiane au XIIIe Siècle* (Bordeaux, 1959), p.117.

the middle decades of the thirteenth century. These councils were Narbonne (1227), Toulouse (1229), Béziers (1232, wrongly dated in Mansi as 1233), Tarragona (1242, wrongly dated in Mansi 1235), Narbonne (1243, wrongly dated in Mansi 1235), Béziers (1246), Valance (1248) and Albi (1254).[98] Of these regional councils Sackville comments that they 'formed the core of authorities for contemporary commentators and which were central to the construction of anti-heretical canon law.'[99] Such an assessment is true, these councils, as a collective, do form the main structure of anti-heretical legislation and inquisitorial practice, however, such analysis flattens out some of the more interesting nuance that can be explored to understand the purpose and outcomes of these councils better. Sackville is aware of this but we are taking her comments as a base line. Equally, as Dossat comments 'the inquisition standardised itself,' which is true, but the process of standardisation through regional councils blurs the complexities of why and the way in which the inquisition came to be standardised.

Firstly, I would like to draw the reader's attention to the close geographical nature of these locations. The councils emanate from Toulouse, an epicentre of heresy of sorts. The church by choosing to locate its councils within this area demonstrated a reassertion of its authority over the Languedoc. The councils surely were intended to display a physical show of dominance in an area where in living memory two rival systems of belief had been competing openly for souls. Bisson, discusses the numerous ways in which mediaeval power could be

[98] The correct dates can be found in, Sackville, *Heresy and Heretics,* p.94.
[99] Sackville, *Heresy and Heretics,* p.94.

displayed. He comments that one such way was a grand display of order, such as a church council, these were intended to project dominance displays towards those being ruled.[100] It seems naturally obvious to us that the regional councils would be held in the Languedoc. After all, the council legislated inquisitorial practice, which was a mechanism of suppressing heresy and heresy was most closely associated with the Languedoc, therefore the councils should be held within its locale. Such an explanation, however, overlooks the centralising effect of the long twelfth century within the church. Since the turn of the first millennium canon law had become homogenised, centralised and universal, hence it mattered little where any council with official sanction was held, because any law created by such a council would become universal regardless of where such law happened to be written. The Catholic Church very deliberately chose to hold these councils within the Languedoc as a display of dominance over its defeated rival the Cathar church. This point is rather simple but often, I feel, overlooked when discussing these regional councils.

Moving beyond the location of these church councils and their homogenised nature, note the dates at which each council was held. The councils come in intermittent periods that fall within three-time divisions, early, middle and late. The early period including Narbonne, Toulouse and Béziers occur within the five years between 1227-1232 and the pontificate of Gregory IX. The middle period included Tarragona and Narbonne, were called within a year of each other 1242-43 and the pontificate of Innocent IV. The later councils Béziers, Valence and Albi

[100] T. Bisson, *The Crisis of the Twelfth Century, Power, Lordship, and the origins of European Government* (Oxford, 2009), p.5.

occur at the end of the 1240s, Albi is a slight outlier in this set as it was held in 1254 nearly six years after the council of Valence. All of these final councils were once again held during the pontificate of Innocent. To understand these councils as falling within these three time periods provides for us a useful analytical tool. Not because the time periods themselves are of great importance but because there is a clear thematic distinction between the periods, of which the most important is between the early and middle period. Before exploring what precisely that thematic distinction is, it is best to analyse precisely why there is such a split as it helps explain in greater detail why we can categorise the councils in such a manner. Briefly, the most important factor contributing to the categories of the regional councils was the transition in pontificate from Gregory IX to Innocent IV. We have explored previously how these two men had radically differing opinions of the law's operation, the division of the councils further demonstrates this case because there is a clear deviation in legal thought between the early and middle councils, or more concretely between the councils of Gregory and Innocent.

5.5 Between Gregory and Innocent, a Thematic Shift

The thematic shift analysis has deep origins. Lea in his *History of the Inquisition,* dating from 1922, wrote of the regional councils and the formation of the inquisition, 'many points as to the treatment of heretics had been settled, not only by Gregory's Roman statutes of 1231 (think also of *Excommunicamus*), but by the council of Toulouse in 1229, and those of Béziers and Arles in 1234….[yet] a new code of some kind was evidently required to render persecution

effective.'[101] Although, Lea does not separate the councils into time periods, this statement clearly addresses the early period. The function of the councils, in this initial period, was to establish the new heretical boundaries Gregory wished to create around his conception of heretics, skewed as it was by his high disgust sensitivity. Lea then moves onto discuss the middle phase of council development. Lea assesses that, 'it was evident that general principles for the guidance of the Inquisition must be laid down, and accordingly a great council of the three provinces of Narbonne, Arles, and Aix were assembled at Narbonne in 1243 or 1244, where an elaborate series of canons were framed, which remained the basis for inquisitorial action.'[102] Lea's narrative is one of progression and whilst it addresses the way in which the inquisition developed as a whole from start to finish, I feel, it could benefit from exploring why the councils differed so greatly.

From reading Lea, one could gain an impression that the inquisition developed through these regional councils as a matter of course. The early councils established and defined heretical crime, in response to the Cathar threat. Then in the second phase with the crimes themselves established, the church began to develop a method by which it could adequality prosecute heresy, although Lea uses the term persecute. Roughly, the distinctions made by Lea can be broken into two categories, law and procedure. These distinctions conform to the larger model already outlined in this chapter. The early councils focussed upon anti-heretical legislation, whilst the middle and later councils fleshed out a procedure

[101] Lea, *A History of the Inquisition,* Vol.1, pp.330-331.
[102] Lea, *A History of the Inquisition*, Vol.1, p.331.

and ethos. This procedural drive was necessary to properly enact the previous anti-heretical legislation. Middle and later councils did not do this to the exclusion of anti-heretical legislation, but they had a procedural bias, which was lacking in the earlier councils. Furthermore, an important point to note is, that the procedure of the inquisition developed as a reflection of individual criminal culpability, especially as a result of a defendant's right to due process.

In the earlier sections of this chapter the differences between the *lex* and the *jus* were explored, alongside the development of procedure to regulate the *lex* and how ideals of justice came to be prescribed through written authority. Here, that process is in action. Lea does not contextualise his statements within this broader process, but his analysis clearly falls within it. Relevant to the theory developed within this thesis, however, is an answer as to why such a difference should be present apart from what would appear to be a natural progression. A fuller discussion of the procedural development of inquisition should discuss not only the staged development over time between the councils, which can also be considered as a divide between legislation and procedure, but why such a distinction would occur. The answer lies within the transition between popes. As explored earlier Gregory had a view of the law that was markedly distinct from his contemporary canonists. This distinction became even more pronounced when contrasted to Innocent IV, who was a consummate canonist as both legislator and glossator.[103] The functional difference between the councils of the

[103] J. Brundage, 'The Teaching and Study of Canon Law in the Law Schools,' in eds. W. Hartmann & K. Pennington, *The History of Medieval Canon Law in the Classical Period, 1140-1243 from Gratian to the Decretals of Pope Gregory IX* (Washington, 2008), pp.100-102.

early and middle periods, stems from the attitudes of the respective popes, who convened them. Gregory IX viewed the law as a mechanism of control. His councils established legislation and punishments. Innocent IV believed the law to be more in keeping with the ideals found in Roman law. The most pertinent of which was the developing of procedural safeguards for defendants, based upon individual criminal culpability. The councils of the middle period then established procedural norms, for the inquisition. These reforms were the immediate effects of Innocent's occupation of the Papal throne. The main thematic difference between the councils, which can also map onto the division in time periods between them, results from the difference in popes and their respective attitudes towards the law. Further to this, Gregory's narrow conception of the law and anti-heretical legislation were partial manifestations of his behavioural immune response.

The thematic analysis did not cease with Lea. Arnold and Sackville, too, noticed that there was a juncture between the early and later councils. Arnold demonstrates how the church came to view the individuation of its lay members as an essential part of Catholicism. Arnold describes a process in which 'the idea of the "lump," drawn from the earlier discourses around heresy, remained present in the early creation of [anti-heretical] texts, there were however other elements emerging within a new discourse, elements that would eventually break up the homogenised construction of the laity.'[104] These were 'the emergence of a system of classification and categorisation. This is present in the

[104] Arnold, *Inquisition and Power,* p.38.

earlier period (ca.1227-ca.1235), but more fully worked out in the later legislation (ca.1238-ca.1254), where its function and effects slowly changed.'[105]

Arnold categorises two distinct time periods that are symptomatic of a growing recognition of individuation, or as labelled in this thesis individual criminal culpability, although Arnold's time periods do not correspond directly to the way in which I have divided them. There is, however, clearly some mirroring in our modes of thought, which is the result of more than an assimilation of Arnold's work into my thinking. [106] Arnold's work traces a process of individuation that seemed to be on an unstoppable trajectory, after 1238. He does not therefore distinguish between Popes as I have done, however, there is a thematic reflection in Arnold's work distinguishing a new procedural and legislative bias that had been lacking in earlier times, which undoubtably reflects the reception of Roman jurisprudence in canon law concerning corporate theory. Furthermore, by focusing solely on the regional councils that created the inquisitorial process we can better reflect the transformative nature of a changing papacy and demonstrate that one of the crucial differences between the two Popes was their conception of the law and precisely how it should be bound by procedure.

[105] Arnold, *Inquisition and Power,* p.38.

[106] Arnold has divided his time periods by using a mechanism of distinguishing councils that he sees as either helping to maintain the Peace of Paris (1229) or developing heretical categories. *Inquisition and Power,* pp.38-42 Interestingly, abstractly there is almost a symbiosis between the semantics of repression and procedure and the implications of maintaining a peace and extending anti-heretical categories. It is still bemusing, however, that Arnold does not distinguish between the Popes in his categories, as I have done, repression for Gregory and procedure for Innocent.

5.6 Tarragona and Narbonne, *inquisitio* to Inquisition[107]

It is to the middle period of regional council development that we will now turn. This middle period is far shorter than the other two. It has been created to highlight the significance of two councils, those of Tarragona (1242) and Narbonne (1243). These two councils should be viewed as Innocent's immediate response to the problems of inquisition and heresy. Held close together at the very inception of his papal reign, they represent his desire to remodel the inquisitorial process in his image. That is, a reflection of his view of law and individual criminal culpability.[108] Both of these councils have been isolated by other historical commentators as unique. Tarragona is usually credited with being the more important of the two and this is understandable because it was the first council held in Innocent's pontificate, however, most historical commentary does not make the reason explicit. Most historians stress the presence of Raymond de Peñafort at the council. Arnold argues that, the principles established by the Council of Tarragona 'had a wider implication; and its authority was no doubt derived not only from the detail it presented but also from the presence at the council of Raymond de Peñafort perhaps the most important voice on canon law in the period.'[109] In a similar fashion Sackville comments that 'the methodical and comprehensive nature of the Tarragona (1242) constitutions can be attributed to the presence at the council of the

[107] Note here the very deliberate use of a capital I for Inquisition, as I believe that after these two councils, we can start to talk about a procedure for Inquisition that was well defined, regulated and self-contained. *inquisitio* had truly transformed into Inquisition.
[108] See, B.E. Whalen, *The Two Powers, The Papacy, The Empire and the Struggle for Sovereignty in the Thirteenth Century,* (Philadelphia, 2009), p.178.
[109] Arnold, *Inquisition and Power,* p.42.

Dominican and renowned canon lawyer Raymond of Peñafort… a former Master General of his order.'[110] Indeed, the council did benefit from the presence of Peñafort, and he was undoubtedly the pre-eminent canonist of his time and certainly the council's legislation was thorough and far reaching.[111] All of this high praise, however, masks the very important analysis that when Peñafort operated, he did so at the behest of his Pope.

Succinctly, Raymond reflected the will of Innocent. It is quite a simple principle to grasp but often overlooked. Raymond was alive during the Pontificate of Gregory and his position was no less illustrious, but Gregory chose not to invoke regional councils with such an august canonist. Innocent wished to stamp his authority on the process of inquisition, which had run amok in Germany and northern France. To do this he chose to hold a regional council within the first months of his pontificate presided over by the most influential glossator of his time, Raymond. It was a marked swing against the rampant inquisitorial practices that Gregory had sanctioned. Heretical crime from Tarragona henceforth would be an exemplary body of canonical practice. It would be codified, given official sanction, promulgated throughout Christendom and most importantly reflect the presence of Roman principles in canon law. This is why after Tarragona we see a stringent codification of heretical crimes.

The Pope and no doubt Raymond, wished to better reflect a person's individual criminal culpability, and what better way to do that than to create heretical categories that better reflect an individual's relationship to heresy? Equally, a

[110] Sackville, *Heresy and Heretics,* p.95.

[111] See, M. Brundage, *Medieval Canon Law* (London, 1995), pp.222-23 for a discussion of Raymond and his canonistic credentials.

new procedural ethos was being created through these two councils to reflect an individual's right to a fair trial. Innocent wished to incorporate a principle of due process within the inquisitorial process.

Having discussed the implication of Raymond at Tarragona we shall discuss the council of Narbonne and its convenor Zoën Tencarius. Zoën Tencarius is a name already familiar to us from our discussion of corporate liability.[112] His position concerning corporate theory that was derived entirely from Roman law and demonstrated an individualising ethos, although he did temper his position by arguing that a corporate body could commit crimes, with the amendment that such instances were rare. Zoën was chosen by Innocent to inaugurate proceedings at the council of Narbonne. Dossat hints that Zoën owed not only this favour to the personal friendship with Innocent but also his election to the position of Bishop of Avignon.[113] Berger goes so far as to call Zoën a 'personal friend,' of Innocent IV and stresses his canonical background.[114] Innocent and Zoën friendship resulted from their relatively similar educational background in canon law and the implicit ideals with which they were imbued. Innocent chose Zoën not only because of their friendship but because he could be trusted to impose, upon the south and the inquisitorial process, a sense of the *ordo iudiciarius*.

Both Tarragona and Narbonne established the precepts that transformed the process of *inquisitio* into the procedure of Inquisition. This does not mean that

[112] See above, section '4.5 Paradigm Shift: The Emergence of the Criminally Culpable Individual'.
[113] Dossat, *Les Crises de Inquisition,* p.159.
[114] E. Berger, *Saint Louis et Innocent IV; étude sur les rapports de la France et du Saint-Siège* (Paris, 1893), p.65.

the Inquisition would not develop after these two councils, but the fundamental legal principles, which created a recognisably distinct process of Inquisition from *inquisitio* were codified. There are two distinct features from each council that are examined to demonstrate precisely how this transition occurred. From Tarragona we examine the list of heretical categories created and assess why such measures were necessary and from Narbonne we will assess how the notion of due process was able to be formulated within the operations of the Inquisition. Both of these factors demonstrate a recognition of individual criminal culpability, which had been lacking from not only previous councils but from previous forms of *inquisitio*.

Firstly, at Tarragona the formulation of heretical categories was decided upon. The list of eleven well defined heretical roles and categories clearly demonstrates canon law's attempt to grapple with the problems posed by heresy. The categories represent a stratification of one's responsibility and place in a heretical network. The categories seek to reflect better the way in which individuals relate to that network and enshrine within the process of Inquisition a recognition of individual criminal culpability. Arnold's work and its description of individuation is broadly similar to the process that established the recognition of individual criminal culpability. What we must now go on to explore are the relations between the implicit individuality of the heretical categories and how this can be demonstrated as procedure as it pertains to the criminally culpable individual. Arnold outlines that, 'the canons [of various councils but especially those of the later period] sketch out degrees of active involvement with heresy, and possibly the degrees of "belief" or adherence they might be understood to

imply.'[115] We have explored above some of these heretical categories and the reasons for their establishment.[116] The list, however, is too exhaustive to be included in full here. Arnold indicates that the categories were formed from one's, 'disobedience to the church.'[117] Sackville has commented on this process, too. Her thoughts are similar and more succinct, 'indeed, the ultimate characteristic and definition of each of these lesser grades [of heretical crimes] is that they are categori[sed] not by their connection to heresy, but to heretics.'[118] This quote refers specifically to the council of Narbonne in 1243 but is expressive of Sackville's assessment of anti-heretical legislation in general. The thread of thought that I shall pick up from my earlier discussion of heretical categories is that heretical crimes came to be defined not upon belief but upon actions. With regard to behavioural immune theory we have explored how this would be the logical conclusion of persecution, because behaviour triggers the functions of the behavioural immune response, therefore the disgusting behaviour of heretics (a well-established trope by the thirteenth century) stimulates the response rather than the 'classic' obstinately theological definition of heresy. Arnold's work is shot through with this dichotomy between the divergent conceptions of heresy and he often draws attention to the transition of heresy to an action-based crime.[119]

[115] Arnold, *Inquisition and Power,* p.41.
[116] See above section, '4.3.1 Excommunicamus: The anti-heretical legislation of Gregory IX'.
[117] Arnold, *Inquisition and Power,* p.41.
[118] Sackville, *Heresy and Heretics,* p.98.
[119] Arnold, *Inquisition and Power,* p.44.

