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Inquisition and the Prosecution of Heresy: Misconceptions and Abuses

HENRY ANSGAR KELLY

The year 1988 marked the 100th anniversary of the publication of H. C. Lea's *A History of the Inquisition of the Middle Ages*. I would like to get the next century off to a good start by renaming his enterprise "A History of the Criminal Prosecution of Heretics in the Middle Ages."[1] The term *inquisition* has been widely misunderstood and misused by historians. There are two distinct abuses, one upper-case and the other lower-case.

When capitalized and given a definite article, as "the Inquisition" or "the Holy Office of the Inquisition," the term is often either personified and endowed with a diabolical omniscience or made to stand for a central intelligence agency with headquarters at the papal curia. Some authors clearly believe that there was a centralized Inquisition in the Middle Ages; others, such as Lea, know that this was not the case but frequently speak as if it were. Lea at times even uses the term "Holy Office" to mean "Holy Office-Building" or "Branch-Office-Building of the Holy Inquisition."[2]

In Lea's case the problem is faulty rhetoric rather than faulty knowledge; however, such misleading expressions are to be found not only in the writings of hostile polemicists but in those of "friendly witnesses" as well. For instance, Yves Dossat, an eminent historian of heresy prosecution of our own day, starts out his article on "Inquisition" in the *New Catholic Encyclopedia*

1. An earlier form of the present essay was delivered as a paper at a symposium organized by Edward Peters to mark the centenary of Lea's work, as part of the program of the Medieval Academy of America meeting held at the University of Pennsylvania, 7 April 1988. I should note that in my citation of medieval Latin (which was spelled and pronounced like the vernacular), I use *e* rather than the classical diphthong *ae*, in order to be more authentic and also to discourage the classical pronunciation of postclassical texts; for the same reasons I use *j* rather than consonantal *i*. See my "Lawyer's Latin: *Loquenda ut vulgus?*" *Journal of Legal Education* 38 (1988): 195–207, esp. 200–201. I also follow the convention of French and English historians of thirteenth-century heresy in translating proper names into the modern vernacular; for example, I render *Johannes Andree* as "John Andrew" (not "John of Andrew") rather than using the classicized form "Iohannes Andreae" or a medieval vernacular form.
2. Henry Charles Lea, *A History of the Inquisition of the Middle Ages*, 3 vols. (New York, 1888). Consider, for example, this passage: "The organization of the Inquisition was simple, yet effective. . . . The inquisitor wore the simple habits of his Order. . . . His principal scene of activity was in the recesses of the dreaded Holy Office, whence he issued his commands and decided the fate of whole populations in a silence and secrecy which impressed upon the people a mysterious awe a thousand times more potent than the external magnificence of the bishop. Every detail in the Inquisition was intended for work and not for show" (1:369).

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thus: "The Inquisition was a special permanent tribunal established by Pope Gregory IX to combat heresy."[3] But elsewhere in the same encyclopedia it is pointed out that there was never a permanently constituted congregation and tribunal of inquisition against heresy until the sixteenth century.[4] Before then, there were only papal inquisitors, sometimes sporadically appointed, sometimes more permanently commissioned, but not organized over larger areas than individual dioceses, provinces, or kingdoms. Even the six *commissarii et inquisitores generales et generalissimi* appointed by Paul III in 1542, and their successors in the "Roman and Universal Inquisition" (the name given the congregation in 1588 by Sixtus V), functioned almost exclusively in Italy.[5] This point about the variety and diversity of medieval heresy inquisitions has been made especially by Richard Kieckhefer, who has rightly protested against referring collectively to these tribunals as the "the Inquisition." He has recently been joined in this campaign by Edward Peters, who has abundantly documented the development of the "the myth of *The Inquisition*."[6]

The remedying of this first abuse is in good hands, and I wish to turn my attention now to the lower-case abuse, to which even the upper-case opponents have sometimes fallen victim. I mean the use of the common noun "inquisition" by itself to designate a heresy prosecution, whereas historically it had a much wider meaning. This usage often stems from a confusion or misconception which is exemplified by the second sentence in Dossat's article. He writes: "It [the Inquisition] owed its name to the use of a new form of procedure created by Pope Innocent III, which permitted *ex officio* the searching out of persons accused of heresy."[7] This statement misleadingly suggests that the procedure of *inquisitio* instituted or formalized under Innocent III was primarily aimed at the suppression of heresy and was mainly used by the papally appointed inquisitors against heresy. Dossat acknowledges elsewhere that the procedure of inquisition was not invented for searching out heretics, but he maintains that it was admirably suited for that purpose.[8] Lea, too, was well aware that the *inquisitio* was not originally designed as a procedure against heresy or *only* against heresy, but he was clearly under the impression that it was rarely used outside of heresy

