

The Culture of Inquisition in Medieval England



Edited by **MARY C. FLANNERY**
and **KATIE L. WALTER**

WESTFIELD MEDIEVAL STUDIES

Volume 4

The Culture of Inquisition
in Medieval England



WESTFIELD MEDIEVAL STUDIES

ISSN 1752-5659

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MARY C. FLANNERY
AND KATIE L. WALTER

D. S. BREWER

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First published 2013
D. S. Brewer, Cambridge

ISBN 978 1 84384 336 8

D. S. Brewer is an imprint of Boydell & Brewer Ltd
PO Box 9, Woodbridge, Suffolk IP12 3DF, UK
and of Boydell & Brewer Inc.
668 Mt Hope Avenue, Rochester, NY 14620-2731, USA
website: www.boydellandbrewer.com

A CIP catalogue record for this book is available
from the British Library

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Typeset by Tina Ranft, Woodbridge
Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY

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MS Ashmole 45, fol. 2r.

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Acknowledgements

This collection has its origins in a conversation held between the editors in Cambridge in 2007, while sipping tea and overlooking King's Parade. Since then, many people have helped to bring this project to fruition, and it is a pleasure to be able to thank them here. Among those who have provided their generous support, Ed Craun, Andy Kelly, Nicky Zeeman and Julia Boffey deserve special mention. The stimulating discussion after our session at the 2008 International Congress of Medieval Studies in Kalamazoo, and the success of two workshops held at Queen Mary in 2009 and 2010, proved invaluable to our development of this volume—we are extremely grateful to all of the participants involved, and to Daphne Rayment, Beverley Stewart, Jennifer Thomas and Rob Ellis for their assistance. These events, and the publication of this collection, were made possible by the generous financial support of the Department of English at Queen Mary University of London, and by a grant awarded by the Westfield Trust. We would also like to express our thanks to the Bodleian Library and its Imaging Services department, who generously provided the image used in this volume. We owe a tremendous debt of gratitude to Rob Ellis, who bravely stepped in at the last minute to help out with the bibliography and with formatting the manuscript. Our thanks, too, to the Westfield Medieval Studies board; to Caroline Palmer and Rohais Haughton at Boydell and Brewer, and, in particular, to Ros Allen, for their support of our project and for their guidance throughout. Finally, we would like to offer our warmest thanks to our friends and families for their encouragement.

Abbreviations

| | |
|------|------------------------------------------------------------------------------------------------------|
| BRUC | A. B. Emden, <i>A Biographical Register of the University of Cambridge to A.D. 1500</i> |
| BRUO | A. B. Emden, <i>A Biographical Register of the University of Oxford to A.D. 1500</i> |
| CIC | <i>Corpus iuris canonici</i> |
| CJC | <i>Corpus juris canonici</i> |
| EEBO | <i>Early English Books Online</i> |
| EETS | Early English Text Society |
| es | Extra Series |
| MED | <i>Middle English Dictionary</i> |
| MLN | <i>Modern Language Notes</i> |
| ODNB | <i>Oxford Dictionary of National Biography</i> |
| OED | <i>Oxford English Dictionary</i> |
| os | Original Series |
| PL | <i>Patrologiae cursus completus: Series latina</i> |
| PMLA | <i>Periodical of the Modern Language Association</i> |
| RS | Rolls Series |
| SPCK | Society for Promoting Christian Knowledge |
| ss | Supplementary Series |
| STC | <i>Short Title Catalogue</i> |
| SUNY | State University of New York |
| TAMO | <i>The Unabridged Acts and Monuments Online</i> |
| UCSD | University of California, San Diego |
| X | <i>Liber extra</i> , or the <i>Decretales Gregorii IX</i> , AD 1234; in <i>Corpus iuris canonici</i> |