By the end of the 1240s 'the description of categories had become enmeshed with the system of inquisitorial procedure.'[120] It is worth taking some more time to dwell on Arnold's assessment. Fundamental to Arnold's analysis is the idea that heretical legislation became intertwined with the procedure of inquisition. From this we must reflect upon the way in which anti-heretical legislation became incorporated into the procedure of inquisition and most specifically the categories of heretical crime. Anti-heretical legislation had a longer progenitor than the inquisition, however, the categorisation of heretical crime, especially as explicit as it became after the council of Narbonne, was a product of inquisitorial procedure, hence Arnold uses the word 'enmeshed' to describe the relationship between the two. Arnold's assessment is undoubtedly correct, however, we can expand upon this deep relation by understanding precisely why it was so important for those who were developing inquisitorial practice to define and create these new categories as part of the operation of inquisition. The answer is that the procedure of inquisition developed to reflect a growing recognition of individual criminal culpability. The process of inquisition depended upon categories in a manner, which lay outside of the norms of normal legislative law. The categories were not fashioned to provide more legislation with which to prosecute heresy, in a way that anti-cybercrime laws were necessitated because of advancements of technology. No, instead the creation of the categories was a response to shape an emerging prosecutorial process to the needs of the individual's rights in law. The categories were created for the inquisitorial

[120] Arnold, *Inquisition and Power,* p.44.

process rather than in spite of it. Individual criminal culpable responsibility was established as a procedural necessity of inquisition through the legislation of individualising criminal categories, which were designed to ensure a procedure for the process of *inquisitio* that reflected an individual's right to fair treatment within the system of justice.

Tarragona (1242) extended anti-heretical legislation through an individualising ethos. Tarragona stratified and delineated varying degrees of heretical crimes. It did this, so that the legislative process was better able to interpret guilt in relation to heretical networks, rather than the corporate justice which had previously dominated. Narbonne, a year later, in 1243 began to formulate a procedure for inquisition that established a form of due process for the individual, which reflected an ethos learnt from Roman law. Narbonne produced a litany of canons designed to formulate the operation and legal exactitudes of *inquisitio* that would create Inquisition.

Most noticeable amongst these were Canon 24, 'it is possible to accept charges of infamy from criminals and accomplices,'[121] Canon 25, 'the depositions of principle enemies are to be rejected,'[122] and Canon 26, 'if the guilty maintain their innocence they can be convicted by the testimony of witnesses or other means.'[123] These canons, in concert, outline the way in which inquisitors were to construct and use *fama*. Specifically, they balance the general suspicion of *fama*

[121] Mansi, XXIII c.363 'et eriminis etiam participes, ad accusationem, vel testimonium admittantur,'.
[122] Mansi, XXIII c.357 *'tantum exceptionibus fidem testium ex toto evacuantibus, quae non ex zelo justitiae, sed de malignitatis fomite proccedere videntur,'.*
[123] Mansi, XXIII c.357 '*Si qui stamen culpam suam, ex qua possit credens, vel heareticus judicari, de qua plene per testes, seu aliam probationem constat, pertinaciter negare non metuit,'.*

against the individual's right to dismiss malicious testimony. This had been a particularly troublesome problem for Conrad. He had been happy to accept clearly malicious testimony.[124] The ultimate legal principle of *fama*, however, had to be maintained. While it was possible for an individual to have testimony dismissed on the grounds of its malicious nature, an inquisitor could still accept testimony from other members of a heretical network. Note that canon law set this precedent because of the great magnitude of the crime.[125] Further to this, inquisitors could use such testimony as a form of proof to establish a verdict. We shall explore below precisely how proof came to be reconstructed through the inquisitorial process, suffice to say here in Canon 26 *fama* alongside accompanying testimony (or other means) could produce proof. A significant boon to the inquisitorial arsenal, to say the least. This great power of prosecution, however, was mitigated by Canon 23, explored below, which stressed the importance of freeing innocent souls to the detriment of punishing the guilty.

Equally, to the above Canon 5 stipulates that 'the penalties are left to the judgment of the inquisitor.'[126] This is significant because it legislates for the individualising nature of penance. Itself a realisation of individual criminal culpability.[127] The way in which inquisitors chose to reflect this individualising

[124] Alberic of Trois-Fontaines, *Chronicon*, 931 '*Nescio quem accusare; dicite mihi nomina, de quibus suspicionem habetis*,'.

[125] Mansi, XXIII c.363 '*quamvis in hujusmodi crimine propter ipsius enormitatem omnes criminosi et infames,'.*

[126] Mansi, XXIII c.357 '*quod paenitentiae inquisitorum discretioni permittuntur,'.*

[127] See, D. McCann, *Soul Health Therapeutic Reading in Later Medieval England* (Melksham, 2018), pp.4-16; L. Boyle, 'The inter-conciliar period 1179-1215 and the beginnings of pastoral manuals,' in ed. F. Liotta, *Miscellanea Rolando Bandinelli, Papa Alessandro III* (Siena, 1986), pp.43-56; J. Baldwin, 'From the ordeal to confession: in search of lay religion in early thirteenth century France,' in P. Biller & A.J. *Minnis, Handling Sin: Confession in the Middle Ages*, (Woodbridge, 1998), pp.200-205. See also, M.W.F. Stone,

ethos is explored in the proceeding chapter. In its most basic form individual criminal culpability was recognised through a gradation of penances. Interestingly, the variations of penances operated not only between the heretical categories established at Tarragona but within them. The legislation outlined here and the penitential records of inquisition demonstrate how truly ingrained the notion of individual criminal culpability had become within the Institution of Inquisition.

The most important canon established at the council was Canon 23. Canon 23 stresses the need for proof and stipulates to establish guilt there was a need for 'clear and frank (full) proof, or the production of their own confession; indeed, it is a better act, to free the guilty than to condemn the innocent.'[128] This canon has uniquely linked two crucial elements of justice, which were radically transformed by the long twelfth century. These were, modes of proof and the resultant impact upon notions of innocence. We have discussed in previous chapters the impact that the rejection of ordeal had upon the nature of proof. Here we can clearly see how the new modes of proof designed to operate in the process of *inquisitio* were being transformed into that of Inquisition. *Inquisitio* was a well conceptualised construct by the 1240s. Theoretically *inquisitio* could call a person to trial if there was significant enough *fama* to necessitate a trial. Procedurally, however, the process of *inquisitio* was not as well defined and certainly not a by word for the prosecution of heresy. *Inquisitio* would now rely

'The care of souls and practical ethics,' in R. Pasnau, *The Cambridge History of Medieval Philosophy* (Cambridge, 2009), pp.531-533.

[128] Mansi, XXIII c.362-3 '*Ad nullius vero condemnationem fine lucidis probationibus, vel confessione propria procedatis. Satius enim est facinus impunitum relinquere, quam innocentem condemnare,'.*

upon the stipulation of clear and full proof, which could also be a confession.[129] *Fama* was not a suitable mode of proof for the prosecution of heretics as it had been in the trials conducted by Conrad of Marburg. The implications of this posed a legal conundrum. Ordeal had operated on a mechanism of full proof, in so much as God's judgment was indisputable, however, as we have previously discussed the reality of ordeal was a communal judgment of a defendant's character. In a similar fashion *fama* was used to begin trial proceedings and within the legislation of Gregory IX could be used as a mode of proof. Canon 23 rejects this use of suspicion as a mode of proof.

Canon 23 and the way in which it necessitates a full form of proof is indicative of the long twelfth century and the changing nature of written prescriptive law. Proof had changed in the long twelfth century to be explicit and beyond doubt, in essence it needed to be empirical, although due to human nature such an ambition was often not realised, yet *fama*, suspicion and ordeal all ran counter to this new way of understanding the law and proof, reliant as they were on human judgment. This came to manifest itself in the next part of the clause of Canon 23, 'it is better to let the guilty go free than condemn the innocent.' Guilt had to be unequivocally proved, and the method of that proof had to be beyond reproach, hence, the morality of condemning the innocent was seen to outweigh the acquittal of the guilty.

[129] The need to establish guilt in trial proceedings was a real driving force in medieval jurisprudence. For instance, the use of torture, medieval Canonists actually refer to ordeal as torture in some instances, was only permitted because of the legal imperative that full proof, the pre-requisite for guilt, had to be established.

It is interesting to reflect upon the way in which Roman law had radically transformed the nature of corporate theory in canon law. The discussion of innocence and guilt was not quite an extension of that, but certainly ran parallel to it. Individuality was becoming the way in which society was re-structuring itself. The individual criminal culpability had triumphed in the battle of corporate liability and punishment and now the individual on trial was triumphing in the battle of procedure. There are some very complex legal arguments that this canon rather neatly summarises. The right of the victims over the accused, the nature of proof, the idea of innocence until proven guilty, the burden of proof and who it should fall upon? All of these legal abstractions were subsumed into one rather distinct facet of the legal procedure, the criminal defendant's right to due process. In essence, the individual as a legal identity had been renegotiated in the long twelfth century through concepts of Roman law and the teaching of Gratian's *Decretum* and demonstrated by a better outlined court procedure. For the process of *inquisitio* this necessitated a better reflection of individual criminal culpability, which found form in the well-defined categories of Tarragona and a system of due process more tightly ascribed to the nature of the individual, hence the twenty-third canon's insistence upon the need of proof and its forthright affirmation of the morality of innocence.

5.7 Inquisition; Individuality Through Procedure

When first theorising my response to regional councils, I had merely planned to establish a simple timeline in which anti-heretical legislation became more sophisticated, codified and explicit. As my thoughts began to crystallise, however, it became clearer that there was a distinctness between the

inquisitorial practice of early and later inquisitors. The further I delved into the uniqueness of the early inquisitors, namely Robert and Conrad, the more apparent their style and system of *inquisitio* became.

This uniqueness stemmed from the way in which they interpreted their role as inquisitors. These men were legal forces beholden to no authority except their own, and arguably that of the Pope. They lacked a proper inquisitorial procedure, which would have painted their actions in a very different light. It was this lack of procedure that became crucial to understanding the way in which these men operated. As a result, procedure became the focus of this chapter, and what better way to demonstrate its changing nature than via the regional councils, which established Inquisition. Procedure as a theme masked many strands including, the long twelfth century, individual criminal culpability, canonical discussion, reception of Roman law, but the most important of these was the transition of Popes from Gregory IX to Innocent IV. There was clearly a chasm between the way in which these Popes conceptualised the law and its operation. This difference made itself manifest through the ethos and procedure of these two men's inquisitions, which can be demonstrated by the regional councils held in each man's pontificate. It is no exaggeration to state that the regional councils of Tarragona and Narbonne transformed the process of *inquisitio* into Inquisition and cemented its relationship with heresy. The fundamental way in which they did this was through a renewed focus upon procedure. A procedure that had been inspired by Roman law and remoulded to reflect individual criminal culpability. Consider the differences in sentiment between the words of Conrad of Tours and canon 23 of the Council of Narbonne. As noted above, Conrad once

callously retorted ‘we like to burn one hundred innocent people among whom there is one guilty person,’ whereas canon 23 states ‘it is better to let the guilty go free than condemn the innocent.’ These two binary opposed statements reflect an ethos and attitude towards law that is not immediately interpreted as procedure, however, we can clearly demonstrate through the differing procedures used by the post and pre-Innocent inquisitions how such an ethos dramatically affected the process of *inquisitio* creating Inquisition. If we take the underlying principle behind this procedural shift and thematic reflection, it is beyond doubt that the underlying causal principle was a growing recognition of individual criminal culpability.

6.0 Inquisition in practice

6.1 Reflections on an Individual

The final chapter of this thesis examines the Inquisition in practice. Its focus will be how the transformative nature of Roman jurisprudence affected the process of *inquisitio*. This will take the form of two overarching themes, individuation and the technical legal process of *inquisitio*. These two features are important to understanding the way in which the Inquisition developed because they are, in effect, the definition of what Inquisition (as an institution) was. First, the process of *inquisitio* supplanted ordeal because it facilitated prosecution of individual criminal culpability. Secondly, the technical legal procedures developed to support this process, were fundamental to the way in which inquisitors operated. Inquisitorial courts operated in order to try an individual in a highly procedural manner.

It is difficult to grasp the magnitude of this transformation without focusing on an individual. Therefore, a brief examination of the tragic story of Bernard de Revel will take place. Bernard's story is used to frame Arnold's work *Inquisition and Power*. Bernard in order to escape his penance from the inquisition and prevent further incrimination of those he loved, committed suicide, by striking his head against a cell wall. Bernard's death occurred in the summer of 1273, during the Inquisition of Ranulphe de Plassac and Pons de Parnac.[1] Significantly for our discussion, this inquest incorporated the fullness of legal development, benefiting from the canons of both

[1] See, Doat 25 fols. 11r-14v, and A. Murray, *Suicide in the Middle Ages: The Violent Against Themselves* Vol.1-2 (Oxford, 1998), Vol.1 pp.187-88 and J. Arnold, *Inquisition and Power Catharism and the Confessing Subject in Medieval England* (Philadelphia, 2001), pp.1-3.

Narbonne (1243) and Tarragona (1242), discussed in the previous chapter. Bernard's death allows us to focus upon the themes of the inquisition in a very provocative way.

Bernard's story exemplifies the major theme of this work, the transition from corporate to individualising justice. Bernard's death was a product of the way in which the law demanded a more stringent legal process focussed upon individual guilt, whilst at the same time concentrated power and the mechanisms of that control into the hands of a bureaucratic elite. Bernard's death illustrates the historiographical approach taken by Hamilton, that the inquisition represented 'the substitution of mob violence for the rule of law.'[2] This line of argument is reinforced by the fact that far fewer people died as a result of Inquisition, than during the Albigensian Crusade.[3] The legacy of Inquisition, when all else is stripped away, may be the rather troubling premise that it afforded for society a better form of justice.

Dwelling more deeply upon the assessment of Hamilton, it is worth contrasting this notion of mob violence to that of the law. Above, we examined the ways in which medieval canonists understood the sources of law developing from either a *lex, mos* or *jus*.[4] Hamilton's remark pits these competing notions of law against each other, in this instance the *jus* and the *lex.* Bluntly, however, both of these concepts were sources of legitimate law. What Hamilton is really articulating, and what will be the focus of this chapter, is that the Inquisition was an expression of the *lex*. This legal transformation,

[2] Hamilton, *The Medieval Inquisition,* p.57.
[3] The vast number of people killed at Béziers skews this figure. Caesarius of Heisterbach places the total at one-hundred thousand See, J. Bird, P. Edward and J. Powell, *Crusade and Christendom: Annotated Documents in Translation from Innocent III to the fall of Acre,* 1187-1291 (Philadelphia, 2013), p.80. An inflated figure, no doubt but certainly refugees would have swelled the number within the town, when it was sacked in 1209. Arnaud Amalric in a letter to Innocent III, (1209, PL 216, col.139) places the figure at 20, 000. Equally, the crusade itself was marked with numerous incidents of mass killings. See, G. Lippiat, *Simon V of Montfort and Baronial Government, 1195-1218* (Oxford, 2017), pp.169-170.
[4] K. Pennington, '*Lex Naturalis* and *Ius naturale,*' *The Jurist* 68 (2008), 569-591, pp.569-571.

whose nascence began in the long twelfth century, was the result of centralised authority, expressed through a written codified law. Yet, simultaneously, the *lex* legislated protections for the defendant. The most significant of these was the individual's right to a trial.[5] Inquisition, represented an institution of binary-opposites in which, we can see the horrors of persecution, contrasted with a legal process whose fundamental *raison d'être* was to afford a defendant due process.