3. Yves Dossat, "Inquisition," *New Catholic Encyclopedia*, 16 vols. (New York, 1967), 7:535–541.
4. Ulric Beste, "Doctrine of the Faith, Congregation for the," *New Catholic Encyclopedia*, 4:944–946.
5. See Edward Peters, *Inquisition* (New York, 1988), pp. 105–121.
6. Ibid., pp. 1–7, 122–315; Richard Kieckhefer, *Repression of Heresy in Medieval Germany* (Philadelphia, 1979), pp. 3–7. Bernard Hamilton, *The Medieval Inquisition* (New York, 1981), p. 9, agrees with Kieckhefer's analysis, but not with his advice to abandon "the Inquisition" as a generic term to describe the work of medieval heresy tribunals.
7. Dossat, "Inquisition," pp. 535–536.
8. Yves Dossat, *Les crises de l'Inquisition toulousaine au xiii^e siècle (1233–1273)* (Bordeaux, 1959), p. 107.

proceedings. He speaks of "this extraordinary power vested in the judge," that is, the bishop or ordinary. He seems to believe that of the three forms of procedure listed in the decretal *Qualiter et quando* from the Fourth Lateran Council in 1215, namely, *accusatio, denunciatio,* and *inquisitio*, the *denunciatio* was the usual method employed by the bishop as judge.[9] The reality is that the *inquisitio* was a new form of trial meant to replace the *accusatio*, which it did. The *denunciatio* was little more than an alternative method of starting an *inquisitio*; like the *accusatio*, it was rarely used, even though both *accusatio* and *denunciatio* continued to receive full treatment in canonistic commentaries.[10]

The *inquisitio ex officio* became the universal method of trial procedure in all ecclesiastical courts, except in "civil" actions or instance cases, where plaintiffs brought suits against defendants. The *inquisitio* was used at all levels, from the courts of archdeacons and rural archpriests or deans charging rustics with fornication or adultery to papally commissioned trials presided over by cardinals on charges brought against kings and queens.[11] For instance, all of Henry VIII's annulment trials were inquisitions.[12]

The medieval Latin sources always scrupulously distinguish between inquisition as a general process and inquisitio against heresy by referring to the latter as *inquisitio heretice pravitatis*, "inquisition of heretical depravity." But modern historians, especially English-speaking ones, have generally found this phrase too much of a mouthful and have used "inquisition" alone to do service for this specialized meaning, much as "therapy" in recent years has been used elliptically for "mental therapy," "chauvinism" for "male chauvinism," and "tenure" for "permanent tenure."[13] With all of these words

9. See Lea, *History*, 1:310. See *Decretales Gregorii IX* 5.1.24, *Qualiter et quando* no. 2, ed. Emil Friedberg, *Corpus iuris canonici*, 2 vols. (1879–81; reprint, Graz, 1959), 2:745–747. Hereafter, I will use the standard abbreviation *X* to refer to the *Decretales*. An early version of this decretal was issued in 1206, and it was also partially incorporated into Gregory IX's collection: *X* 5.1.17 *Qualiter et quando* no 1. (see n. 35 below). A still earlier decretal of Innocent III's, listing the three forms of procedure, deals with simony, namely *Licet Heli* (*X* 5.3.31), issued in 1199.
10. I intend to deal with these matters at greater length in a later study. For the time being, let me simply note that the trial records speak for themselves: accusations and denunciations are very scarce and inquisitions are the rule. For a rare example of a denunciation, from the year 1321 in the diocese of Rochester, see *Registrum Hamonis Hethe, Diocesis Roffensis, A.D. 1319–1352*, ed. Charles Johnson (Oxford, 1948), p. 218.
11. H. A. Kelly, *Love and Marriage in the Age of Chaucer* (Ithaca, N.Y., 1975), pp. 168–173; idem, *Canon Law and the Archpriest of Hita* (Binghamton, N.Y., 1984), pp. 51–54, 57–58, 91, 173.
12. H. A. Kelly, *The Matrimonial Trials of Henry VIII* (Stanford, 1976); idem, "English Kings and the Fear of Sorcery," *Mediaeval Studies* 39 (1977): 206–238.
13. The *Oxford English Dictionary*, 2d ed. (1989), gives the earliest instance of the restricted use of "tenure" as occurring in Vladimir Nabokov's 1957 novel *Pnin*. See my "Chaucer and Shakespeare on Tragedy," *Leeds Studies in English* 20 (1989), where I argue that the same phenomenon can be observed in the word "tragedy," which is often used elliptically for "great tragedy."

the ellipsis is often forgotten and the narrow meaning becomes primary. In my view, Peters would have been better advised to title his book *Heresy Inquisition* rather than *Inquisition*; as it is, he gives the impression, both in his title and throughout the book, that inquisition as a criminal procedure was specially designed for heresy trials.