Introduction: Imagining Inquisition

MARY C. FLANNERY AND KATIE L. WALTER

Inquisitio, a process first codified in the canons of the Fourth Lateran Council of 1215, was an important means of investigating crime in general and heresy in particular in the later medieval period. For the most part, it has been the subject of historical rather than cultural investigation: scholars have focused on its role in the development of the medieval church and its laws, and on the dynamics of heresy inquisition in medieval Europe and, more recently, England. To view it only as a tool in the fight against heresy, however, is to overlook both its broader significance and its imbrication with other mechanisms of medieval canon law. Even in the English ecclesiastical courts, *inquisitio* had other uses: it was, for example, most commonly used to regulate sexual relations (fornication, adultery, bigamy, etc.); it was bound up with sanctions like excommunication and public penance, as well as confession, sacramental or otherwise; and, perhaps most significantly, since the law stipulated that *inquisitio* could only be initiated when someone was widely held to be guilty of a specific crime, it was intimately associated with questions of reputation and social standing. It is hardly surprising then that in the centuries following Lateran IV, the applications of inquisition moved beyond the boundaries of the ecclesiastical courts into the fields of exemplarity, rhetoric and poetry. In addition to having specific legal and pastoral applications, *inquisitio* was a dialogic mode of inquiry, a means of discerning, producing or rewriting truth, and an often adversarial form of invention and literary authority. Instead of a rigid, inflexible system imposed from above, it was organic and malleable, shaped in dialogue with bishops and heretics, canon lawyers and pastoral writers, local communities and their deviants, poets and prose writers.

Inquisition's symbiotic relationship with the discourses, objectives and processes of confession, a subject which has received much critical attention in recent decades, also renders it a topic of pressing interest to medievalists. Close attention to inquisition's role not only in relation to the theory and practice of English ecclesiastical courts but in key genres of medieval English literature reveals that it operated not only within public but also private realms, that it shaped individual identity and forged communal bonds, and that it could function as a potent means of self-expression. Alongside (and out of) the legal concept of inquisition developed new ways of conceiving inquiry, dialogue, knowledge and communal and personal identity.

Over the past decade or so, the work of historians has done much to illuminate

heresy inquisition in medieval England.¹ But much work remains to be done on the implications and relevancies of inquisition for medieval English literature and culture, both within and outside the context of heresy, particularly in relation to the varied and extensive textual culture it produces—constitutions, trial records, confessions and abjurations, bills and broadsides, pastoral *summa*, exempla and romance—and the power it exerts over and offers to the authors, subjects and audiences of those texts. As recent inquisition studies have shown, we cannot properly speak of *inquisitio* as simply a specific moment in the process of prosecuting heresy; rather, it is enmeshed in a complex set of pastoral, legal, social and literary structures which, for the most part, have yet to gain the attention of medievalists. This study is the first to treat these discursive and cultural implications, demonstrating that while the canons of Lateran IV outlined and codified the purposes and applications of inquisition within ecclesiastical law, inquisition as a concept and a discourse penetrated the late-medieval consciousness in a broader sense, shaping public *fama* and private selves, as well as affecting the construction of deviancy, sexuality and gender, rhetoric, narrative form and literary invention.

The second impetus behind this collection of essays derives from the field of confession studies, where medieval developments in the theory and practice of the sacrament of penance have been made the basis for extensive claims about late-medieval culture and literature.² Medieval scholarship has commonly considered sacramental confession separately from inquisition, but this obscures the ways in which the discourses, processes and concerns of inquisition and confession interact with one another and even overlap. A focus on *inquisitio* shows that confession and inquisition are inextricable from one another. We therefore need both to reintroduce the play of public *fama* and social ethics into our understanding of medieval confession (the private, interior nature of which has perhaps been overstressed), and to recognise the potential of inquisition alongside confession to form a hermeneutic for medieval subjectivity and narrativity. The recent increased scholarly interest in English inquisitorial practices indicates that it is

¹ See for example Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Oxford University Press, 2005); John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001); John H. Arnold, 'Lollard Trials and Inquisitorial Discourse', in *Fourteenth Century England II*, ed. by Chris Given-Wilson (Woodbridge: Boydell, 2002), pp. 81–94; and John H. Arnold, 'Inquisition, Texts and Discourse', in *Texts and the Repression of Medieval Heresy*, ed. by Caterina Bruschi and Peter Biller, *York Studies in Medieval Theology IV* (York: York Medieval Press, 2003), pp. 63–80. H. A. Kelly has published extensively on inquisition; see the bibliographical references in his essay in this collection.

² Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, NJ: Princeton University Press, 1977) and Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. by Robert Hurley (London: Penguin, 1978) are both particularly important here. See also *Handling Sin: Confession in the Middle Ages*, ed. by Peter Biller and A. J. Minnis, *York Studies in Medieval Theology II* (York: York Medieval Press, 1998); Mary Flowers Braswell, *The Medieval Sinner: Characterization and Confession in the Literature of the English Middle Ages* (London: Associated University Press, 1983); Jeremy Tambling, *Confession: Sexuality, Sin, the Subject* (Manchester: Manchester University Press, 1990); Jerry Root, 'Space to Speke': *The Confessional Subject in Medieval Literature* (New York: Peter Lang, 1997); Katherine C. Little, *Confession and Resistance: Defining the Self in Late Medieval England* (Notre Dame, IN: University of Notre Dame Press, 2006).

timely to open up the field to interdisciplinary approaches, and particularly to confession and literary studies. By surveying developments in the imagining of inquisition from Lateran IV to the Reformation, this essay collection moves the study of inquisition into new discursive and imaginative realms, establishing a new field for investigation in the literary and cultural history of medieval England.

One of the first tasks of this volume is to set English inquisitorial practice in the context of the development of *inquisitio*. Therefore, the opening essay by Henry Ansgar Kelly begins by examining the development of inquisition in canon law, and goes on to consider its application and development in England. Kelly's particular focus is on those abuses of *inquisitio* related to inquisitors' efforts to charge individuals with crimes that were not public knowledge (*publica fama*). As he points out, while inquisition was not designed to prosecute heresy, it was soon used for this purpose, especially in the tribunals of papal heresy inquisitors. Kelly contends that while some infringement of the rights of defendants occurred in heresy inquisitions on the continent and in heresy trials in late fourteenth-century England, English heresy trials in the later fifteenth and early sixteenth centuries show more concern for due process than do similar proceedings on the continent, and convictions were limited to proved offences. Crucially, he distinguishes between the anxiety felt by those accused of heresy in the Middle Ages and more general paranoia concerning abuses of inquisitional procedure, which he contends did not emerge in the English imaginary until well into the sixteenth century. Consequently, his investigation of the misuse of medieval inquisition clarifies its place in the English imagination, and offers a new starting point for scholarly approaches to the subject.

Kelly's piece establishes the ways in which *inquisitio* came to dominate the business of ecclesiastical courts in preference to other modes of inquiry, such as *accusatio* and *denunciatio*. Edwin Craun, however, shows that if *denunciatio* fell out of favour in practice, in the realm of canon law theory it assumed almost equal importance with inquisition. For canonists interested in the questions of reform and of how to root out sin from a community, the charitable goals of *denunciatio* provided powerful tools for thinking more broadly about inquisitional processes. In conjunction, Kelly's and Craun's essays demonstrate how the operation of inquisitional processes is both determined and problematised by notions of the public and private. While Kelly addresses the relationship between inquisitorial procedure and *publica fama*, Craun focuses on the pastoral tradition's negotiation of the procedure of *denunciatio* (the disclosing of another's sins to a disciplinary authority), which entailed a shifting of the knowledge of another's sin from the private realm (between the sinner and one or two witnesses) to more public legal procedures, a step that might well initiate inquisition. At its core, denunciation relied on the concept of charitable admonition, which required that the admonisher be motivated by the desire to move the sinner to penance and reform, either for his or her sake or for the sake of the public good. But *denunciatio* also required all Christians to negotiate the seemingly contrary claims of three goods: the sinners' amendment, their good repute and the common good. Consequently, the question of when it was necessary to bypass private admonition and proceed

directly to more public *denunciatio* was one with which the medieval church struggled. Craun explores how canonists and pastoral writers grappled with the question of when to 'go public' with admonition. Drawing largely on three important *summae* surviving in manuscripts in British libraries, Craun's essay thus situates developments in inquisition in this period within the overarching aim of charitable correction.