This is why Bernard's story is so compelling. It captures the cruelty of legal system, designed to prosecute a crime to the detriment of personal liberty, yet, the Inquisition was also predicated upon the rights of the individual. Below, we shall explore how the Inquisition straddled the binary opposition at the heart of its legal procedure.

6.2 The Source of the Problems, Doat and Ms. 609

6.2.1 Historical Reproduction

The Inquisition, as a development of the sweeping legal transformation of the twelfth century, relied heavily upon the written word.[6] This power of written authority was demonstrated not only in the *lex* that created the mechanisms of procedure by which the Inquisition operated, but also within the sophisticated mechanisms of trial that developed to implement its operation. Above, we explored the *lex* of inquisition. Here, we shall examine some of the copious amounts of testimony, penances and sentences that were necessary for the Inquisition's operation.

[5] K. Pennington, 'Due Process, Community, and the Prince in the Evolution of the Ordo iudiciarius', *Rivista internazionale di diritto comune* 9 (1998), pp.9–47 and 'Innocent Until Proven Guilty: The Origins of a Legal Maxim' *The Jurist* 63 (2003), pp.106–124.
[6] C. Bruschi, *Wandering Heretics of Languedo*c (Cambridge, 2009), p.46 and L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011), p.142.

Before examining the specifics of what Inquisitorial trials can demonstrate, it will be worth outlining what exactly our sources are and the problems associated with them. Thirteenth century trial records of the Languedoc can be found in two sets of sources. These are the Doat collection and the Toulouse BM Ms. 609. What remains of the original Doat documents contains some 400, 000 words and represents over five thousand deponents. There are, however, microfilm editions and an edited online version,[7] as well as a selected edited version in Douais[8] and translations of selected segments can be found in Wakefield[9] and Biller and Arnold.[10] These documents are reproductions of the original trial records, which contained summaries of the testimonies given.

Simplistically, before we examine the sources' construction in greater detail, there are two main prisms through which we view these Inquisitorial sources. Firstly, there is the historical reproduction of these documents. Secondly, the manner of construction through the inquisitorial process itself, which obscures and restricts the deponent in a variety of ways. These factors greatly hinder the historian when assessing the Inquisition.

First, I shall focus upon the Doat collection. The original inquisitorial manuscripts are no longer extant, however, in 1663, as part of a larger commission, Jean de Doat, or more precisely his staff, produced copies of some of the original documents.[11] The Fonds Doat

[7] http://jean.duvernoy.free.fr/text/listetexte.htm Duvernoy's online resource, whilst useful, should act more as an aide-mémoire rather than an edited source.
[8] C. Douais, *Documents pour server à l'histoire de l'Inquisition dans le Languedoc*, vols. 1-2 (Paris, 1977).
[9] W. Wakefield & A. Evans, *Heresies of the High Middle Ages* (New York, 1991).
[10] P. Biller & J. Arnold, *Heresy and Inquisition in France, 1200-1300* (Manchester, 2016).
[11] H. Omont, 'La collection Doat à la Bibliothèque nationale. Documents sur les recherches de Doat dans les archives du sud-ouest de la France de 1663 à 1670,' *Bibliothèque de l'École des chartes* 77 (1916), pp.286-336, p.286, Biller & Arnold, *Heresy and Inquisition,* p.294 and Bruschi, *Wandering Heretics,* pp.24-26.

consist of 258 surviving manuscripts. The collection still bears his name as the official designation within the Bibliothèque nationale France, of this rather large collection, only volumes 21-36 pertain to the Inquisition.[12]

Doat was an official of the French Crown, working for the *Chambre des Comptes* in Navarre. He was tasked by Jean Colbert with recording legal documents within the Languedoc that pressed the King's rights or were of historical interest. Despite a four-hundred-year gap between the production of the trial manuscripts and their reproduction, Doat's transcriptions offer to the historian some of the best evidence for how inquests operated.[13] The odd mistake notwithstanding the historical consensus is that the manuscripts, which have survived, offer a faithful reproduction of the originals without deliberate falsification.[14]

Bruschi, highlights the problems faced by Doat when trying to acquire enough talented scribes to properly record the information within the documents.[15] She argues that this adds a further barrier between the historian and the inquisitorial court, but should not deter one from engaging with these sources. She offers this final assessment: 'still transparent and visible through the filter of the Doat copies are the historical memory of the investigation…and the inquisitor's library, his knowledge and instruments.'[16] It is these instruments which shall be the focus of this chapter. Inquisitorial records be they Doat or Ms. 609, shall be construed as technical documents. They are products of a legal process, whose production was necessitated by the transforming nature of the long

[12] See, https://www.york.ac.uk/res/doat/ for general information about the Doat collection.
[13] Bruschi, *Wandering Heretics*, p.24.
[14] C. Sparks, *Heresy, Inquisition and Life Cycle in Medieval Languedoc* (York, 2014), p.15, n.70.
[15] Bruschi, *Wandering Heretics*, p.25.
[16] Bruschi, *Wandering Heretics*, p.26.

twelfth century. Here, we shall be giving snapshots of that process as *inquisitio* transformed itself into the Inquisition.

In a similar fashion, Toulouse BM Ms. 609 is a historical reproduction of documents originally generated by the inquisition of Bernard of Caux and John of Saint-Pierre. Unlike those of the Doat collection, however, Ms. 609's reproduction occurred roughly forty years after its original creation, sometime after October 1258, but no later than august 1263.[17] Our extant documents are only the fourth and fifth books, of a possible ten. Interestingly, these documents are committed to paper, not vellum. They remain one of the earliest examples of paper documents in France.[18] Pegg believes the paper to be a product of Valencia via Catalonia, although without a watermark, the use of which became common in the last decade of the thirteenth century, we will remain uncertain. The Ms. 609 manuscripts have been damaged by water and time, so a complete reading is challenging.[19]

The question remains, however, can we rely upon these sources? Here the answer becomes ambiguous. In the reproduction of the sources we can find many faults from accusations of falsification or mistranslation to neglect and damage, all of this casts scepticism over the value of our sources. Historians, however, are willing to examine the documents to reconstruct a picture of inquisitorial activity, the odd mistake notwithstanding. The major issue pertaining to the sources lays not in their reproduction by Doat or unnamed scribes in Toulouse in the 1260s, but in the

[17] Pegg, *The Corruption of Angles,* p.20.
[18] Biller and Arnold, *Heresy and Inquisition in France,* p.380. In contrast the earliest surviving paper records from England are letters from Italian bankers (the Riccardi) to Edward I, dating from 1296. See, M. Clanchy, *From Memory to Written Record: England 1066-1307* Ed.2nd (Oxford, 1993), p.120.
[19] Pegg, *The Corruption of Angles,* p.21.

production of the original documents by the inquisitors themselves. The larger historiographical debates relate to the construction and function of the texts, not their now extant form.

6.2.2 Conducting and Inquisition and Constructing the Texts

Below is an account of how the inquisitorial process operated with specific reference to the inquest of Bernard of Caux and John of Saint-Pierre (1243-1252). The Inquisition of these two men has been selected because it was the first Inquisition to benefit from the canons of Tarragona (1242) and Narbonne (1243). The effect of the canons upon this inquisition is subtle, and simply institutionalised many of the practices already used by earlier inquisitors, such as Peter Sellan (whose inquest is discussed below). The best example of this standardisation of inquisitorial procedure is, the period of grace. Peter used the period of grace in some capacity, however, it was not well regulated or defined.[20] The Councils of Narbonne and Tarragona legislated for a more explicit procedure, discussed below. It is a subtle shift and the effect in the court room would have been limited, if not unnoticed by deponents. The point remains, however, that in the wake of the regional councils, Inquisition had a standard legislative procedure, originating from the *lex* of canon law. Consider this when reading below about the process of Inquisition, which had been created in the wake of the regional councils. It will be beneficial to contrast this to the poorly outlined procedure of *inquisitio* defined by Gregory IX.[21]

[20] J. Feuchter, 'The *heretici* of Languedoc: Holy Men and Women or Organised Religious Group? New Evidence from Inquisitorial, Notarial and Historiographical sources,' in A. Sennis, *Cathars In Question* (York, 2016), p.117 and J. Feuchter, 'Pierre Sellan, un vieillard expérimenté,' in ed. L Albaret*, Les Inquisiteurs, portraits de defenseurs de la foi en Languedoc* (Toulouse, 2001), p.45.
[21] See above, section '5.2.1 *Excommunicamus*: The anti-heretical legislation of Gregory IX'.

Initially, inquests began by addressing a letter to the parish priest, which called either upon a singular deponent or the entire parish to come before the inquisitorial court.[22] There then followed a period of grace, in which, if a penitent fully recanted and related their sin they would receive a lesser punishment. This procedure was introduced by the first canon of the council of Narbonne (1243) and later reissued at Béziers (1246).[23] The canon stated that inquisitors had, 'promised immunity from prison to heretics and their believers, receivers, defenders, and supporters who came of their own accord, before the set day, repentant, to tell the whole truth about themselves and others.'[24] Long before a deponent found themself within the cloisters of Saint-Sernin,[25] the legal process of Inquisition was underway. Inquisitors followed a process, designed to regulate justice in a form defined by written procedure and procedural steps. The new *lex* had an oddly dualistic feature, while it granted novel ways of manifesting power, it also constrained that power through a written procedure, whose primary focus was the individual defendant.

Having been summoned to the inquisitorial court, deponents had to make the journey to where the inquest was being held. This could be a journey of many miles or just a short trip. Once there, deponents were tried separately. The process began with a standardised oath to abjure heresy and give full and faithful testimony. Initially the

[22] M.G. Pegg, *The Corruption of Angles, The Grand Inquisition of 1245-1246* (Oxford, 2001), p.38.
[23] Initially, Peter Sellan had used a similar mechanism, but it was not a standard or formalised part of inquisitorial procedure. See, Feuchter, 'The *heretici* of Languedoc,' p.117 and Feuchter, 'Pierre Sellan,' p.45. Equally, Peter Sellan's use of this, informal period of grace, reflects more the deal he made with the political elite of Quercy. See, C. Taylor, *Heresy, Crusade and Inquisition in Medieval Quercy* (York, 2011), p.123. For specific discussion of the oath as formulated at Narbonne see, H.A. Kelly, 'Oath Taking in Inquisitions,' *Bulletin of Medieval Canon Law* 35 (2018), pp.215-242, p.225.
[24] Mansi, XXIII c.356 'Quatenus haereticis, et eorum credentibus, receptatoribus, defensoribus, et fautoribus immunitatem carceris assequutis, quam ex vobis aliqui eis infra certam diem sponte venientibus, poenitenibus, et tam de se quam de aliis plenam dicentibus veritatem,'.
[25] The Cathedral where Bernard of Caux and John of Saint-Pierre conducted their Inquisition whilst in Toulouse, recorded in ms. 609.

inquisitorial oath was intended to bind defendants to answer the inquisitorial questions, not to force them to give faithful testimony.[26] The oath, however, evolved over the course of the twelfth century to become one in which the defendant would 'come forward of their own accord as penitents' and proceed 'to tell the full truth, about themselves as about others.'[27] Once again, this illustrates how the technicalities of the legal practice were outlined through the regional councils.

There then followed a series of formulaic questions, which were designed to place the individual into a heretical criminal category.[28] It is around these questions that the trial was structured, and our sources constructed. This degree of individuation can be lost somewhat, especially when we imagine entire parishes being questioned, or when the penitents were sentenced in general sermons, but the time was taken to treat each individual in accordance with the law. This fact is made more astonishing when we think about the vast numbers who were called before the inquisitorial court.

This notion of power, in the construction of discourse, is crucial to the way in which historians are inclined to interpret the sources left to us.[29] The nature of the sources is that they give the illusion of being a record of a conversation, albeit a highly restrictive

[26] K. Pennington, 'The Jurisprudence of Procedure,' in eds. K. Penninton & W. Hartman, *The History of Courts and procedure in Medieval Canon Law* (Washington, 2016), p.143.
[27] Narbonne Mansi, XXIII c.356 *'sponte venientibus, penitentibus, et tam de se quam de aliis plenam dicentibus veritatem*,'.
[28] Arnold, *inquisition and Power,* p.42, Bruschi, *Wandering Heretics*, p.22 and Sackville, *Heresy and Heretics,* p.94.
[29] Foucault's model of discourse analysis will no doubt help the reader unpick the larger issues at stake here. For a brief digestion of his research and its relation to inquisitorial discourse see, Arnold, *Inquisition and Power*, whose entire work takes Foucault as an analytical paradigm. In particular, see p.10 and pp.205-206. I would also recommend C.C. Ames, *Righteous Persecution: Inquisition and Dominicans, and Christianity in the Middle Ages* (Philadelphia, 2010), *passim,* whose work is a counterpoint to the nature of Foucauldian discourse presented in Arnold's work.

one, between penitent and inquisitor.[30] That is, the inquisitor would ask questions to a deponent and we have a record of their responses, from which, we can infer the questions being asked. The production of the documents was never intended to be a verbatim record of the words of each deponent. The documents of Inquisition were functional texts, designed to constitute proof and substantiate a continuing legal process.[31] This question of the nature of inquisitorial discourse is a vibrant area of historiography. There are diverse opinions on the nature of what precisely the Inquisitorial records represent and how they can be used. The plainest position is that of John Arnold, who points to the constrictive nature of the testimony, who argues that the formulaic nature of the trial placed deponents into categories of repression, however, we can still unpick from the testimony a voice of a deponent.[32] This position is countered by Christine Caldwell Ames, who believes that the 'inquisition was a conversation about Christianity in its practice.'[33] Ames work is a direct response to the Foucauldian model, and subsequent historiographical position, used by Arnold.[34] She does, however, concede that this relationship was restrictive and that 'inquisitors [were the] holders of literal power.'[35] Personally, I am inclined to view the inquisitorial documents as primarily legal texts, from which interesting details of life can emerge,

[30]See, Pegg, *The Corruption of Angles,* p.50, p.35, Bruschi, *Wandering Heretics,* pp.6-46 and J. Arnold, 'Inquisition, texts and discourse', in C. Bruschi and P. Biller, *Texts and Repression of Medieval Heresy* (York, 2003), pp.63-80, for a good summary of the debate between historians regarding the relationship between deponents and inquisitors.

[31] Pegg, *The Corruption of Angles,* p.60 and Bruschi, *Wandering Heretics*, p.46. Also see below, 'Individuals and *inquisitio.*'

[32] J. Arnold, 'A man takes an ox by the horn and a peasant by the tongue: literacy, orality and inquisition in Medieval Languedoc,' in ed. S. Jones, *Learning and Literacy in Medieval England and Abroad* (Turnhout, 2003), pp.34-35 and Arnold, *inquisition and Power,* p.42.

[33] Ames, *Righteous Persecution,* p.16.

[34] Ames, *Righteous Persecution,* p.5.

[35] Ames, Righteous *Persecution*, p.18.

however, inquisitorial documents were not designed to capture the peculiarities of peoples' lives, even if they sometimes did.