But there is more to the matter than mere verbal abuse and confusion. Even the most careful historians of heresy prosecutions writing today sometimes seem to believe that heresy judges, especially papally appointed heresy inquisitors, had far greater legal powers—and heresy defendants were legally denied far more defenses—than was in fact the case. Thus, for example, we find Kieckhefer stating that "the inquisitors to whom the *officium inquisitionis* was entrusted had powers that other judges did not possess, as H. C. Lea and other scholars have repeatedly made clear."[14] My short response to this is a simple denial: the papal heresy judges did not have greater powers than other judges, and historians who have claimed otherwise (which does not include Lea) are mistaken. My more qualified response is that one must distinguish between powers that such "judges delegate" had *de jure* and powers that they exercised illegally, *de facto* but *contra jus*; and one must remember that papal inquisitors had no greater *procedural* powers than bishops in their dioceses. Lea himself admits that "technically there was no difference between the episcopal and papal Inquisitions."[15]

One should add that since the bishops were ordinary judges with jurisdictions not only over heresy but over every kind of offence, they had far more power than did the papal inquisitors, who had authority only over cases of heresy and were under the same restrictions as other delegated judges. But granted Lea's point that when bishops dealt with heresy they had the same powers as papal inquisitors, *were* these powers much greater than those allowed in other cases? Lea says yes: "The equitable system of procedure borrowed from the Roman law by the courts of the Ordinaries was cast aside, and the bishops were permitted and even instructed to follow the inquisitorial system, which was a standing mockery of justice—perhaps the most iniquitous that the arbitrary cruelty of man has ever devised."[16] In demonstrating his assertion, however, Lea constantly shifts between denouncing abusive laws and revealing abuses of laws. In other words, he is not clear on how far inquisitors were permitted by law to modify procedures in cases of heresy and how far they violated or distorted legal procedures.

More recent scholars have done little to clarify the confusion. For instance,

14. Richard Kieckhefer, review of A. Patschovsky, *Quellen zur bömische Inquisition im 14. Jahrhundert* (1979), in *Speculum* 56 (1981): 899–901. For a typical listing of these alleged special inquisitorial powers, see James Given, "The Inquisitors of Languedoc and the Medieval Technology of Power," *American Historical Review* 94 (1989): 336–359, esp. 339.
15. Lea, *History*, 1:364.
16. Ibid.

Bernard Hamilton, who says there are excellent studies of the judicial status of the papal heresy inquisitors, concludes from these studies that "on paper their powers were almost unlimited."[17] Some of the precisions and qualifications he goes on to make are accurate, but some are not, because he does not study the inquisitorial norms incumbent on all judges. The same is true even of Henri Maisonneuve, who provides valuable citations of canonistic commentaries on the title *De hereticis* in the *Decretals* of Gregory IX and the *Sext* of Boniface VIII but nothing on the title *De accusationibus, inquisitionibus, et denunciationibus* or on the general court procedures mandated for all kinds of cases.[18] For, once an inquisition moved beyond its initial phase, it was meant to follow pretty much the rules for other forms of trial. These rules were most abundantly set forth by William Durant, "the Speculator," in his massive handbook *Speculum judiciale* ("Judicial Mirror"), the final version of which was finished around 1289.

The thesis that I wish to propose is that there was not a single provision of the original *ordo juris* or rules of procedure for inquisition that privileged heresy cases over all other kinds of cases or limited due process for persons charged with heresy in ways that were not permitted for persons charged with other crimes. In later years two exceptions were made: the use of summary procedure and the suppression of the names of witnesses. But the first was soon defined out of existence, in effect, and only the second was given the force of permanent law.

Summary or abbreviated procedure was allowed or ordered in individual trials of various kinds. It was first permitted to papal heresy inquisitors as early as 1255, when Alexander IV authorized it for the Dominicans of Paris.[19] It was allowed by Boniface VIII in 1298 for all heresy trials (that is, whether conducted by bishops or by papally commissioned inquisitors).[20] The formula used by the pope, *simpliciter et de plano et absque advocatorum ac judiciorum strepitu et figura* ("simply and plainly and without the uproar and form of lawyers and judgments"), had been interpreted by some canonists as allowing the exclusion of lawyers and all rules of procedure.[21] But Clement V in 1314 decreed that no necessary proofs or defenses were to be excluded, and earlier, in 1312, he had permitted summary procedure in all sorts of cases, concerning benefices, tithes, marriage, and so on.[22]

17. Hamilton, *Medieval Inquisition*, p. 10.
18. See especially Maisonneuve's *Etudes sur les origines de l'Inquisition* (Paris, 1960), pp. 287–356.
19. See Alexander's bull *Cupientes* in Paul Frédéricq, *Corpus documentorum inquisitionis haereticae pravitatis neerlandicae*, vol. 1 (Ghent, 1889), pp. 123–124 no. 130.
20. *Sext* 5.2.20 *Statuta* (Friedberg 2:1078). An earlier use in a nonheresy case can be found in Gregory IX's decretal *Olim* (*X* 5.1.26; Friedberg 2:747).
21. See Charles Lefebvre, "Les origines romaines de la procédure sommaire aux XII et XIII s.," *Ephemerides iuris canonici* 12 (1956): 149–197, esp. 191–192.
22. *Clementines* 2.1.2 *Dispendiosam*, A.D. 1312, and 5.11.2 *Sepe*, A.D. 1314 (Friedberg 2:1145, 1200).