The kind of intellectual creativity described by Craun, which was generated by the impulse to reform sinners and driven by Lateran IV, is also the subject of Ian Forrest's contribution. In the first two decades of the fifteenth century there was a renewed burst of interest in English provincial constitutions. These texts, which had been significant tools of church government in the thirteenth and early fourteenth centuries, were often collected in legal anthologies. Whilst the last major series of constitutions had been issued by Archbishop John Stratford in 1342, the second decade of the fifteenth century was a period of intense production, during which existing collections were updated and new collections were produced. Forrest argues that this renewed interest in provincial constitutions is, in fact, a by-product of the practical engagement with heresy inquisition in England at this time. Examining the codicological and material evidence provided by the manuscripts, Forrest singles out Archbishop Arundel's raft of anti-heresy legislation in 1407 and Archbishop Chichele's later constitutions concerning heresy as particular spurs for scribal activity. As Forrest points out, the enthusiasm for updating and making collections did not continue after this period, despite the fact that the fight against heresy did; instead, William Lyndwood's *Provinciale*, the 'ultimate scholarly product' of the intense phase of manuscript production in the 1420s, proved such a definitive collection and commentary on canon law that it retained legal authority through the fifteenth century and into the Reformation.

Whereas Forrest and Craun show that imagining inquisition was an intellectually creative activity for English churchmen, the remainder of the essays in this collection explore the ways in which it was also an intellectually creative activity for heresy suspects, for the laity and for vernacular writers, not only in the genres produced by inquisition, but also more widely in pastoralia and exempla, advice literature and romance. Moreover, like canonical Latin texts, these works evince a strong concern with the interplay of public and private, which indicates that the dominant binary of public inquisition versus private confession is too limiting: not only does confession often figure itself in peculiarly public terms, but the discourses of inquisition and confession are both fundamentally generative structures.

The essay by the editors of this collection explores the relationship between modes of inquiry and the dynamics of interiority in three fifteenth-century vernacular texts: *Dives and Pauper*, *Jacob's Well* and an episode from John Lydgate's *Fall of Princes*. One of the fundamental goals (and difficulties) of both inquisition and confession is the discernment of interior truth and intent. But one of the main complications with which inquisition and confession consequently must contend is the contingent nature of the knowledge both produce. Changes in canon law in the twelfth and thirteenth centuries can be seen in part as responses to this indeterminacy of knowledge. Perhaps the most significant of these changes is the sepa-

ration of canon law into two spheres: the external or judicial forum and the internal or penitential forum, both of which develop specialised techniques for tackling the problem of uncertainty and for utilising the differing kinds of knowledge or truth produced in their systems. We argue that we must admit the concerns of the external forum—its use and regulation of forms of knowledge, its modes of inquiry and the apparatus required to perform them—to our understanding of the role played by the internal forum in the late-medieval engagement with notions of interiority and epistemology. Doing so highlights the ways in which inquisition provides an alternative model for the self-scrutiny and subject-formation traditionally understood to have been produced and fostered in medieval confessional practices.

James Wade provides an extended discussion of the interiority generated by inquisitional discourses in his essay, which focuses on the *The Erle of Tolous*, a Middle English romance noted for its ‘subtle psychology’ and its attention to the interior self. The poet’s strategy for accessing this concealed interior is ‘to pursue an inquisition of sorts—a sequence of confessional inquiries that form the etiological bedrock of the story’, culminating in a mock-confession that Wade reads as inquisition masquerading as confession. Picking up on themes in play elsewhere in this volume—the inextricability of confession from other inquisitional processes and their generative structures; a questioning of the public inquisition versus private confession binary—Wade surveys a number of Middle English romances, including *Sir Gawain and the Green Knight*, *Guy of Warwick* and *Sir Gowther*, in order to contextualise his discussion of *The Erle of Tolous*. In this last, Wade argues, the generative structure of confession is used to create exemplary women: both Beulybon (the romance’s heroine) and also the romance’s female readers. Arguing that exemplarity was more of a reading strategy than a generic category amongst lay readers in late-medieval England, Wade calibrates the moral implications of the heroine’s behaviour by considering related texts within the four extant *Erle* manuscripts. Looking to the particular matrix of texts each manuscript provides (and the distinctive frontispiece of Oxford, Bodleian Library, MS Ashmole 45, a presentation copy), Wade argues that the romance presents a sophisticated articulation of exemplary female virtue that is generated by the logic of inquiry in confession.