James Given, also, sees the Inquisition as highly restrictive and powerful, shaping the discourse to suit its needs.[36] To Given, deponents were an 'inert and pliant mass, waiting passively to be shaped by,' the inquisitorial process.[37] Given's attitude is rebutted by Bruschi. Bruschi believes that the deponents were not simply moulded by the process but played a significant role in constructing the texts.[38] The dynamic between the inquisitor and deponent is not one easily reconciled. The nature of a trial lends itself to a discursive model, similar to Arnold and Given's, in which power to guide the conversation is within the hands of the Inquisitors. That said, there are moments in which individuality and the intimate nature of testimony shines through.[39] This is something more akin to the views held by Bruschi and Ames. I believe that the best way in which to interpret inquisitorial documents is as a legal process. They were functional documents, shot through with procedure and rigour, designed to fulfil the burden of proof necessary for guilt. Hence, they tend to be formulaic, stereotyped and methodological.[40]

Very rarely do we get a hint of something more when reading through Inquisitorial depositions. Using the evidence of Doat or Ms. 609 presents the problem that the inquisitors were literally putting words into the mouths of the deponents. Often the

[36] J. Given, *Inquisition and Medieval Society: Power, Discipline, and Resistance in the Languedoc* (New York, 1997), p.213.
[37] J. Given, 'The Inquisitors of Languedoc and the Medieval Technology of Power,' *American History Review* 94 (1989), pp.336-359, p.357.
[38] Bruschi, *Wandering Heretics*, p.46.
[39] Although not relating to the Languedoc, Stephan Justice's article 'Inquisition, Speech, and Writing: A Case from Late-Medieval Norwich' *Representations* 48 (1994), pp.1-29, is a fine exploration as to why this might be.
[40] Bruschi, Wandering Heretics, p.46 and Sackville, *Heresy and Heretics,* p.142.

formulation runs something like, 'Item, he saw in the house of William's daughter Ar. Maiestre formally the concubine of B. de Mairevila…' (then follows a long list of names of suspected heretics).[41] Even if, the source was to read "I saw in the house of William's daughter," the power dynamic between deponent and inquisitor would remain the same.[42] That is, if the trial record was constructed directly through the words of the deponent, the larger problem of the coercive nature of the trial would still be present. For example, later on in that deposition it is reported that, 'although he knows that he attacks the church through this, and he heard them say their errors.'[43] We cannot credibly believe that the inclusion of such a statement was given voluntarily of the deponent's own volition, without some form of prompting. Would the deponent willingly construct heresy as an attack upon the church? Or even accept that what he heard to be erroneous? For the inquisitor, however, the above statement was irrefutable proof of a heretical crime. This construction of heretical categories is common throughout the range of inquisitorial sources. Often, the inquisitorial process subsumes the internal motivation of the heretic in place of a series of actions, which were taken to construct belief.[44] The construction of heresy in the eyes of the persecutor is the single largest problem facing the historian dealing with Doat and Ms. 609 sources.

A further layer obscuring historical clarity is the problem of translation. Inquisitions had to be conducted in the vernacular Occitan. The documents produced, however, were

[41]Ms 609 Fo 2 B (13. JD), '*Item vidit in domo Willelme filie quondam den Companh concubine Ar. Maiestre B. de Mairevila,'.*
[42] See, Bruschi, *Wandering Heretics of Languedoc,* pp.6-46 and Arnold, 'Inquisition, texts and discourse,' pp.63-80.
[43] Ms 609 Fo 2 B (13. JD) '*licet sciret quod Ecclesia persequeretur eos, et audivit eos dicentes errores*,'.
[44] Sackville, *Heresy and Heretics,* p.100 and Arnold, *Inquisition and Power,* p.44.

transposed into Latin by a process called tachygraphy.[45] Inquisitorial records are then a summary of testimony that was given at trial, not in the original language of discourse. Beyond even these considerable barriers, there is the further problem that our documents today are copies of the original courtroom documents. As stated above, Doat and Ms. 609 seem to contain no obvious falsification but we can only speculate as to what has been omitted and what errors exist in the copying. It is doubtful that Ms. 609 is an exact replica of the original courtroom documents.

6.3 Inquisitorial Developments After the Death of Gregory IX

Inquisitorial trial records were products of dramatic legal change occurring after the death of Gregory IX (1241). What follows, is a brief outline of where the events of this chapter take place in regards to the larger inquisitorial timeline. We begin in 1241, with the death of Gregory IX, which facilitated Peter Sellan's inquest. Gregory IX had presided over a period of *inquisitio* that had done little to further the rights of the individual defendant. His definition of guilt, evidence and proof, were all severely lacking for the highly developed courts of the long twelfth century. Attuned as they were to written forms of proof, witnesses and of course Roman jurisprudence. Inquisitors during his pontificate met a particularly gruesome end, think of Conrad of Marburg and Robert le Bougre. Little would change during his pontificate because of his high disgust sensitivity and his low reception to Roman law.[46] Feutcher dates Peter Sellan's inquest as starting much earlier in 1236, however, despite some inquisitorial activity, its impact seems

[45] Pegg, *The Corruption of Angles,* p.57 and M. Parkes, 'Tachygraphy in the middle Ages: Writing Techniques Employed for Reportations of Lectures and Sermons,' in M. Parkes, *Scribes, Scripts and Readers: Studies in the Communication, Presentation and Dissemination of Medieval Texts* (London, 1991), pp.19-33.

[46] See above, section '5.2.1 *Excommunicamus*: The Anti-heretical Legislation of Gregory IX'.

rather muted, although this may simply reflect that the source material is no longer extant.[47] Most of the material that survives is records of his penances. We lack the depositions that would have constituted the proof of heretical criminal activity. Therefore, I agree with Taylor's dating of 1241. On Gregory's death canon law was able to reign in and remodel the process of *inquisitio* through a series of regional councils. The most important of these were held at Tarragona (1242) and Narbonne (1243), discussed above.[48]

Tarragona, headed by Raymond de Peñafort, outlined and modernised the process of *inquisitio*, outlining how it would be conducted within the courtroom. Narbonne expanded the anti-heretical legislation that was used by inquisitorial courts. The canons of Narbonne produced more and better-defined categories of heretical activity and for the first time outlined specifically an ethos of Roman law that the innocent should not be punished for the crimes of the guilty. The council at Narbonne, in many ways, reflected a larger battle of corporate liability that had been raging in the glosses of canon law since Gratian's *Decretum*. One of the greatest proponents of a more Romanised form of canon law was Innocent IV. All this legal change had transformed the process of *inquisitio* into the Inquisition. The changes, thorough procedure and legislation, were centred upon the individual. We shall be assessing the trial records for demonstrable moments of individual criminal culpability and a reflection of the new anti-heretical legislation, discussed in the previous chapter.

[47] See, Feuchter, '*Pierre Sellan'*, pp.53-4; J. Feuchter, 'Le pouvoir de l'inquisition a travers ses peines. Le cas de ontauban', in ed. G. Audisio, *Inquisition et pouvoir* (Aix-en-Provence, 2003), pp.233-55, p. 239, Lea, *Inquisition*, vol.2, pp.21-2.
[48] See, Taylor, *Heresy, Crusade and Inquisition*, p.23 and H. Barmby, *The punishment of heresy in Languedoc during the mid-thirteenth century* (unpublished PhD thesis, Nottingham, 2017), p.54.

6.4 Peter Sellan

Peter Sellan was one of the very first inquisitors to be appointed to the Languedoc in 1241. Prior to this, he had a long clerical history. He was one of the first two recruits, in the Languedoc, to the Dominican order in 1215 and later he gave over properties that he owned to support their work within the region. from May 1241 to March 1242, his inquisition in Quercy incorporated nine towns Almont, Beaucaire, Castelnau Montratier, Gourdon, Moissac, Montauban, Montcuq, Montpezat and Sauveterre.[49] His records leave to us seven hundred and twenty four penances, however, the actual figure of unique individual penances is six hundred and forty four. The discrepancy relates to duplication of previous sentences within the text.[50] Significantly, he was carrying out his inquisitorial duties, at the very height of the legal transformation that swept through the process of inquisitorial legislation, most importantly his inquisitorial records demonstrate the Romanising influence that had seeped into canon law.[51]

The surviving records of Peter's inquisition are contained within Doat 21, however, they are incomplete. What is left to us are the public proclamations of guilt, which were delivered through a penitential sermon. This surviving material makes it possible to

[49] See, Feuchter, 'Pierre Sellan,' and Feuchter, 'Le pouvoir,' Taylor, *Heresy, Crusade and Inquisition,' passim* for discussions on Peter Sellan's life and inquisitorial work, Biller and Arnold, *Heresy and Inquisition*, p.310; Taylor, *Heresy, Crusade and Inquisition,* p.23.
[50] Barmby, *The punishment of heresy,* p.45.
[51] For Romanising influences in canon law see, R. Helmholz, 'Cannon law and Roman Law' in D., Johnston, *The Cambridge Companion to Roman Law* (St. Ives, 2015), p.411; J. Brundage, 'Legal Learning and the Professionalization of Canon Law', in H. Vogt and M. Munster-Swendsen, *Law and Learning in the Middle Ages Proceedings of the second Carlsberg Academy Conference on Medieval Legal History 2005* (Copenhagen, 2006), p.15 and A. Winroth, 'The teaching of Law in the Twelfth Century' in eds. H. Vogt & M. Munster-Swendsen, *Law and Learning in the Middle Ages Proceedings of the second Carlsberg Academy Conference on Medieval Legal History 2005* (Copenhagen, 2006), pp.50-55.

demonstrate both, the representations of individual criminal culpability and the developing sophistication of inquisitorial procedure

The public nature of penance is remarked upon by James Given. Given notes that 'infliction of punishment(s) were public occasions, spectacles open to everyone.'[52] The function of which, Given argues, was to create fear and awe within those witnessing the punishment. Given frames this punishment and repression within the Durkheim model. Society was being repressed by those in power for their needs and to suite their modes of behaviour. It is worth pausing briefly and asking how closely Given's interpretation of inquisitorial penance aligns to what we expect from behavioural immune theory. I would argue that the very visible and dramatic nature of the penances, things like the wearing of crosses and public proclamations of penances, are in keeping with the precepts of the behavioural immune system. Such penances were designed to alienate other members of a community who, were able to elicit a disgust response. After serving their penance they may well be viewed as clean, although some people did report problems of re-integration.[53] In terms of exclusion, visibility and alienation the public nature of the penances was designed to create a group of "disgusting" individuals against who the behavioural immune system could operate.[54]

The most striking characteristic of the penances of Peter Sellan is their leniency. An enduring caricature of the inquisitorial process is that it ended in the death of its deponents. Whilst this picture may not be wholly true, most people were able to escape

[52] Given, *Inquisition,* p.73.
[53] Given, *Inquisition,* p.78, p.21, p.218.
[54] W. Miller, *The Anatomy of Disgust* (London, 2009), p.63 and M. Schaller, 'The Behavioural Immune System and the Psychology of Human Sociality,' *Philosophical Transactions of the Royal Society* Vol.366 (2011), pp.3418-3426, p.3420.

the flames, although many would die in Prison.[55] It is worth exploring why none of Peter Sellan's penitents were released to the secular arm or imprisoned. Feuchter outlines two factors. Firstly, the desire of the inhabitants to use the period of grace to voluntarily come forward and confess their crimes, resultantly receiving a lighter punishment, had a significant impact. Secondly, it seems that the political elite of Montauban and Gourdon cut some sort of deal with the inquisitors, similar to the period of grace, in which they would fully relate their heretical activity to receive lesser (none corporeal) punishments.[56] It is arguable therefore that Peter's inquisition does not, truly, reflect the full legal force of the process of *inquisitio.*

Despite Peter's leniency, he still generated a range of unique penances for the varying degrees of heretical crime he encountered, all of which demonstrate the various ways in which the inquisitorial process began to reflect individual criminal culpability. As stated in the previous chapter the council of Narbonne (1243, canon 5)[57] legislated that Inquisitors could decide upon the individual penances appropriate to each case, demonstrating how individual criminal culpability was becoming the main focus of inquisitorial practice. Barmby outlines that thirty-seven varieties of penances were used by Peter.[58] Peter's inquest predates the regional councils of Tarragona and Narbonne, therefore the legal terminology used in his penances does not conform to the more rigorous approach outlined by the later regional councils, especially concerning

[55] A. Roach, 'Penance and the Making of the Inquisition in Languedoc,' *Journal of Ecumenical History* 52 (2001), pp.409-433, p.415.
[56] Feuchter, 'The *heretici* of Languedoc,' p.117 and Feuchter, 'Pierre Sellan,' p.45.
[57] Mansi, XXIII c.363 '*quamvis in hujusmodi crimine propter ipsius enormitatem omnes criminosi et infames,'.*
[58] Barmby, *The punishment of heresy in Languedoc*, p.70.

heretical categories. We can start to see an emerging reflection of individual criminal culpability and a gradation of heretical involvement.

I shall begin by exploring those penitents who were identified by the Inquisition as supporters of heretical networks. Although, these people were not obstinate heretics, they were all culpable of practicing a form of religious worship distinct from those of Catholicism. After the council of Tarragona such people would be labelled the *credentes.* Below are the penances given to three heretics, Raymond Arpa [A], Guiralda of Rieu [B] and En Rocas [C]. There are three varying degrees of heresy present in these sources. The three penitents represent a cross section of heretical activity, all were true believers in heresy, but the extent of their involvement in the heretical world differed. Raymond and Rocas are what we may term ordinary believers, whereas Guiralda had been, at one time, a perfected heretic and observed some form of heretical religious life. I will address the type of heretical activity described and what in particular drew the attention of the inquisitors and the varying degree of penance ascribed to these individuals.

[A] 'Raymond Arpa was a host and escort for many heretics for a long time, and heard the preaching, and believing they were good men, and that one could be saved by them. And he was captured for heresy, and this was not during the period of grace. He will stay in Constantinople for eight years. Regarding cross and journey, just as others.'[59]

[59] Doat 21, 186 v *'Raymundus Arpa fuit hospest et ductor haoereticorum multori longo tempore, et audivit praedicationes eorum et credebat quod essent boni homines et salvan per eos, et fuit captus pro haeresi et non fuit in tempore qratiae stabit Constantinopolitani per octo annos de cruce et via sicut alii,'.*

[B] ‘Guiralda of Rieu left her husband, and made herself a perfected heretic, and stayed with heretics for half a year. She is to wear two crosses, and she will go to Le Puy, St-Gilles and St-James.’[60]

[C] ‘Rocas heard heretics often, and he was a receiver and host of the heretics for a long time. And from the moment he saw them he believed in them. And he provided them with necessities. And he adored them often, and ate the bread blessed by the heretics. And believers in heretics often came together to his house to hear their preaching’s and adore them, in his presence, and he ate with them. And he was present at three hereticatations, one of which was done in his house. And he escorted heretics, and received heretic’s bequests. And he believed in the heretics as though they were messengers sent by God. He received heretic so many times, ate with them so many times, and they with him, and adored them so many times, and heard the preaching so many times, and saw so many men and women with the heretics he does not remember. And he cried when the heretics left. He kept them company on Easter Day.[61] Item, he said that if he died, he wanted to die in their hands. He will stay for a period of three years in Constantinople. Regarding the cross and travel, just as the others.’[62]

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[60] Doat 21 190 r *‘Guiralda del Riu recessit a viro et fecit se haeretiram perfectam et per dimidium annum stetit cum haeretiris ista resumet duas cruces, et ibit ad podium Sanctum Egidium, et Sanctum Jacobum.’*

[61] This detail would have particularly interested an inquisitor because since the Fourth Lateran the receiving of Holy Communion on Easter Sunday became a significant indicator of Catholic religiosity. It was a legislatively prescribed form of belief outlined in canon 21 of that council. The exclusion of this behavioural norm would naturally trigger some form of behavioural immune response and clearly demark the perpetrator as ‘other’.