As for the concealment of the names and identities of witnesses from defendants in heresy trials, at least some authorities in the thirteenth century asserted that there was papal approval for this deviation from the *ordo juris*; this was the claim of the bishops of the provinces of Narbonne, Arles, and Aix at the Council of Narbonne around 1244.[23] Heresy judges did sometimes receive such approval, like the Dominican inquisitors addressed in 1254 by Innocent IV in the bull *Cum negotium*. But when a provision of this sort was eventually incorporated into canon law, it was in a much less rigorous form, in Boniface VIII's decretal *Statuta:* the names are to be suppressed only when revealing them would put the witnesses in real danger.[24] However, according to the *Repertorium inquisitorum,* the first edition of which was published in Valencia in 1494, the routine suppression of names in all heresy cases had become a "custom of inquisition," and support for this custom was found in Innocent's *Cum negotium*. A note to this effect is found in the 1582 official edition of the *Sext*.[25]

Other alleged privileges of heresy judges or restrictions on heresy defendants turn out to be nonexistent, either misinterpretations by historians or violations or distortions of the law by the judges themselves, "well-intentioned" or otherwise.

I dismiss without further ado the modern notion that defendants in any canonical process, inquisitorial or not, were presumed guilty until proven innocent. No one could be legally convicted of a crime without adequate proof. I should add, however, that if it was proven that a person was considered guilty in the community, he could be required to counter this opinion by compurgation, that is, by having acquaintances swear that they believed his denial of guilt. In the matter of heresy, one could be convicted on the lesser charge of suspicion of heresy if heretical connections were proved.

As for torture, it was the standard canonistic doctrine that all ecclesiastical

23. Council of Narbonne, chap. 22 (Mansi, *Concilia*, 23:362); this is also the claim of the *Processus inquisitionis*, ed. A. Tardif and F. Balme, "Document pour l'histoire de *processus per inquisitionem* et de l'*inquisitio heretice pravitatis*," *Nouvelle revue historique* 7 (1883): 669–678, p. 673, where the authorization of Gregory IX and Innocent IV is alleged. Dossat attributes the manual to the Dominicans Bernard Caux and John Saint-Pierre, inquisitors at Toulouse since 1245 and at Carcassonne as well since September 1248, dating it to the end of 1248 or beginning of 1249 (*Crises*, p. 167). It is listed as Manual number two by Antoine Dondaine, "Le manuel de l'inquisiteur (1230–1330)," *Archivum fratrum praedicatorum* 17 (1947): 85–194, esp. 97–101, and said to be unquestionably the work of the inquisitors of Narbonne, the Dominicans William Raymond and Peter Durant (Dossat maintains that this is a mistaken judgment). It is reprinted by Kurt-Victor Selge, *Texte zur Inquisition* (Gütersloh, 1967), pp. 70–76, using Dondaine's title, *Ordo processus Narbonnensis*, with no reference to Dossat's rival attribution.

24. *Sext* 5.2.20 (Friedberg 2:1078); Lea, *History*, 1:438.

25. *Corpus juris canonici*, 3 vols. (1582; reprint, Lyons, 1606), 3:1:645, note to *Sext* 5.2.20, referring to *Repertorium inquisitorum* (1575; reprint, Venice, 1588), pp. 360–361. The 1494 edition of this work, compiled by Michael Albert, J.U.D., of Valencia, was titled *Repertorium perutile de pravitate hereticorum et apostatarum*. The discussion in question is on Sig. Biiir^{N}v, in the entry *Nomina*.

judges were able to employ it, especially the torture of vacillating witnesses or those of "vile condition." Huguccio in the twelfth century formulated the rule that ecclesiastical judges should employ only moderate forms of torture, which John Andrew in the fourteenth century interpreted to mean rods or switches or leather whips rather than the rack or claws and cords.[26] Eventually, restrictions were placed on the use of torture by papally appointed heresy inquisitors because of reported abuses. Such restrictions were not specified for other judges.[27]

Persons accused of heresy had a right to be defended by legal counsel, just like persons accused of other crimes. Only actual heretics, that is, persons judicially convicted of heresy, were forbidden lawyers.[28] If one wants to find a legal system in which persons who were only charged with a felony were denied a trial lawyer, one can look to the English common law. This infringement of the defendant's rights was eliminated only in 1836.[29]