Where romance uses inquisition to generate a readable, exemplary interior, other genres use it to contend more widely with the problem of legibility: how to read the hidden thoughts and beliefs of a person, how to interpret a text. In Diane Vincent’s essay it is the legibility of the very questions and answers produced in inquisition itself that is under scrutiny. Examining two sets of adversarial documents—the first related to the heresy suspects examined under Archbishop Courtenay in 1382: Nicholas Hereford, Philip Repingdon and John Aston; the second to the heresy trial of Sir John Oldcastle under Archbishop Arundel in 1414–1417—Vincent argues that the significance of inquisitorial questioning is itself on trial in this period. After their examination, Hereford, Repingdon and Aston each circulate bills around London giving brief accounts of their examination in English. Pitted against these bills is the (Latin) counter-broadsheet of an anonymous orthodox respondent, as well as the records of ecclesiastical admin-

istration. The trial of Oldcastle in turn resulted in a proliferation of bills and official proclamations, as well as chronicle records and poetic responses such as Thomas Hoccleve's 'To Sir John Oldcastle', that consciously engage the public; perhaps most remarkably, Arundel orders the entire registered process against Oldcastle to be read out in Middle English in all the churches of the province of Canterbury. Exploring the conversation between such bills, ecclesiastical proclamations and bishops' records offers a glimpse into a *deliberately public* contest over the significance of the inquisitorial question in determining heresy.

In such a contest, the significance and the subjects of inquisition are continually subject to rereading and revision. This process pertains not just to heresy inquisition but to the discourse of inquisition more generally, as the example of Thomas Usk demonstrates in Jenny Lee's essay. Lee's central argument revolves around a paradox. Confessions of guilt in the penitential forum had as their goal the erasure of sin and the reformation of the confessing subject; the confessions produced for judicial purposes instead sought to preserve the statement of an individual's wrongdoing through written records, which could result not in the erasure of sin, but of the subject himself. In this essay, Lee explores this paradox in the works of Usk, arguing that his familiarity with penitential confession's goal of erasing sin motivates his writing of the *Appeal* in 1384; his subsequent experience, however, shows how the written form of this confession could be used instead to efface his good name, since it is precisely the *Appeal's* written form which ensures that it later comes to be appropriated by the authorities for use against Usk. In response, Usk's strategy is to fight writing with writing, hoping to produce a more durable written account in the *Testament of Love* to replace the verdicts of the courts and the failed form of the *Appeal*.

Usk's strategy has much in common with that used by heresy suspects: while inquisition used textual records to fight against heresy, it also gave heretics the very literary forms with which they could fight back. Genelle Gertz's essay revisits the relationship between inquisition and literary production, focusing on the composition of confessions of faith by defendants in heresy trials between 1400 and 1560. In particular, Gertz examines the confessions of faith authored by John Frith, Anne Askew and John Lascelles, who were inspired by their own experiences of inquisition to declare their faith to a reading public. Whereas Forrest's essay examines the impact of inquisition on literary production on behalf of inquisitors, Gertz's essay considers the effects of inquisition on literary production among the *subjects* of early modern inquisition. As she argues, heresy trials fostered a culture in which writing about belief became a matter of personal urgency, and the experience and even the language of inquisition were often appropriated by defendant authors for the purposes of resistance, rather than submission and recantation. Gertz's analysis of what she describes as the 'productive discourses of trial' paves the way for new readings of inquisition as a generative, rather than a discursively stifling, legal process.