[62] Doat 21 198 r- 199 v ‘*Rocas vidit haereticos pluries et in diversis locis et fuit receptator et hospes haereticorum longo tempore et ex quo vidit eos credidit eis et ministravit eis necessaria, et adoravit eos pluries et comedit de pane benedicto ab haereticis et conveniebant saepe credentes haereticis ad domum ad audiendum praedicationes eorum, et ad adorandum eos ipso praesenti et comedebat cum eis, interfuit tribus haereticationibus, quarum cona fuit iri domo sua facta, et conduxit haereticos et legata haereticorum recipiebat, et credebat eis sicut nuncius a Deo (199v) mis sis totiens recepit haereticos et tot et totiens comedit cum eis et ipsi cum eo, et totiens adoravit eos, et totiens audivit praedicationes eorum, et tot viros, et tot viros, et mulieres vidit cum haereticis quod non recordatur, et flevit in recess*

The greatest disparity between these penances is that Raymond and Rocas [A &C] were both sent on long pilgrimages to Constantinople for varying degrees of length, whereas Guiralda [B], rather leniently, was sentenced to comparably parochial pilgrimages. This disparity between the male and female penitents reflects the military usefulness of the male *credentes*. There is a certain degree of historical consensus that the correlation between the destination of Constantinople and the sex of the penitents sent there, flowed form an initiate to provide military support for the fledgling Latin state.[63] Women were not seen as militarily useful as their male counterparts. Therefore, there was no need to send them so far afield. It is an explanation I find convincing and helps us to understand precisely how Peter decided upon the penances he ascribed.

Further to this, it should be noted that whilst both Raymond and Rocas are sentenced to Constantinople, their period of pilgrimages varies by drastic amounts. Raymond must reside in Constantinople for eight years to Roca's three. This disparity in length stems from the time at which each penitent became subject to the Inquisition. Rocas, whose criminal culpability was far greater than Raymond's, had a reduced sentence because he testified during the period of grace. Raymond's fate was comparatively worse because, as noted in his penance, he did not come forward during the period of grace and was captured at a later date. The difference between these two penances highlights some rather unique features of not only the inquisitorial process but the approach of the Catholic church to heresy. Firstly, we must use the differing lengths of penance as

haereticorum in die pascha associavit eos. Item dixit quod si moreretur vellet mori in manibus eorum. Stabit per triennium Constantinopoli de cruce, et via sicut alii.'.

[63] See, Feuchter, 'Pierre Sellan,' p.53, Feuchter, 'Le pouvoir,' pp.239-40, p.247, C.T. Maier, *Preaching the Crusades* (Cambridge, 1994), p.69; P. Segl, 'Stabit Constantinopoli, Inquisition und päpstliche Orientpolitik unter Gregor IX' in *Deutsches Archiv für Erforschung des Mittelalters* 32 (1976), pp.209-220, p.209, p.218 and R. Spence, 'Gregory IX's attempted expeditions to the Latin Empire of Constantinople: the crusade for the union of the Latin and Greek churches'*, Journal of Medieval History* 5 (1979), pp.163-74.

indicative of individual criminal culpability. Secondly, the period of grace and the nature of penance highlights the redemptive attempts made by the Catholic church in its mission to combat heresy.[64] The church, especially Peter Sellan, was willing to re-embrace its flock and wished people to atone. If we contrast the leniency of Peter, to the outright murderous Conrad of Marburg, we can see a stark transformation. Such a transformation reflects not only the internal nature of both men, but also the growing legislation that came to regulate the operation of the process of *inquisitio*.

6.4.1 Further Categories of Heretical Criminals

Disruption of heretical networks needed to be conducted systemically, hence there emerged a range of heretical categories, which reflected individual criminal culpability. The Catholic church had long been interested in rooting out heretical networks in their entirety. To achieve this aim, without wholesale slaughter, heretical categories had been crystallising throughout our period. They became explicitly outlined at the council of Tarragona (1243).[65] Peter's inquisition falling just shy of the council, conforms to the trends of individuation presented at the most transformative of the regional councils in 1242 and 1243. Below are some examples of those who lent some form of support to heretics, which could include simply hearing heretical preaching without the implication of believing in an alternate version of Christianity. Note, how innocuous this form of heretical activity could be.

[D] 'Joanna of Ribière saw heretics twice. She will go to Le Puy.'[66]

[64] Roach, 'Penance and the Making of the Inquisition in Languedoc,' pp.411-412.
[65] Arnold, *Inquisition and Power,* pp.42-43 provides a very useful breakdown of the heretical categories that were established at the council of Tarragona (1242).
[66] Doat 21 208 r '*Joanna de Riberia vidit haereticos bis ibit ad podium*,'.

[E] 'Raymond Bernard saw heretics twice and accompanied them. He will go to Le Puy, St. Giles and St. James.'[67]

[F] 'Elias of La Valade saw heretics twice. The same as the previous one,'[68] (i.e. Raymond Bernard

The following penance more properly conforms to the heretical activity of a *credens*, but I have included it for some revealing reasons:

[G] 'Bernarda of Ribière saw women heretics many times, and heard their preaching, and gave them things of hers and believed they were good women. The same as the previous one.'[69] (i.e. Elias of La Valade)

The above penances are testimony to how the criminally culpable individual became constructed through the inquisitorial process. The above penitents were all found guilty of heretical activity, but received a lesser punishment for their role than those who were true believers in an alternate form of Christian religiosity.

Why was there such a marked contrast between the inquests of Peter Sellan and early inquisitors, like Conrad of Marburg and Robert le Bougre? Why were early inquisitors so willing to conduct a process of *inquisitio* that sought to punish indiscriminately the guilty and accept testimony that was dubious at best, whereas Peter conducted an inquisition based upon an ethos of individual criminal culpability and repentance with the church. The most simplistic answer is, Peter was conforming to the arranged deal he had made

[67] Doat 21 208 r '*Raimundus Bernardus vidit haereticos bis, et associavit eos ibit ad podium, Sanctum Egidium, et Sanctum Jacobum*,'.
[68] Doat 21 208 r '*Elias de la Valada vidit bis haereticos, idem quod Proximus*,'.
[69] Doat 21 208 r-208 v '*Bernarda de Riberia vidit pluries haereticas audivit praedicationem earum dedit eis de bonis suis, et credebat quod essent bonae mulires, idem quod Proximus*,'.

with the political leadership of Quercy, not to prosecute too harshly those elite families.[70] Certainly, this was the case, but why would Peter be willing to make such a deal? A few possible reasons emerge. Firstly, Peter was a man of the south and so did not wish to persecute his fellow countrymen (of Languedoc), too harshly. Secondly, he could have feared for his safety. Harsher inquisitors had suffered some rather brutal consequences, the assassination of Conrad, the imprisonment of Robert le Bougre and the expulsion of William Arnaud from Toulouse in 1235, may have quieted his vindictive nature. Equally, local hostility had brought Peter's earlier inquisitorial efforts to a premature end.[71] I feel that whilst such things were important to Peter, we can contrast his willingness to forgive and reconcile, to Conrad's need for draconian punishment. The greatest discrepancy between these two inquisitors came not from fear of punishment, nor fictive kinship, Conrad was as much a man of the Rhine as Peter was a man of the Languedoc, but from their internal disgust sensitivity. Peter was far more willing to forgive because he was less disgust sensitive and so more inclined to forgive breaches of the behavioural immune system. This does not mean that Peter was insensitive to the operation of the behavioural immune system. Simply, his disgust sensitivity did not gravitate him towards harsh punishments for moral breaches as Conrad's did.[72] This comment is more an example of the extreme disgust sensitivity of Conrad than of Peter's, but it helps to highlight the viability of understanding precisely how behavioural

[70] Taylor, Heresy, Crusade and Inquisition, pp.220-221 and Feuchter, 'Le pouvoir,' pp.245-50.
[71] See, Feuchter, '*Pierre Sellan'*, pp.53-4; Feuchter, 'Le pouvoir,' p. 239; Lea, *Inquisition*, vol. 2, pp. 21-2.
[72] Conrad's harsh punitive measures for moral breaches are well documented see, K. Sullivan, *The Inner Lives of Medieval Inquisitors* (London, 2011), pp.80-82. See, Y. Inbar, D. Pizzaro & P. Bloom, 'Conservatives are more easily disgusted than liberals' *Cognition and Emotion* 23 (2009), pp.714-725, p.723 for harsh moral punishment being linked to disgust sensitivity.

immune theory can allow us to interpret the actions of these very different inquisitors and the impact of their inquisitions.

I have used the penances above to demonstrate the macro differences between differing sorts of heretical crime. What I have thus far neglected is the micro differences in penances between those found guilty of minor heretical crimes. How did Peter gradate penitents who were culpable of similar crimes? Below we shall examine the penitents involved in the lesser category of crimes.

Beginning with two criminals whose crimes are comparable, Raymond [E] and Joanna [D], both discussed above, saw the heretics twice. Raymond, however, not only did this but accompanied them too. This variation in their heretical activity is reflected in the penance they received. Joanna must venture on a pilgrimage to Le Puy but Raymond, who is more culpable than Joanna, must also, travel to St. Giles and St. James. A rather simple, but important distinction of individual criminal culpability. Such an example is, however, slightly confused by the penance received by Elias [F]. Elias, too, saw the heretics twice, like Joanna. He did not, however, accompany them as Raymond had done. Despite this, he served the same penance as Raymond. Elias may simply have had the bureaucratic misfortune of appearing in the same session as Raymond. Often, penances conform to a stereotype punishment, for example three years in Constantinople or a pilgrimage to Le Puy, so we see notes like: 'the same as previous.'[73] Indeed, this is what the penance suggests when it stipulates, 'the same as the previous one.'[74]

[73] See, Doat 21 225 v '*idem quod proximi,'.*
[74] Doat 21 208 r '*idem quod Proximus*,'.

Equally perplexing is the Penance received by Bernarda [G]. Bernarda's heretical activity was far more implicating than other deponents addressed in this section of penitents. She saw heretics many times, provided them with material support and believed them to be Good Women.[75] Such crimes realistically place her into the *credens* category above. Her penance, however, is not as severe as other *credentes*. More astonishingly, it is not even as severe as some penitents, who were less criminally culpable. Bernarda's penance may seem severe, a pilgrimage to Le Puy, St. Giles and St. James. She is, however, comparatively lucky. Her penance was the equivalent to Elias, yet, her heretical activity was more far-reaching and implicating. The discrepancies between the penances can only be attributed to gender.

The harsher punishments for male heretics is a recurring theme throughout the penances of Peter. Most noticable in the *credentes* category, due to the necessities of male *credentes* needed to support military efforts in the near east. This leniency shown towards females is replicated consistently through Peter's penances. Such an observation no doubt reflects Peter's gendered attitude towards female religious practice. I would argue that Peter did not view female heretical involvement to be a significant to that as their male counterparts, therefore he deemed females penances to not be as important and therefore comparatively lenient *vis a vis* their male counterparts culpable of similar sorts of crimes. Indeed, as Taylor highlights the heretical activity of women is often more muted than that of their male counterparts, and she is sceptical of the emancipation and equality of women through heretical

[75] Bernarda's heretics are specifically heretical women. It is a rare example of female preaching.

activity. Such a silencing of women's role, however, may be a reflection of the sources.[76] In so much as, sources created through such a gendered prism would necessarily reflect that construct.

Certainly, there was a gender bias exhibited by Peter when it came to distributing penances. It is an interesting finding that individuation not only existed between the categories of canon law but, tanks to Peter, between the sexes as well. Individual criminal culpability is a demonstrable phenomenon in the penances of Peter Sellan, we must be aware, however, of precisely how he manifested that individuation through his conception of gender.

6.5 Peter Sellan and Behavioural Immune Theory

Before moving onto to analyse further heretical categories, I would like to take the time to discuss behavioural immune theory and its relevance to the sources. When discussing persecution and behavioural immune theory, one of the crucial concepts to understanding the sudden appearance of the persecuting society was the emergence of a new level of bureaucracy.[77] The Inquisition helped to regulate and align the limits of acceptable behaviour in previously unseen ways. We can see this process in our sources via the uniqueness of their construction, never before had there been such a concerted effort to conform society through legislation. What we have not explored, however, is

[76] Women are almost universally constructed via their relationship to a male, for example, "the wife of," "the sister of," "the daughter of." See, Taylor, *Heresy, Crusade and Inquisition*, pp.165-166. This may be another reason why females received a lesser penance from Peter Sellan, simply their agency was taken from them by the inquisitorial process. They were not respected as individuals to the same degree as their male counterparts.

[77] R. I. Moore, *The Formation of a Persecuting Society* Ed.2nd (Oxford, 2007), pp.144-45, Moore does not use behavioural immune theory but does link persecution to the bureaucratisation of society.

precisely how behavioural immune theory came to manifest itself in a very sophisticated way through the inquisitorial process.

The most alarming way in which behavioural immune theory was expressed in the inquisitorial process was the elision between action and belief.[78] Broadly, actions came to subsume explicit belief. Specifically, heretical relations and associations came to be criminalised. This process of criminalisation was the product of two factors. The first was the strict definition of heresy within canon Law. Heresy was defined as the obstinate belief in error at Tarragona in 1242.[79] This resulted in a situation where true heretics were few and far between. This dearth of readily prosecutable people led to a second factor that heretical networks could often endure and heretics evade the church. Therefore, to attack heretical networks or heretics themselves, the true source of the Churchmen's disgust response and need for conformity, heretical categories were established. The inquisitorial penances of Peter Sellan demonstrate how these heretical categories based upon action and association came to be criminalised. It is integral to the understanding of Inquisition that the production of heretical categories, encapsulates both, the repressive and progressive (novel) nature of the Inquisition. Heretical categories were not only manifestations of individual criminal culpability but were also products of the more sophisticated operations of the behavioural immune system. The victory of the *lex*, during the long twelfth century, helped produce individual culpable criminals as well as prosecute them.

[78] Sackville, *Heresy and Heretics,* p.142.
[79] Sackville, *Heresy and Heretics,* p.190 '*heretici sint qui in suo errore perdurant,'.*

Further to this, it is significant precisely what sort of activity was considered to be an indicator of heretical belief. Examining Rocas' testimony [C], I would argue that certain behavioural patterns linked to the consumption of food and death, preoccupy his inquisitorial penance. This is precisely what one would expect to see from a legal apparatus built upon the foundations of behavioural immune theory. The inquisitorial records demonstrate an interest within the inquisitorial process in elements that coincide with the operation of the behavioural immune system. The inclusion of such detail about the consumption of blessed bread by the heretics and that he wished to die in their hands, are crucial indicators that Peter Sellan felt important for it publicly to be known. The inclusion of such information may have been to disgust the audience members hearing the penitential sermon, justifying the punishment Rocas received. The inclusion of such practices also indicated precisely what heretical beliefs Rocas held. His consumption of blessed bread and wishing to be consoled on his death bed, indicated that he was a follower of Catharism as opposed to Waldensianism. Inquisitors were interested in these details, not only because they distinguished between heretical groups, but because they were moments at which heretical beliefs could be made manifest. These moments of food consumption and death ritualisation accrue significance because they are demonstrable moments for the operation of the behavioural immune system.[80] That is, they are cultural behavioural norms aligned to a set of beliefs concerning food preparation and the care of the vulnerable. Such moments become crucial indicators for religiosity. When such moments fall under the regulation of the behavioural immune system they are subjected to a complex process of

[80] P.W. Sherman & J. Billing, 'Darwinian Gastronomy: Why We Use Spices' *BioScience* 49 (1999), pp.453-463; B.S. Low, S.W. Gangestad, M.G. Haselton & D.W. Buss, 'Evolutionary Foundations of Cultural Variation: Evoked Culture and Mate Preferences,' *Psychological Inquiry* 17 (2006), pp.75-95.

repressive mechanisms. The Inquisition was a medieval attempt to bring behavioural order to society, by cleansing it of heresy. What would be more natural then for an inquisitor to take interest in, criminalise and punish, than moments at which the behavioural immune system regulated?

I shall now depart from the inquisition of Peter, having demonstrated a wide range of individual criminal culpability through a varying degree of severity.[81] Those crimes deemed most supportive of heresy and the heretical network were more severely punished, as one would expect. Within these broader categories, however, there were also subtle variations of penances that reflect individual criminal culpability. The discrepancies within the broader categories were based upon things like, the frequency of criminal heretical activity, the willingness of a penitent to appear before the inquisition most notably within the period of grace. The most striking variation, however, can be seen between the penances of men and women. Peter's inquisition of the early 1240s helps us to understand precisely how the process of *inquisitio* was transforming itself into the Inquisition, after the regional councils of Tarragona (1242) and Narbonne (1243), with a greater emphasis upon procedure and individual criminal culpability. It is to the legal technicalities we now turn and ask how did the process of *inquisitio* become institutionalised?