Defendants in heresy inquisitions had the right to appeal from the judge (whether bishop or papal inquisitor) to the pope himself at any point in the trial where they believed that their rights of defense were being violated. That such appeals could be made and actually were made and acted on during the fourteenth century can be seen in J. M. Vidal's *Bullaire*.[30] The idea that appeals were not allowable in heresy trials is a figment of historians caused by overreading phrases like *omni appellatione remota* ("every appeal removed") which appear in many papal letters to heresy inquisitors. The fact of the matter is that the same phrases commonly occur in other kinds of papal commissions, and they were explained by Innocent III in 1204 in the decretal *Pastoralis* as practically meaningless: they meant only that no *frivolous* appeals were to be allowed.[31] It is true that Boniface VIII's decretal *Ut inquisitionis* stipulated that appeals were forbidden to heretics, which could be interpreted to mean that once a trial was over the convicted persons could not enter an appeal against unfair proceedings (for example, a judge's refusal to allow an appeal *during* the trial). But such appeals were in fact made and accepted, as Vidal shows.[32]

26. See John Andrew's *Novella* (finished in 1338) on *X* 5.41.6 (1581, reprint, Turin, 1963), 5:161 no. 3, citing Huguccio, referring to Gratian, *Decretum* 2.23.5.1 *Circumcelliones* (Friedberg 1:928–929). See my *Canon Law and the Archpriest of Hita*, pp. 110–111, 184–185.
27. See *Clem.* 5.3.1 *Multorum querela* (Friedberg 2:1181–1182).
28. *X* 5.7.11 *Si adversus* (Friedberg 2:783–784). Even Peters alleges that heresy defendants were restricted in their use of lawyers (*Inquisition*, p. 67). Hamilton first says, rightly, that defendants could use lawyers (p. 44), but then he says that they were not allowed in certain conditions (p. 45). The latter may have been true in practice, but it contravened the *ordo juris*.
29. See David Mellinkoff, *The Conscience of a Lawyer* (St. Paul, 1973), pp. 47–62.
30. J. M. Vidal, *Bullaire de l'inquisition française au xiv^e siècle et jusqu'à la fin du grand schisme* (Paris, 1913).
31. *X* 5.28.53 (Friedberg 2:432).
32. *Sext* 5.2.18 *Ut inquisitionis* (Friedberg 2:1077); Vidal, *Bullaire*, pp. lxxii–lxxiii.

The admission of tainted or criminous witnesses in heresy inquisitions was not peculiar to heresy cases but applied to other "exempt" crimes, namely, treason, or *lesa majestas*, and simony. It was justified by Innocent III for simony in the decretal *Licet Heli* of 1199.[33]

Now that we have dispersed these obfuscations, let us try to get a clear view of what constituted inquisition, the new general form of trial instituted by Innocent III, and see how heresy prosecutors adopted it, adapted it, and eventually abused it.

The essence, or "specific difference," of inquisition was that instead of an accuser the judge himself presented the charges against a defendant.[34] But Pope Innocent did not want it thought that the judge was somehow acting as an accuser in initiating the trial; rather, the action was to be started by public opinion: "non tanquam idem sit accusator et judex, sed, quasi deferente fama vel denunciante clamore, officii sui debitum exequatur" ("not as though the accuser and the judge are the same, but rather, with fame as it were serving as informant or outcry being the denouncer, the judge is to carry out the duty of his office").[35] According to this procedure, therefore, only public crimes publicly connected to a specific person were eligible for prosecution; the judge could inquire (that is, start an inquisition) *ex officio* only against someone who was "infamous" by reputation. The required procedure was that he charge an individual with committing a certain crime on the basis of *publica fama*, which he had to establish before proceeding to the charge itself. That is, he had to prove that trustworthy members of the community considered the defendant guilty before he could require him to plead guilty or not guilty, and if he pleaded not guilty, the judge had to offer proof of guilt. The person charged had to be present, and the chapters of inquiry (that is, the charges) had to be given and explained to him and all rights of defense allowed.

33. *X* 5.3.31, repeated and clarified in *Per tuas*, A.D. 1204, *X* 5.3.32 (Friedberg 2:760–762). The admission of *infames* and *criminosi* to testify against those who have left the faith antedates Innocent's invention of the inquisition; it is stated as permissible by Gratian in his dictum before 2.2.7.23 *Alieni erroris* (Friedberg 1:488). I should note that the rubric to canon 23 as Friedberg puts it, *Infames hereticos accusare non possunt* ("The infamous cannot accuse heretics"), belies Gratian's meaning; the older edition of the *Corpus juris canonici* cited above (n. 25), 1:691, gives a correct rubric: *Infames et haeretici homines bonae famae accusare non possunt* ("The infamous and heretics cannot accuse men of good fame").
34. In some cases there was a *promovens* who initiated and prosecuted the charges; examples can be found in the Rochester register (n. 10 above), pp. 479, 615, 784, 941, 1075 (compare 956). Eventually, there emerged two different kinds of *promotor*: an *ad hoc* assistant to the judge appointed in a specific case, called *promotor judicis officii*, who helped to formulate charges; and a permanent *promotor* who acted like an independent prosecuting attorney. For the former, see my "English Kings and the Fear of Sorcery," p. 225 n. 75, and my *Matrimonial Trials of Henry VIII*, pp. 23, 80, 89–90; for an example of the latter, see Vidal, *Bullaire*, p. 498.
35. Innocent III, *Qualiter et quando* no. 1 (see n. 9 above), a passage omitted by Raymund of Pennafort from *X* 5.1.17 but repeated in *Qualiter et quando* no. 2 (*X* 5.1.24; Friedberg 2:738, 746).

This procedure, which was allegedly so ideally suited for the prosecution of heresy, actually presented heresy-hunters with real puzzles, which Innocent III and subsequent commentators did little to solve, especially after Gregory IX in 1231 elevated "believers" to the category of "heretics."[36] There is a general prohibition in church law against the public prosecution of secret crimes—"Ecclesia de occultis non judicat"—and a specific prohibition against it in inquisitorial procedure.[37]

The bishops at the Council of Narbonne attempted to answer some of the questions posed by the Dominican heresy inquisitors. I have mentioned their allegation of papal permission for suppressing names of witnesses. They approved of another policy for which they did not claim an exemption, but which could be contrary to the *ordo juris*: in the preliminary information-gathering inquisitions the inquisitors could make persons testify "generaliter *de se* et de aliis" ("in a general way *about themselves* and about others").[38] Self-incriminatory testimony, especially if required under oath, would be regular only for a person who had voluntarily confessed to guilt. The bishops did warn the inquisitors not to condemn anyone without open and lucid proofs, and they specified the sort of external manifestations that were necessary to identify believers.[39] However, they did not indicate how suspected believers should be summoned and tried.

In an as yet unpublished collection of guidelines and procedures for heresy judges (which Antoine Dondaine lists as his fifth manual), to be dated shortly after 1265, though perhaps in its original form going back to Toulouse around 1256, the account of the preliminary inquisition matches that of the Council of Narbonne: all adults must say what they know "tam de se quam

36. *X* 5.7.15 *Excommunicamus* no. 2 (Friedburg 2:789). For the text of the whole letter, dated February 1231, see Selge, *Texte zur Inquisition*, pp. 41–42, who takes it from Lucien Auvray, *Les registres de Gregoire IX*, vol. 1 (Paris, 1896), no. 539. Friedberg gives only Raynaldi's date of 1229. This decretal declares "believers in the errors of heretics" to be themselves heretics, in contrast with the decree of the Fourth Lateran Council, *Excommunicamus* no. 1 (*X* 5.7.13), par. 5, where "believers of heretics" (this can be interpreted either as believers in the good character of heretics or believers in the good character of their teachings) are included in the lesser category of supporters of heretics. However, in a still earlier decretal, Lucius III's *Ad abolendam* (A.D. 1184), excommunication is decreed against the wrong thinker (*aliter sentiens*) as well as against the wrong teacher (Friedberg 2:780).

37. *X* 5.3.33 *Sicut* and 34 *Tua nos* (Friedberg 2:762–763), and see Stephen Kuttner, "Ecclesia de occultis non iudicat," *Acta congressus iuridici internationalis . . . 1934*, vol. 3 (Rome, 1936), pp. 225–246. Compare John Andrew, *Novella* on *X* 2.18.2 *Cum super* (2:108A nos. 4–5), who concludes: "Nulla ergo equitas potest movere judicem ut reum interroget de occultis. Equitate autem deficiente non est locus interrogationi judiciali."

X 5.1.21 *Inquisitionis negotium* (Friedberg 2:741–742). I deal with this question at length in "The Inquisitorial Prosecution of Secret Crimes," forthcoming in the proceedings of the Eighth International Congress of Medieval Canon Law, held at the University of California, San Diego, in August of 1988, to be published in the Subsidia series of the Vatican Library's Monumenta iuris canonici.