6.6 The Inquisition of Bernard of Caux and John of Saint-Pierre

The next inquest we shall examine is that of Bernard of Caux and John of Saint-Pierre. The records of this inquisition are contained within Ms. 609, unlike Peter Sellan's, which are within the Doat collection. Ms. 609 records a single Inquisition conducted by two

[81] Barmby, *The punishment of heresy in the Languedoc,* p.70.

inquisitors Bernard of Caux and John of Saint-Pierre, from 1245 to 1246 around the area of Toulouse. The dating of the inquest is linked to the cessation of hostilities in the final chapter of the Albigensian crusade and the fall of Montségur (1244).[82] The capitulation of Montségur marked the end of effective, armed, Cathar resistance in the region, which resulted in a relatively free authoritarian hand for the church to persecute heresy. Although, resistance to Inquisition would continue, not least in the court room,[83] it would often be more targeted and oriented towards the documents produced by the Inquisition, rather than at the inquisitors themselves.[84] Reflecting, not only the demise of Catharism as a viable challenge to the authority of the Catholic Church, but also, that people began to recognise the growing power of the written form of proof, indicating that the process of Inquisition was dependent upon the records produced not the person in office. There emerged a clear and marked distinction between the individual who happened to be an Inquisitor and the power of that office: creating the institution of Inquisition. Trial records generated by inquisitors were part of a continuing legal procedure, in which the documents themselves constituted proof.[85] This form of written proof was a legacy of the dramatic legal transformations of the long twelfth century.[86] The written word had come to replace witnesses and guarantors as modes of proof. The legal revolution had supplanted the testimony of witnesses in favour of the controlled discourse of Inquisition. The nature of the controlled discourse helped shape and

[82] J. Sumption, *The Albigensian Crusade* (London, 1999), pp.236-241.
[83] This is the main thrust of Ames's work *Righteous Persecution,* which views power as a dialogue. She argues that the inquisitorial trials were spaces of resistance and a negotiation of Catholic power and what it meant to be Christian. See, Ames, *Righteous Persecution,* p. 16, p.160.
[84] Arnold, *Inquisition and Power,* p.82 & Given, *Inquisition,* pp.90-150 for a more general discussion of the way in which communities resisted inquisitorial power.
[85] Bruschi, *Wandering Heretics,* p.46.
[86] See, J. Brundage, 'The Learned Judge: The Development of an Ideal,' *University of St. Thomas Law Journal* 1 (2003), pp.434-446, p.439 and Helmholz, 'Cannon law and Roman Law,' p.397.

categorise deponents into heretical categories.[87] The novelty of this written procedure is discussed in greater detail below. With this relatively uncensured power, after 1245, deponents were called from the villages and towns surrounding Toulouse to give testimony before the inquisitorial court, which was held at the cathedral of Saint-Sernin within the city itself.[88]

Within the two surviving volumes (of ten) there are the depositions of over five thousand named deponents.[89] If, we consider that the original collection in its entirety ran to ten volumes, it would not be unreasonable to assume that at an estimated 20, 000 people were subjected to the inquest of Bernard and John. The majority of these depositions are brief and expand no more than the deponent affirming that they abjured all heretical activity and beliefs. Wakefield extrapolates from his comprehensive survey of Le Mas-Saintes-Puelles that nine tenths of deponents fell into this category.[90] A discussion of the extent of the heretical activity occurs above, but to reiterate here, it seems that whilst heresy was popular it was contained within the elite class of the Languedoc and the majority of people remained Catholic even if they did display a deference to the good men and women.[91]

6.7 Penitential Sermons and the Criminally Culpable Individual

[87] Arnold, *Inquisition and Power,* p.42; Bruschi, *Wandering Heretics*, p.22 and Sackville, *Heresy and Heretics,* p.94.
[88] W.L. Wakefield, 'Heretics and Inquisitors: The Case of Le Mas-Saintes-Puelles,' *The Catholic Historical Review* 69 (1983), pp.209-226, pp.209-210.
[89] Wakefield places this figure at around 5500, Biller puts the figure at over 5000. To be conservative I have chosen the lower figure for my calculations. See, Wakefield, 'Heretics and Inquisitors,' p.209; P. Biller & J. Arnold, *Heresy and Inquisition in France, 1200-1300* (Manchester, 2016), p.380.
[90] Wakefield, 'Heretics and Inquisitors,' p.210.
[91] M. Lambert, *The Cathars* (Oxford, 2004), pp.67-69.

Like the penances of Peter Sellan, the inquest of John of Saint-Pierre and Bernard of Caux demonstrates a gradation of penances based upon individual criminal culpability. In contrast with Peter Sellan these later inquisitors favoured imprisonment rather than pilgrimages as a form of penance. This undoubtedly derived from the nineteenth canon of the council of Béziers (1246), which states that relapsed heretics should be imprisoned, perpetually, rather than sent on pilgrimages.[92] In fact, most of their heretical penitents were subject to some form of imprisonment. Individual criminal culpability came to be reflected in the varying sentence lengths for differing heretical crimes. The stratification of heretical crimes used by John and Bernard remained those defined by the council of Tarragona (1242). Individual criminal culpability also came to be reflected in the stratification of criminal culpability within those heretical categories. Usually, a more lenient sentence indicated an individual's willingness to adhere to the inquisitorial process. There was also a marked leniency for penitents who were coming before the inquisition for the first time. Although, the minutia of this individuation can be harder to spot in the records, due to the nature of a general proclamation of sentencing, with broadly stereotyped penances.

The depositions of the heretics of the village of Gournvielle provide an excellent illustration, for the way in which the Inquisition of Bernard and John came to construct individual criminally culpability through the process of *inquisitio*. All eighteen heretics, three women and fifteen men, were sentenced as a group on the 13th of May 1246 to

[92] Mansi, XXIII, c.20, col.719.

perpetual imprisonment.[93] Such a general proclamation, rather than individual sentencing hearings, was common practice for the Inquisition.[94]

Initially, the use of such standardised penances seems to contradict the individuating argument of this thesis. Indeed, the penitential sermons of Bernard and John are hard to distinguish from the use of corporate punishment, which characterised the massacre at Béziers or the inquisition of Conrad of Marburg. Such a view, focusing solely on the penances and the manner of their delivery, marginalizes the wider context of the way in which the Inquisition constructed individual criminal culpability. Firstly, it should be made clear, Bernard and John did use a range of penances to punish their heretical criminals. This range, however, is masked somewhat by the majority of penances having been delivered *en masse*, to groups of penitents. Ultimately, it is the process of *inquisitio* where individuality is best demonstrated, not necessarily the outcome of a penance. The procedure of Inquisition developed around the criminal culpable individual, providing a legal framework to establish guilt or innocence. The trial of any individual was more important to the construction of this criminally culpable individual than the penance they received. Now, while most penances were stereotyped, such a detail

[93] These are, Aldriga wife of Bernard Ri, Bernard de Prato, Johanna wife of W. de Solario, Willelma de Manso, Stephanus Garric de Vauro, Esclarmunda wife of Poncii Bret de Godervilla, Arnaldus de na Borgesa de Roca Sereira, Stephanus Fabri, Petrus Fabri, Ar. Fabri, Petrus Folc, Jordanus Hugole, Poncius Jordani, Ar. Andreas, W. de Guzenx, W. Sermenha, Poncius de Piquel and W. de Sirignano. See, Douais, *Documents,* pp.10-16.

[94] To illustrate the point, provided here is a breakdown of the sentences for the year 1246. On the 18th of March 2 men were condemned as heretics and their goods seized. March 25th is the most diverse sentencing but still the penances were distributed into four blocks: 10 were sentenced to perpetual imprisonment, 20 to temporary imprisonment of an unspecified length, 1 to fifteen years and 6 to ten years. May 6th 1 to wear a cross and 6 sentenced to perpetual imprisonment. May 13th 18 perpetually imprisoned. May 17th 5 perpetually imprisoned. May 20th 2 perpetually imprisoned. May 28th 8 perpetually imprisoned. June 3rd 5 perpetually imprisoned. June 10th 11 perpetually imprisoned. 24th June 4 perpetually imprisoned and 1 sentenced to a nunnery. July 8th 4 perpetually imprisoned. July 22nd 4 perpetually imprisoned. July 27th 3 condemned as heretics and their goods confiscated. Clearly sentencing was a communal affair and penitents were punished in blocks. See, Douais, *Documents,* pp.1-38 note the edited French pre-amble which details penitents and their penances given before each day's sentencing.

distorts the individualising process that placed the penitent before the inquisitorial court. This argument is perhaps the strongest for articulating how sophisticated the Inquisition had become, as a legal process centred upon individual criminal culpability, by the mid-thirteenth century.

As an example take the penance delivered to heretics of the village of Gournvielle on the 13th of May 1246, which states,

> 'because they have scandalously offended God and the Church, in the ways stated above, our will and command is that to work though the appropriate penance they must be thrust into perpetual imprisonment, and remain there for ever, and we order them to carry out this penance by the oaths they have taken. If, however, they are unwilling to do the aforesaid penance, let them be bound by the chains of excommunication.'[95]

The above proclamation imprisoned perpetually eighteen people for crimes related to heresy. By examining the penance alongside the confessions presented in the pre-amble of the sermon, we can see that the penitents of the 13th of May were all guilty of the same heretical crime, namely they were all *credentes*. The inquisitors were bound by procedure to punish these heretics in a manner befitting their crimes. Whilst they had the right to choose what this penance may be, often they decided that perpetual imprisonment was by far the most suitable penance, no doubt guided by canon 19 of the council of Béziers.

[95] Douais, *Documents*, pp.15-16 '*Quia in Deum et Sancta Ecclesiam predictis modis temere deliquerunt, ipsos coram nobis comparentes legitime citatos die sibi ad recipiendam penitentiam, in perpetuum carcerem retrudi volumus et precipimus ibidem perpetuo comorari; et quod istam penitentiam compleant injungimus eis in virtue prestiti juramenti. Si vero predictam penitentiam facere noluerint, ipsos excomunicationis vinculo innodamus*,'.

Below are examples of the penitents of Gournvielle to provide context for the penance they received:

[H] Aldrige wife of Bernard the money changer, 'saw heretics often, adored them many times, believed the heretics to be good men, heard them publicly, ate bread blessed by the heretics, was present at a heretication, the truth of which she concealed against her own oath.'[96]

[I] Bernard of Prato 'saw heretics often, adored them many times, believed in their errors, gave to and served heretics, received them in his home, after abjuring heresy.'[97]

[J] Esclarmonde widow of Pons Bret of Goudourville 'saw heretics, adored them, believed them to be good men and believed that one could be saved in their faith, and believed she would be damned if she died other than in the hands of the heretics, and she ate with a heretic woman, and denied this truth before other inquisitors and then again before us against her oath.'[98]

Whilst these records pertain to individuals, they are oddly formulaic, if not stereotyped. It is easy to see precisely how these deponents became categorised through the inquisitorial process and how these categories were expressed. The deponents here are all designated as *credentes.* That is, true believers in heresy. I noted above about how inquisitorial records were designed to produce heretical categories as a reflection of

[96] Douais, *Documents*, p.11 '*Aldriga, uxor quondam Bernardi Ri, cambiatoris, vidit pluries hereticos, adoravit pluries, credidit hereticos esse bonos homines, predicationem eorum audivit, comedit de pane benedicto ab heretics, hereticationi interfuit et celavit veritatem contra proprium juramentum*,'.
[97] Douais, *Documents*, p.11 '*Bernadus de Prato vidit pluries hereticos, adoravit eos pluries, credidit eorum erroribus, dedit et servit hereticis, receipt eos in domum sueam et, post abjuratam heresim,'.*
[98] Douais, *Documents*, p.12 '*Prenominata etiam Esclarmunda, uxor quondam Poncii Bret de Godervilla, vidit hereticos, adoravit, credidit eos esse bonos homines et credidit salvari in fide eorum, et, si descederet, nisi in manibus hereticorum, crederet dampnari, et comedit cum heretica, et negavit veritatem aliis inquisitoribus, et postmondum* (Ms. *Postmotum*) *coram nobis contra proprium juramentum*,'.

behaviour. Sackville takes this further by arguing that actions came to subsume belief.[99] The inquisitorial process took individual believers and subsumed their belief into an encompassing identity. Arnold illustrates this point by highlighting the semantic difference between a burglar and one who has committed burglary.[100] The latter defines the first, but the term burglar has an identity of its own, removed from the actions committed by any one burglar. This question of constructing identity is the strange juxtaposition inherent in the inquisitorial process, within the records left to us. Each individual entry represents the fate of a person, however, due the nature of the inquisitorial document, which were inherently functional within that legal process, the individual's identity can be hard to separate from the reportage of their crimes or more worryingly the individual becomes identified by their crimes.

We should not, however, dismiss individual belief completely. Individual belief, as constructed within the summary of the penitents' guilt, varies from individual to individual. The specificity of these individual beliefs but not practices, which seem general and prescribed, not only provide interesting detail to the case of the deponents, but erodes some of the more deconstructionist views, which would argue that the process of inquisition prescribed and created the ideas of heretical belief.[101]

The most explicit manifestation of an alternate religiosity can be found in Esclarmonde's penitential summary [J]. We are told that she wished to die in the hands of the heretics, presumably under the *consolamentum*, but also, she believed that she would be

[99] Sackville, *Heresy and Heretics,* p.142.
[100] Arnold, *Inquisition and Power,* pp.46-47.
[101] M.G. Pegg, 'The Paradigms of Catharism; or, the Historians' illusion,' in ed. A. Sennis *Cathars In Question* (York, 2016), p.21. This is of particular relevance to Pegg's work because his conclusions are derived solely from Ms 609.

damned if she did not. Such a provocative anti-Catholic statement lends itself to behavioural immune theory analysis. The inclusion of such detail within the penitential sermon demonstrates its resonance for the inquisitors, especially when that detail is contrasted with the penitential summary of Bernard [I]. Both Bernard and Esclarmonde were believers in heresy, yet the detail in Esclarmonde's summary is far more intimate. The inquisitors found it necessary to include this information because its subject matter relates to the behavioural immune system and so triggered a behavioural immune response.[102] It is also worth reflecting upon the public nature of the sermon here. The inclusion of this extra detail may seem innocuous, but when contrasted to other deponents' beliefs or even further beliefs seen in Esclarmonde's own deposition, which are not recorded within the penitential sermon, its inclusion is striking. The Inquisitors felt it necessary to record such detail because they found it shocking. Behavioural immune theory would suggest that they perhaps intended to shock their audience, too. It must also be stated that a direct reference to the *consolamentum* would have identified Esclarmonde as a Cathar heretic and not a Waldensian or member of any other heretical sect, which drew the inquest's attention. Fundamentally, however, its provocative nature stems from its triggering of a behavioural immune response.

This juxtaposition between the structured records of the inquisitorial process and the individual culpable criminal is the driving exploration of this chapter. How can records, so formulaic and procedurally driven, display individuation? The answer developing

[102] See, P.W. Sherman & J. Billing, 'Darwinian Gastronomy: Why We Use Spices' *BioScience* 49 (1999), pp.453-463; R.J. Quinlan, 'Human Parental effort and Environmental Risk,' *Proceedings of the Royal Society* 274 (2007), pp.121-125; B.S. Low, 'Marriage Systems and Pathogen Stress in Human society,' *American Zoologist* 30 (1990), pp.325-339 and S.W. Gangestad, M.G. Haselton & D.W. Buss, 'Evolutionary Foundations of Cultural Variation: Evoked Culture and Mate Preferences,' *Psychological Inquiry* 17 (2006), pp.75-95, also, S.W. Gangestad & D.W. Buss, 'Pathogen Prevalence and Human Mate Preference,' *Ethology and Socialbiology* 14 (1999), pp.89-96.

stress two things. Firstly, and most importantly, the trial records generated by the inquisition are quintessentially vehicles of individuation. Each record is an individual, who was tried before the inquisitorial court. The *lex* of procedure chose to recognise the individual's right to a trial. Secondly, there are moments of individuation present within our records. Such moments, however, are not always apparent because of the technical legal process in which our records were generated. This chapter tries to highlight the legal function of the documents and not the stories of individual heretical activity. It is an odd approach to try to find the individual culpable criminal in a bureaucratic process, nevertheless it is still worth seeking them out.

6.8 Constructing Individuality Through a Range of Penances

The range of penances prescribed by Bernard of Caux and John of Saint-Pierre further demonstrate individual criminal culpabilty. Like previous inquisitors, John and Bernard gave harsher punishment for those who did not cooperate with inquisitorial procedure, by using the period of grace to admit their crimes. For example, Lombarda of Cossas's deposition states that she 'saw and adored heretics, was present at the heretication of a person, and did not come before other inquisitors during the grace period.'[103] For this failure she was sentenced to perpetual imprisonment. The magnitude of this failure to use the period of grace resulted in her penance being the equivalent of a *credens*, despite heretical involvement that did not affirm belief in an alternate religiosity. Six other persons are also recorded as not coming before the inquisitors, during the period of grace, they also received perpetual imprisonment.[104]

[103] Douais, *Documents*, p. 45, '*Vidit et adoravit hereticos, hereticationi cujusdam persone interfuit, et non venit tempore gratie coram aliis inquisitoribus*,'.
[104] Douais, Documents, pp.45, 51-52, 60-61.

Bernard and John further recognised individual criminal culpability by demonstrating a level of clemency to individuals who had not appeared before an inquisitorial court before. Vitalis of Salas, Fabrisse the wife of Peter Marchesi of Toulouse, William Arcmand of Toulouse, Raymond of Puy, Bernard Durand and Bernard of Ecclesia of Hodarcio, are six deponents who, whilst guilty of the crime of heresy, were all sentenced to ten years in prison, as opposed to the perpetual imprisonment suffered by those who did not use the period of grace to reconcile with the church, or those who had been through the Inquisitorial milieu previously.[105] Unfortunately, they almost certainly would have perished when imprisoned.[106] This penance no doubt reflected that it was the first time these penitents had appeared before an Inquisition. This information is more implicit than explicit. Such an assumption is derived from the fact that the penitential sermons of this group do not mention a breaking of oath before a previous inquisitorial court as some other sermons do.[107] It is the lack of inclusion of this detail and the relative leniency that coincide to suggest the relationship between the two.

A seventh deponent, Titborxs, wife of Pons of Gamevilla, was sentenced to a fifteen-year prison sentence. She received this penance despite having previously abjured all heresy. Her penitential sermon makes it clear that she was a relapsed heretic. It reads, 'after making a confession of heresy, and abjuring heresy before the inquisitors, she knowingly saw heretics in her house a few years before'.[108] The differing length in penances between Titborxs and the above penitents is easily understood by Titborxs'

[105] See, Douais, *Documents*, pp.6-7.
[106]Douais, Documents, p.7, '*Quod intrent domum carceris, ibidem per X annos moraturi, ad penitentiam pro crimine heresis peragendam*,'.
[107] See, Douais, Documents, p.11 '*contra proprium juramentum,*' and p.15 '*relapsus est in heresim abjuratam*' such remarks about relapsing and oath braking litter the records.
[108] Douais, *Documents*, p.6, '*Post confessionem de heresy factam et heresim abjuratam coram inquisitoribus, ipsam hereticos in domo sua a paucis annis citra scienter vidisse*,'.

relapse. It is harder to understand why she was not simply perpetually imprisoned as almost all other penitents who committed this crime were. A conclusion we are able to draw, however, is that Bernard and John chose to reflect a degree of individual criminally culpability within their penances. Penitential incarceration became de *rigueur* for later inquisitors. Bernard and John chose to mould the use of this penal system to reflect varying levels of criminal culpability.

One of the most individual forms of penances detailed within the inquisitorial records is that of Raymond Sabatier. Raymond Sabatier was a relapsed supporter of heresy, who also concealed the truth of such matters from the Inquisition. He was, however, treated with a startling degree of leniency by Bernard and John. Raymond's penance was no greater than the wearing of penitential crosses on his clothes. He was granted such a light penance because of the ailing situation of his father, whose care he provided.[109] The penitential sermon reads 'we grant licence to Raymond Sabatier that he may stay with his Catholic father because he is poor and sick... and must wear two crosses of black on all his clothes and care for his father.'[110] Clearly Bernard and John were attuned to the needs of an individual when forming penances. Such recognition was, however, only tangentially related to the crimes of the individual. Raymond's penance, whilst individually tailored to his situation, does not reflect his individual guilt. Raymond's penance can be understood through another legal maxim, which was closely associated with the legal construct of the criminally culpable individual and was explicitly outlined

[109] This 'humanity' or 'humanism' theme of inquisitorial procedure is more forcibly argued by Derek Hill in his latest work *Inquisition in the Fourteenth Century the Manuals of Bernard Gui and Nicholas Eymerich* (York, 2019), p.29, p.207 and p.211.

[110]Douais, *Documents*, p.10 '*Damus tamen licenciam Raimundo Sabbaterii quod maneat cum patre suo, qui valitudinarius est et catholicus et pauper, ut dicitur, quamdiu vixerit pater suus… portet mantam nigram et crucem in omni veste cum duobus brachiis transversalibus, provideat sicut poterit patri suo*,'.

in canon law relating to inquisitorial procedure.[111] This canon (23 of Narbonne 1243) was inspired by the legal principle found in Roman jurisprudence that the innocent should not suffer for the crimes of the guilty.[112] Raymond's case offers an interesting interpretation of this principle. The *lex* as written was clearly designed to stop corporate punishment in heretical cases. Here, however, the intention behind the *lex*, the *mos*,[113] of the law is being used to render a penitential judgment. The innocent person not to suffer was the defendant's father, as he surely would have done if his son and caregiver had been imprisoned. It would have been very easy for John and Bernard to simply treat Raymond as a relapsed heretic and imprison him perpetually. They chose, however, to construct his penance in an individual manner. Raymond's penance would not have been possible without the ideals used to construct individual criminal culpability in the inquisitorial process.

In sum, Bernard and John use a variety of penances. The most commonly used is perpetual imprisonment. Barmby places the number of penitents who received this penance, in Ms 609, as one hundred and thirty.[114] Other penances, however, were used and represent a varying degree of individual criminal culpability as well as individual circumstance. We shall briefly explore some of the other forms of penitence used by Bernard and John to demonstrate a range of their penances. I would like to briefly

[111]Council of Narbonne (1243), Canon 23, Mansi, XXIII c.362-3 '*Satius enim est facinus impunitum relinquere, quam innocentem condemnare.*' it is a better act, to free the guilty than to condemn the innocent.

[112] Codex of Justinian, *Digest*, Codex. 9.47.22 '*peccatta suos debent tenere auctores.'* Penalties ought to bind their authors.

[113] See, K. Pennington 'The Birth of the *Ius commune*: King Roger II's Legislation,' *Rivista internazionale del diritto commune* 17 (2006), pp.23-60, p.53. Its legal construct was prescribed to mean long term usage see, Gratian, D.1 c.4: "*Mos autem est longa consuetudo*" and Justinian, Dig.1.1.9: "Gaius 1 inst. *Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur*." Above and functionally, however, the term is intended to be moral based law, rather than custom, which has become more embroiled with a sense of the *ius*.

[114] Barmby, *The punishment of heresy in Languedoc,* p.146.

address the case of Joanna, widow of Bernard of Latour. She was condemned for a plethora of heretical crimes including, but not limited to adoring, seeing and listening to heretics who she believed to be good men.[115] Her penance, like Raymond Sabatier's, was tailored to her status as an individual, reflecting not the degree of criminal culpability but the individual behind the penance. Joanna, had previously been a nun in Lespinasse, so her penance returned her to that Convent to live in isolation.[116] Such a tailored penance was clearly derived from her one time position as a nun.

The final grouping of penances used by Bernard and John relate to heretical fugitives, who absconded from the inquisitor's justice. Such persons, of which there are five in 1246, two on the 18th of March and three on the 27th of July, were condemned *in absentia*. This punishment saw them branded as heretics and their goods confiscated.[117] Obviously, the use of perpetual imprisonment was impossible in such cases, but their sentence of excommunication still demonstrates a recognition of individual criminal culpability. Clearly, Bernard and John used a range of penances during their Inquisition. The focus of this section, however, has not been these range of penances because they too easily demonstrate how a sophisticated Inquisition had come to reflect the criminally capable individual. Instead, we have explored how a more nuanced approach to the block use of penances can still be used to demonstrate the criminally culpable individual in the inquisitorial process. The process itself was centred upon the individual and their guilt, the use of block penitential sermons made sense for expediency and

[115] Douais, *Documents*, p.31 '*vidit et adoravit pluries hereticos et in pluribus locis predicationem eorum audivit, pluries receipt eos, dedit eis de suo, credidit esse bonos homines*,'.
[116] Douais, *Documents*, p.31 '*includatur infra scepta, ne alii as ipsem nec ipsa ad alios accedat; set ibidem exterius sibi necessary ministrentur; et mandamus priorisse de Lespinassa quod sibi juxta predictum faciat provideri,'.*
[117] Douais, *Documents,* p.1 & p.37.

ease. The use of such sermons, however, masks the individualising ethos that informed the canon law upon which the Inquisition had become dependent, but individual criminal culpability remained the driving force of Inquisition.

6.9 Conclusions

The purpose of this chapter was to explore the nature and function of inquisitorial documents, as a product of the inquisitorial process. There is a tension at the heart of this chapter between its subject matter and the sources via which it has been demonstrated. The chapter's title 'Inquisition in practice,' invokes some form active participation, whereas the sources used, are viewed as the product of the inquisitorial process. That is, they were constructed after the fact. How then can these sources be the inquisition in practice? How can records of events come to be an event in their own right? It is an intriguing puzzle. Perhaps a more fitting tittle for this chapter would be 'Records of inquisitorial procedure'? The resolution of this tension between the activity of the courtroom and the records of those events, lies at the very heart of the nature of what the Inquisition was. The question may not be, what relationship did the trial process bare to the records kept, but how divorced was the process of *inquisitio* from the production of its records? Could one imagine an Inquisition without the production of the records. Inquests relied upon the production of these documents. They were not simply records of testimony given or penances ascribed, but in a very real sense they were the Inquisition. The Inquisition in practice was the documents now contained within Ms. 609 and the Doat collection. They are not simply sources generated by a process; they were the process of *inquisitio.*

The documents left to us by the Inquisition demonstrate two fundamental features. Firstly, they exhibit the technicality of the legal procedure needed to conduct an Inquisition. Secondly, they represent the individualising ethos upon which that procedure was built. These two themes are mutually reciprocal, the first benefits from the latter. The individualising nature of the trial determined the structure and nature of inquisitorial procedure, this in turn, shaped the way in which the discourse of Inquisition operated. The core of the process became predicated upon establishing an individual's criminal culpability within a heretical network. So that the individual was firmly placed at the centre of inquisitorial procedure.

The new procedure of the inquisition, developed in the wake of the regional councils of the 1240s, contained a significant tension, which has been played out in the larger story of this thesis. The Inquisition afforded radical new powers to conduct and try a criminal, yet, simultaneously, the process by which a criminal would be tried was heavily regulated by the procedural technicality of the Inquisition. This transformation, in the nature of prosecution, was a stark and dramatic one. Throughout this thesis, we have used the juxtaposition between the massacre at Béziers and the individualising nature of the Inquisition, as a way of quickly conceptualising that transformation over time. I now wish to offer this speculative question, as a means of demonstrating the fundamental effect the *lex* had upon the prosecution of heresy. Who was afforded a better form of justice, the deponent entrapped in the inquisitorial process or a resident of the town of Béziers? The answer is not apparent. It may indeed be that neither person could truly have been subjected to, what we may think of as, justice. Moral qualms aside, however, there should be a recognition that for the vast majority of people, who were swept up in the persecuting society of the middle ages, the Inquisition afforded

for them a legally defined process of trial, guilt and penance. This procedure if not perfect at least treated them as an individual.

It is the nature of an individual trial that has become the fundamental demonstration of the individual culpable criminal. As stressed above, each record represents an individual within the inquisitorial process, whose crimes, punishment and trial were their own. It is peculiar to argue that the institution of Inquisition created individuals, but it is nevertheless the case. Such individually culpable criminals represent the individualising discourse of the inquisition and the individualising nature of Roman jurisprudence. When viewing the Doat collection and Ms. 609 it can be easy to be overwhelmed by the volume of names or submerged within the raft of similar, formulaic if not virtually identical, records, however, the historian must remain aware that each record of trail represents an individual.

Finally, this chapter has sought to demonstrate the way in which medieval society, through its persecution, conformed to behavioural immune theory. The first, and most significant, way in which inquisitorial procedure manifested the behavioural immune system, was the elision of action and belief. We have discussed, on numerous occasions, how anti-heretical legislation became increasingly predicated upon behaviour and action, as the long twelfth century progressed. Actions, ritual and association came to subsume belief.

Heretical criminals were no longer to be found purely in obstinate defiance of Catholicism. Inquisitorial records demonstrate, not only the range of heretical activity, but also, the way in which the categories were constructed. The records allow us to see, precisely, how the law, as a written form, came to constrain the lives of subjects.

Heretical practices were viewed as disgusting. Through the inquisitorial trial records, we can see how medieval bureaucracies chose to articulate that disgust, through the prosecution of improper behaviour. To that end, it has been highlighted that inquisitors had interests in highlighting areas in which the behavioural immune system operated. Namely, they kept special records of ritualistic Cathar practices, especially food consumption and death practices, which then seeped into the penitential proclamations. The Inquisition and their records represent the way in which the effects of the long twelfth century codified behaviour, into written expression. The Inquisition, as far as behavioural immune theory is concerned, was a mechanism via which to conform people to an explicit set of written ideals. It was legislative persecution.

In sum, Doat and Ms. 609 in this chapter have been treated as records of a legal process. They are tools by which the more centralised governments of the high medieval period sought to enforce their conception of society upon the people they ruled. The records demonstrate the way in which the *lex* had transformed the prosecution of heresy into a procedural process. These records are manifestations of how the individually culpable criminal became the central figure within that process.

7.0 Conclusions

When collating the various themes of this thesis, I think it best to return to the narrative frame discussed at its very inception, which juxtaposes the massacre at Béziers to the individualising process of the Inquisition. This work argues that the dramatic transformation seen in the prosecution of heresy is best understood through the prism of the criminally culpable individual. The development of the Inquisition, it argues, was centred upon resolving the tensions of corporate liability and punishment through an individualising ethos.[1] The final question then is, how credible is this claim? Is there enough evidence to suggest that prosecuting individual guilt became the corner stone of the inquisitorial process? The most compelling evidence, for this criminally culpable individual thesis, can be found in the canon law that regulated the Inquisition's operation. There is no better indicator of this transformation than canon 23 of the council of Narbonne (1243), which unequivocally stated the need for 'clear and frank (full) proof, or the production of their own confession; indeed, it is a better act, to free the guilty than to condemn the innocent.'[2] This canon articulates that the presumption of an individual's innocence was paramount to the process of inquisition. It is a demonstration of an ethos of canon law that sought to place the individual defendant at the heart of criminal proceedings.