38. Council of Narbonne, chap. 27.

39. Ibid., chaps. 23 and 29.

de aliis."[40] But in the formula for citing an individual to trial the person is said to labor under infamy, and the trial is to determine whether the infamy corresponds to the truth. The rest of the *ordo processus* is in accord with the rule of law.[41] However, the same manual contains an anonymous consultation that advises the inquisitor to use threats and deceit and even torture and imprisonment against defendants who deny heretical connection and who demand the opportunity of defending themselves *secundum juris ordinem*.[42]

From the fragmentary records of early trials, or from historians' fragmentary reports of more complete records, it is usually hard to tell exactly what procedures were being followed. But the records of the inquisitions held by the bishop of Carcassonne between 1250 and 1258, sometimes with the participation of the Dominican inquisitors, seem to indicate that care was taken not to bring suspects to trial without definite charges and proof and not to violate procedure in any other way.[43] But when we see the Dominicans operating again in the same city in the 1270s, as far as their practices can be deduced from Dondaine's sixth manual, the situation is much different.[44] Now confessions are secured by clearly irregular means, without establishing infamy, without giving chapters of charges, and by making defendants take an oath to testify *de se* on unspecified questions.

In 1291 the king of France, Philip the Fair, who would later oversee the inquisitorial extermination of the Knights Templar on outrageously bogus charges, intervened at Carcassonne and ordered the seneschal not to arrest or imprison anyone on the commands of the inquisitors unless he was a self-confessed heretic or was considered a heretic on the testimony of several trustworthy men.[45] Philip's insistence on the *ordo juris* does not seem to have affected the irregular trial procedures of the inquisitors, at least not for long, since the inquisitor of Carcassonne in the early 1300s, Geoffrey of Arblis, was still using a self-incriminatory oath, and a similar formula was used by James Fournier, bishop of Pamiers from 1318 to 1325 (he later became Pope Benedict XII).[46]

40. Manual 5, Vatican lat. MS 3978, fols. 17–38: chap. 9 (fol. 32). See Dondaine, "Le manuel de l'inquisiteur (1230–1330)," pp. 106–107, 141–146. For the dating, see Dossat, *Crises*, p. 199.
41. Manual 5, chap. 23 (fols. 35–36v).
42. Ibid., chap. 4 (fols. 25v–26).
43. Célestin Douais, ed., *Documents pour servir à l'histoire de l'Inquisition dans le Languedoc*, 2 vols. (Paris, 1900), 2:115–301.
44. Manual 6: *Doctrina de modo procedendi contra hereticos*, ed. Edmund Martène, *Thesaurus novorum anecdotorum*, vol. 5 (1717; reprint, New York, 1968), pp. 1795–1814. See Dossat, *Crises*, pp. 202–204.
45. See, for example, Malcolm Barber, *The Trial of the Templars* (Cambridge, 1978). For Philip's letter, see Claude de Vic and Joseph Vaissette, rev. Auguste Milinier et al., *Histoire generale de Languedoc*, 16 vols. (Toulouse, 1872–1904), 10:273–274. Philip's letter of 5 September 1298 supporting Boniface VIII's *Ut inquisitionis* (*Sext* 5.2.18), ibid., cols. 276–278, should not be taken as rescinding the 1291 cautions on due process.
46. L. Tanon, *Histoire des tribunaux de l'Inquisition en France* (Paris, 1893), p. 348 n. 1. Jean

In the meantime, in 1298, a change had occurred in the rules of procedure for inquisitions of all sorts (that is, not just against heretics). Earlier in the century, the authoritative Cardinal Hostiensis had declared that an inquisitory trial was void if the judge failed to charge a defendant or if he started to question witnesses about a suspect's guilt before the person's infamy was established. Boniface VIII in his *Liber sextus* (1298) issued two laws that invalidated Hostiensis's opinion and had the effect of removing part of the burden that Innocent III had placed on the judge's conscience and making it more a matter of the defendant's alertness or knowledge of the law. According to the first statute, *Postquam*, if a defendant confesses a crime to a delegated judge, he cannot then object that he was not first "defamed" or charged.[47] In other words, he must make his objection at the beginning (and if the judge fails to comply with the rules, he has the right to remain silent and to appeal). The second statute, *Si is*, similarly allows a delegated judge to proceed without establishing infamy if the defendant does not object.[48] Defendants still have the right to the proper *ordo juris*, and the judges have the obligation to follow it, but one can see that these laws might easily lessen a judge's concern for doing so. In one of Bishop Fournier's heresy trials, when a defendant, on being required to tell the truth about those things he had been charged with, asked to know exactly what the charges were, the bishop told him *de gratia* ("as a favor").[49] It therefore seems that Fournier, in this case at least, did not consider the specification of charges to be a right of the defendant but an option of the judge that he could exercise at his discretion.

It became standard procedure in many heresy tribunals that instead of following the canonical rules of charging the defendant with a public crime and offering him the chance to defend himself against all documentary and testimonial proofs that were produced, the inquisitors would make the defendant guess why he had been summoned to trial and would question him on his beliefs and actions in the hope of confirming their suspicions or uncovering new grounds for prosecution.

In one case that reached the pope on appeal in 1323 it was alleged that the

Duvernoy, *Le registre d'inquisition de Jacques Fournier, évêque de Pamiers (1318–1325)*, 3 vols. (Toulouse, 1965; a pamphlet of corrections was issued in 1972): see 1:40 for the formula used in the first recorded case, 9 August 1319. The Dominican vice-inquisitor is noted as assisting at the bishop's proceedings.

47. *Sext* 5.1.1 *Postquam* (Friedberg 2:1069). John Andrew, in the *Glossa ordinaria*, on the word *postquam*, *Corpus juris canonici*, 3:609–610, states explicitly that the opinions of Hostiensis are corrected by this decretal and the next. For Hostiensis on the failure to present charges, see his *Commentaria* to *X* 5.1.24 (1581; reprint, Turin, 1965), 5:11A no. 15.
48. *Sext* 5.1.2 *Si is* (Friedberg 2:1069). See Hostiensis on *X* 5.1.17, *Commentaria*, 5:5A–6 nos. 4–6. The canonists held that ordinary judges already had the power to proceed without establishing infamy; see John Andrew's gloss on this decretal at the word *fuerat* (col. 610), and see his *Novella* on *X* 5.1.25 (5:15A no. 10).
49. Duvernoy, *Registre*, 2:204, case of Arnaud Tesseyre. Later, after becoming Pope Benedict XII, Fournier accepted the appeal of a man who was denied the copy of the inquisitorial process held against him in his absence (Vidal, *Bullaire*, p. 44).

defendant, Jean l'Archévêque, lord of Parthenay, had been put into prison by the inquisitor of Tours and allowed no counsel to help him deal with the charges that were levied or intended to be levied against him, even though he was a man of military simplicity and ignorant of the law.[50] The same could have been said of Joan of Arc in 1431, who was imprisoned and grilled for a month without counsel before being charged.[51] In both cases there were hostile judges who refused appeals, but Parthenay's family managed to get the appeal sent directly to the papal curia, much as Catherine of Aragon's supporters would be able to do, even though her direct appeals were turned down by her legatine inquisitors in the trial of 1529. Joan of Arc could easily have been liberated from the Rouen inquisition (if not from the Rouen prison) if only her French allies had taken the trouble to have the case advoked to Rome. Eventually, a review of the trial was instituted by the pope, at the petition of Joan's mother and brothers, and their proctor submitted a list of 101 detailed objections to the proceedings.[52] Surprisingly, he made no objections to the violations of the inquisitorial process. Nor were such points raised by any of the other jurists who participated in the retrial—with the exception of a doctor of canon law named Jean de Montigny.[53] Things had come to a sorry pass when the very substance of the inquisitorial procedure was so routinely ignored that violations were no longer recognized as such.

The obligation of judges to establish *publica fama* and to make specific charges against defendants was still stipulated in canon law, however, and it received renewed emphasis in Elias Regnier's 1483 commentary on Boniface VIII's modifications of the *ordo juris* in the *Sext*. A few years later Regnier's comments were incorporated by Jean Chappuis into his editions of the *Sext*, and they remained enshrined in the *Corpus juris canonici*, including the papally authorized edition of 1582 and its reprints, for the following centuries.[54]

In conclusion, inquisition was a brilliant and much-needed innovation in trial procedure, instituted by the greatest lawyer-pope of the Middle Ages. It served the generality of church courts very well and formed the basis of modern Continental criminal procedure. The abusive practices that came to

50. Vidal, *Bullaire*, pp. 77–83.
51. Paul Doncoeur and Yvonne Lanhers, eds., *Instrument public des sentences portées les 24 et 30 mai 1431 par Pierre Cauchon et Jean le Maître, O.P., contre Jeanne la Pucelle* (Paris, 1954); and Pierre Tisset, ed. (with Yvonne Lahers), *Procès de condemnation de Jeanne d'Arc*, 3 vols. (Paris, 1960–1971). I follow the traditional vocabulary in considering the brief proceedings in which Joan was condemned as relapsed on 30 May to be part of the original trial.
52. Pierre Duparc, ed., *Procès en nullité de la condemnation de Jeanne d'Arc*, 4 vols to date (Paris, 1977–1986), 1:111–150 (modern French translation, 3:103–144).
53. Ibid., 2:266–317: *Opinio domini Johannis de Montigny, decretorum doctoris*; see esp. pp. 293–294. Duparc is preparing a fifth volume which will contain a commentary on the consultations.
54. I give details in the essay mentioned in n. 37 above.

prevail in the special heresy tribunals do not merit the name of inquisition, but rather should be identified as a perversion of the inquisitorial process caused by overzealous and underscrupulous judges. Part of the blame lay with the great canonistic commentators of the time, who failed to confront the theoretical and practical problems raised by the prosecution of heresy and who failed to instruct the inquisitors. Many of the inquisitors were trained in theology rather than in law, and they came by their ignorance honestly; and such honest ignorance has persisted to our own day.