The other crucial component of this thesis has been an exploration of behavioural immune theory. Behavioural immune theory offers a unique way to assess the

[1] See, B. Tierney, *Foundations of Concillar Theory, The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge, 1968), pp.106-126; B. Tierney, *The Idea of Natural Rights, Studies on Natural Rights, Natural Law, and Church Law 1150-1625* (Cambridge, 1997), pp.43-77.
[2] Mansi, XXIII c.362-3 '*Ad nullius vero condemnationem fine lucidis probationibus, vel confessione propria procedatis. Satius enim est facinus impunitum relinquere, quam innocentem condemnare,'.*

transformation of persecution within medieval society, over the course of the long twelfth century. Broadly this thesis employees a recent neuropsychological model stressing the central themes of disgust and the behavioural immune system,[3] to argue for a revised approach to understanding persecution during the high middle ages.

Its application here harmonises the competing historiographical analyse of Moore (elite led) and Hamilton (populist).[4] Behavioural immune theory, I argue, offers a fruitful route via which to do this because it articulates how societies can be persecuting in general and more disgust sensitive at hierarchical and bureaucratic levels with a preference for authoritarian governance.[5]

It is argued throughout this thesis that the criminally culpable individual was product of a larger current of structural change observed in the high middle ages, during the long twelfth century.[6] The effects of the long twelfth century were a raft of changes that radically transformed, disrupted and homogenised medieval life. Whilst no one area of change can account for the totality of transformation seen in the long twelfth century,

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[3] R. Kurzban & M. Leary, 'Evolutionary origins of stigmatization: The functions of social exclusion,' *Psychological Bulletin* 127 (2001), pp.187-208, p.189; D. Murray, R. Trudeau & M. Schaller, 'On the Origins of Cultural Differences in Conformity: Four Tests of the Pathogen Prevalence Hypothesis,' *Personality and Social Pyscology Bulletin* 38 (2011), pp.318-329, *passim*; S. Neuberg, D. Kenrick and M. Schaller, 'Human Threat Management Systems: Self-protection, Disease Avoidance,' *Neuroscience and Biobehavioral Reviews* 35 (2011), pp.1042-1051, p.148 and M. Schaller, 'The Behavioural Immune System and the Psychology of Human Sociality' in *Philosophical Transactions of the Royal Society* 366 (2011), pp.3418-3426, p.3418.

[4] See, Moore, *Formation of a Persecuting Society,* pp.144-145, Hamilton, *The Medieval Inquisition,* p.16

[5] See, Schaller, 'The Behavioural Immune System,' p.3421 for 'population level,' analysis. Y. Inbar, D. Pizzaro & P. Bloom, 'Conservatives are more easily disgusted than liberals' in *Cognition and Emotion* 23 (2009), pp.714-725, p.723, for arguments that bureaucratic systems become more conformist and D. Murray, M. Schaller and P. Suedfeld, 'Pathogens and Politics: Further Evidence That Parasite Prevalence Predicts Authoritarianism' available on https://doi.org/10.1371/journal.pone.0062275 (accessed on 20/02/2018 10:07) for a discussion of preference for authoritarianism.

[6] See, C. Haskins, *The Renaissance of the 12th Century* (New York, 1957); T. Bisson, *The Crisis of the Twelfth Century, Power, Lordship, and the origins of European Government* (Oxford, 2009) and R.I. Moore, *The First European Revolution c.970-1215,* (Oxford, 2000), for various reflections on this broader theme.

the power of the written word is highlighted in this thesis as a significant generator of change.

The written word created two intertwining features of transformation. Firstly, it enhanced the power of rulers to make and create law. This was an ethos learnt from the re(discovery) of Justinian's digest, which stated, 'whatever the Emperor has decreed has the force of law; since by a Royal ordinance which was passed concerning his sovereignty, the people conferred upon him all their own authority and power.'[7] Secondly, this rise of written codified law bureaucratised the functions of medieval society. Creating a new class of bureaucrats (think Inquisition) whose new roles served 'their twin purposes of providing the means to extend the power and advance the interests of their masters.'[8] Through the power of the written word, elites were able to enhance their control, centralise their authority and marginalise communal power.

Despite the centralising effects of the long twelfth century, there were persistent tensions between the rulers and ruled. The best way, it seemed, in which to mitigate the loss of communal power to the written word was to simply get the *lex* to work for you. Since the first gloss of *Decretum*, canonists had been expanding and theorising upon an individual's right to a trial.[9] The process of *inquisitio* presented challenges to this principle of canon law, not because the process of *inquisitio* was fundamentally incompatible with it, but because the novelty of an invented form of trial procedure

[7] Justinian Digest Vol.1, Book.1 Tit.4 Concerning the constitutions of the Emperors, Ulpianus, Institutes, Book I. '*quod principi, legis habet uigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.'* In A. Watson, T. Mommsen and P. Krueger, *The Digest of Justinian* Vol.1 (Philadelphia, 1985), Ed. T. Mommsen and P. Krueger, *trans*. A. Watson.
[8] R.I. Moore, *The Formation of a Persecuting Society* Ed.2nd (Oxford, 2007), pp.144-145.
[9] K. Pennington, 'Due Process, Community, and the Prince in the Evolution of the Ordo iudiciarius', *Rivista internazionale di diritto comune* 9 (1998), pp.9–47, 'Innocent Until Proven Guilty: The Origins of a Legal Maxim' *The Jurist* Vol.63 (2003), pp.106–124 and 'Innocent until proven guilty: The origins of a legal maxim,' *The Jurist* 63 pp.106-124, p.113.

needed to be developed beyond a theoretical model. The poor procedure of *inquisitio* stemmed from the sparseness of legislation formulating it. *Inquisitio* was brought to the fore by the fourth Lateran (1215), after it had rejected the use of ordeal. The procedure and practice of *Inqusitio* would become explicit in the coming century.[10] This problem was, however, exacerbated by the demand placed upon it by the scale of heresy prosecution.

It is clear from *Ut nostrum, Inter solicitudenis, Generales inquisitores* and *Inquisitionis negotiu*,[11] that when Innocent III first formulated his *inquisitio,* designed to replace compurgation, not to be confused with the Episcopal inquisition, it would see usage no more widespread than that of the cloisters of the church. He could not have envisaged that it would become the foundation for legal procedure across Europe, let alone prosecute the tens of thousands who were subjected to various inquests. The manifestation of this tension was born out in two striking ways. Firstly, the vast corpus of supporting legislation produced to cement the Inquisition is the starkest evidence that the procedures established by Innocent were inadequate. Secondly, the inquisitions of Conrad of Marburg and Robert le Bougre were symptomatic of the unregulated procedure of *inquisitio*. Those men were free to operate under their own authority. It is illuminating that the death of Pope Gregory IX (1241) ushered in, not only, sweeping changes to the procedure of *inquisitio* but also, an end to the inquisition of Robert le Bougre. The new pope, Innocent IV (1242), was a canonist more attuned to

[10] F. McAuley, 'Canon Law and the End of the Ordeal,' *The Oxford Journal of Legal Studies* 26 (2006), pp.473-513, p.489.
[11] Innocent III, *Ut nostrum,* in A. Dadine d'Autesserre, *Opera Omnia,* Vol.3 (Napoli, 1777), p.557, Innocent III, *Inter solicitudenis*, Dadine d'Autesserre, *Opera Omnia,* p.868, Innocent III, *Generales inquisitores* in PL Vol. 215, Col.779B Innocent III, *Inquisitionis negotium* in PL Vol.216, Col.716D and McAuley, 'Canon Law and the End of the Ordeal,' p.489 for the significance of these rulings.

Roman jurisprudence and so better able to articulate the ethos of individuality in the operation of Inquisition. Innocent achieved this through expanding the legislation of canon law concerning the procedure of *inquisitio* via regional councils. The most important of these regional councils were Tarragona (1242) and Narbonne (1243). The procedure of those councils in effect cemented the institution of Inquisition.[12]

This new procedural ethos of the Inquisition was not merely the fleshing out of an innovative method of trial. The councils of Tarragona and Narbonne had been centuries in the making, arguably a millennium if one wishes to trace the proclamation of the Digest as the true root of medieval Roman jurisprudence.[13] *Inquisitio* represented the transformative impact of legal transformation of the long twelfth century. Firstly, its widespread usage related directly from the rejection of ordeal. The rejection of ordeal necessitated a new form of trial process to prosecute *occult* cases. It signified a very dramatic change to the operation of law courts during the post-millennial period, symbolically demonstrating the rejection of popular legal customs, resulting in the centralisation of power into the hands of a literate elite who sought to better control and administer power in society.[14] Secondly, the way in which *inquisitio* propagated itself, and conducted its operation, further demonstrates the reliance of the new order upon the written word and bureaucratic underlings.[15] In short, one can find no better manifestation of the *lex* than *inquisitio*. Inquisition relied upon bureaucratic

[12] Y. Dossat, *Les Crises de Inquisition Toulousiane au XIIIe Siècle* (Bordeaux, 1959), p.117.
[13]See, J. Dawson, *The Oracles of the Law* (Westport, 1978), pp.122-134 for the impact of the (re)discovery of the and C. Humfress, 'law and Legal Practice in the Age of Justinian' in M. Hass, *The Cambridge Companion to the Age of Justinian* (Camebridge, 2005), pp.161-162 for a discussion of the Digest's original production.
[14] F. Heer, *The Medieval World Europe 1100-1350* (London, 1998), *trans*. J. Sondheimer. pp.198-99.
[15] Moore, *The Formation*, pp.144-145.

functionaries, to enforce written law at the behest of the *princeps*. A *princeps* who sought to control popular custom and practice, subsuming subjects into subservience.

It is within this framework of the bureaucratisation of persecution that case for behavioural immune theory are most pertinent. The section that first introduced the behavioural immune system discussed the theoretical model in a very general way, outlining how the core elements of disgust,[16] could be found in our anti-heretical sources.[17] This observation, however, was of limited use without an application to the Inquisition. This thesis has argued that the Inquisition should be understood as both a drive to reflect individual criminal culpability and legislative persecution. This tension of functions was not an easy process to resolve, indeed the larger narrative of this thesis has in many ways tracked the resolution of that wider conflict. What must be pointed out, however, is that the expanding anti-heretical legislation of the long twelfth century was designed to persecute, alienate, subjugate and delineate sections of society upon who did not conform to behavioural practice norms. Cathars found themselves targets of the behavioural immune system because of their ritualistic practices concerning death, food consumption and sexual behaviour that did not conform to Catholic behavioural practices norms.[18] These areas of human behaviour were particular vulnerable to pathogens and are noted as crucial moments at which the behavioural immune system operates.[19]

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[16] Kurzban & Leary, 'Evolutionary origins of stigmatization,' p.189 and A. Fallon and P. Rozin, 'A Perspective on Disgust' in *Psychological Review* 94 (1987), pp.23-41, p.23.
[17] R. I. Moore, 'Heresy as Disease' in W. Lourdaux and D. Verhelst, *The Concept of Heresy in the Middle Ages* (Louvain, 1976), p.9; L. Sackville, *Heresy and Heretics in the Thirteenth Century the Textual Representations* (Woodbridge, 2011), p.171 and J. Arnold, *Inquisition and Power* (Philadelphia, 2001), p.25.
[18] M. Lambert, *The Cathars* (Norfolk, 2004), pp.3-49.
[19] See, P.W. Sherman & J. Billing, *'*Darwinian Gastronomy: Why We Use Spices*'* *BioScience* 49 (1999), pp.453-463; R.J. Quinlan, 'Human Parental effort and Environmental Risk,' *Proceedings of the Royal*

The legislative persecution of the long twelfth century, outlined in a series of church councils dating from *Ad abolendam* (1184) to the explicit categorisation of heretical criminals at Tarragona, was a slow crystallisation of the behavioural immune system into canon law.[20] The church began to concern itself with regulating both behavioural norms and deviation from them. This concept of legislated behaviour was unquestionably a product of the great legal transformation of the long twelfth century.

The narrative arc, however, does not simply stop with the profound legal changes of the long twelfth century. It does not stop with the awe-inspiring authority and power the Popes had accumulated for themselves, via the process of *inquisitio*. The transformative arc sees a final act of legal reform bent upon the rights of the individual within this greater narrative of change. The erosion of the *jus* by the *lex* was not so complete as to be despotic, although instances of tyranny did abound. There was a dialectic nature to society, the champions of which were the canonists and glossators of the late twelfth and thirteenth centuries.[21] This group of elite intellectuals began to crystallise a consensus of thought that championed the rights of an individual. The culmination of this was the criminally culpable individual. No one ruling brought this figure into being but the deponents right to a fair trial and the presumption of innocence had been concurrent in canonical thinking since the first recession of the *Decretum*.[22]

Society 274 (2007), pp.121-125; B.S. Low, 'Marriage Systems and Pathogen Stress in Human society' *American Zoologist* 30 (1990), pp.325-339 and S.W. Gangestad, M.G. Haselton & D.W. Buss, 'Evolutionary Foundations of Cultural Variation: Evoked Culture and Mate Preferences' *Psychological Inquiry* 17 (2006), pp.75-95, also, S.W. Gangestad & D.W. Buss, 'Pathogen Prevalence and Human Mate Preference,' *Ethology and Socialbiology* 14 (1999), pp.89-96.

[20] Sackville, *Heresy and Heretics,* pp.88-106 and pp.107-109 for a discussion of *Ad abolendam.*

[21] P. Clarke, *The Interdict in the Thirteenth Century* (Oxford, 2007), p.22.

[22] Pennington, 'Innocent until proven guilty,' p.113.

First and foremost, every record is itself a remarkable example of individual criminal culpability. Beyond this, we explored other avenues of the way in which individuation, within the records, can be demonstrated. The most important of these was the gradation of heretical crimes. We examined how the categories, first outlined at Tarragona (1242), became degrees of individual criminal culpability.[23] Inquisitors sought to place and define heretical criminals by their respective categories. These categories represented an individual's criminal culpability in relation to heresy. The gradations of penance relate to the differing nature of heretical crimes. As a rule, the more culpable one was, as a heretical criminal, the greater the penance one received. Equally, in tandem with the practice of more harshly punishing criminals of a more culpable category, I also demonstrate how gradation of penances existed with the categories of heretical crime. This is one of the more subtle, but profound moments of recognition of individual criminal culpability. It would have been very easy for inquisitors to set penances in a standard and formulaic manner. Inquisitors, however, chose to gradate penances. This gradation normally occurred as a representation of how well one had cooperated with the inquisitorial process. Normally an affirmation that testimony had been heard during the period of grace but could also reflect say one's previous involvement with the inquisitorial process, the sex of a deponent (especially noticeable for Peter Sellan) or the status of their family or other mitigating circumstances. The diverse use of penance and individual tailoring in certain circumstances is a direct reflection of the fifth canon of Narbonne (1243), which states ''the penalties are left to the judgment of the inquisitor.'[24] Individual criminal culpability was made manifest

[23] Arnold, *Inquisition and Power,* p.42.

[24] Mansi, XXIII c.363 '*quamvis in hujusmodi crimine propter ipsius enormitatem omnes criminosi et infames,'.*

through the range of penances used by the inquisitors, both between categories of heretical crimes, but also within them.

Concretely, the process of *inquisitio* was palatable to canonists because of its extreme functionality. Not only, did it facilitate the prosecution of *occult* cases, but also allowed for the prosecution of corporate bodies. Whilst *inquisitio* solved many of the problems presented by an ever-increasing reliance upon the *lex* it presented serious challenges to the notions of Roman jurisprudence, which came to be resolved, by canonists placing sever limitations upon the power of those vested with inquisitorial office. In affect the stringent codification of Canon law through the regional councils of Innocent IV created the institution of Inquisition.

When we seek to explain the difference in prosecution between the massacre at Béziers and the Inquisition, we should draw upon two central themes. Firstly, the centralising impact of the long twelfth century, which created larger polities with the scope, ambition and capacity to order society to their own whims, namely through the authority of the written word. Secondly, the rise of the criminally culpable individual, whose right to a fair trial, a presumption of innocence and most significantly individual culpability for a crime became sacrosanct within the operation of inquisitorial procedure. These two factors aligned to create the institution of the Inquisition, which simultaneously persecuted and protected the individual. The legacy of the Inquisition is ultimately one of persecution, but it should be shaded with the subtler tones of individuation and legislative rights.

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