Ruth Ahnert continues this exploration of the literary deployment of inquisitorial forms in her essay on dialogic structures in Protestant prison writing and polemic. Like Gertz, Ahnert argues that inquisitorial discourse and structure were appropriated by Protestant defendants in sixteenth-century heresy trials, who

redeployed what they recognised as the biased dialectic of inquisition in their own writings in order to put forward arguments in their defence. As Ahnert notes, the presence of bias in an argument is not necessarily a sign of its falsehood or malevolence; rather, it signals particular argumentative strategies that we must acknowledge in order to evaluate the content of their discourse fairly. The presence of such bias within the prisoners' writings indicates that although their fictionalised dialogues (like sixteenth-century inquisitional forms) appear to be balanced, two-sided exchanges, they are in fact one-sided arguments. Focusing on the writings of John Philpot, Anne Askew, Nicholas Ridley, John Rogers and other defendants in sixteenth-century heresy trials, Ahnert argues that biased dialogues allow for the clear argumentation of their authors' respective beliefs, enabling Protestant defendants to provide what they saw as a true and accurate confession of faith, as opposed to the distorted and truncated confessions elicited through inquisition.

Emily Steiner's response essay reflects on the accumulated significance of the essays contained in this collection, arguing that if we appreciate medieval writers' imaginative investments in law, and particularly in inquisition (the procedure most associated with pre-modern law), we will be forced to re-evaluate our assumptions about the relationship between the medieval and modern, especially since, as Steiner observes, those two categories tend to line up respectively with law (always slipping into the medieval) and literature (always tending toward the modern). This suggests the potential for the lens of inquisition to open up new critical interpretations of medieval English texts and textual practices, such as Chaucer's Prologue to *The Legend of Good Women* and John Trevisa's translations made for Lord Thomas of Berkeley. Chaucer's Prologue shows so well one of the key themes that emerges in other essays: that inquisition and authorship emerge from similar and multiple desires. These desires, Steiner argues, are not always progressive or even laudable, but they are critical to the writing of some very creative medieval literatures, and they are desires that we, as readers, are forced to share.

Taken together, the essays in this collection provide convincing evidence of inquisition's broader relevance in the literature and culture of late-medieval England. Instead of merely functioning in a strictly legal role, inquisition and its legal trappings permeated the English cultural imaginary, producing a peculiarly generative discourse, which might be associated just as frequently with resistance, empowerment and invention as with injustice, corruption and non-progressiveness. Our aim in drawing attention to this is to encourage greater awareness of inquisition's place in medieval English culture; our hope is that this will be only the first of many studies giving sustained attention to how this particular change in legal procedure transformed medieval and early modern textual production in England.

Chapter 1

Inquisition, Public Fame and Confession: General Rules and English Practice

HENRY ANSGAR KELLY

My mode of procedure in this essay will be to discuss the institution and development of inquisitorial procedure in general canon law, first with regard to all criminal cases, and then specifically applied to cases of heresy, and, finally, to examine some of the ways in which the rules were applied or modified in England. On the continent, inquisitorial procedure became the standard practice in secular as well as ecclesiastical courts, and many areas of the continent were dominated by papally appointed heresy inquisitors, whereas in England there was no papal heresy inquisition and the secular courts used a different system of criminal prosecution, based on the tradition of common law. The chief impact of English inquisitorial procedure, therefore, was not in the realm of heresy prosecution, which was relatively infrequent, but rather in the area of sexual relations: a large percentage of the business of church courts dealt with clandestine marriages and the high frequency of bigamy that the practice gave rise to, and also the uncovering and punishment of fornication and adultery. Church courts in England were far more involved in policing the morals of parishioners than in any other region of medieval and Renaissance Europe.

Courts were the realm of the external forum, as opposed to the internal forum of confession, where the sole human judge was the individual's confessor. But sometimes the two fora impinged upon each other, and therefore I will discuss the rules and implications of both public and private confession. I will be dealing, therefore, not only with public confessions in court but also with private confession, whether sacramental or not, and the rules that govern confession and secrecy. Specifically, I will show that an early abuse of the inquisitorial system, when applied to heresy, was to force confessions out of suspects without charging them with a public crime to which they were publicly connected. Such matters belonged to the realm of the confessional and the laws by which confessors were bound.¹

¹ All translation of Latin texts are my own. In giving both Latin and early English texts, I regularise the allographs *ij* and *u/v* to conform to modern usage.

Misunderstandings of ‘Inquisition’ and ‘Public Fame’

The historiography of criminal procedure, heresy and witchcraft has been plagued by the failure of historians to understand the real origin, meaning and operation of the inquisitorial procedure developed by Pope Innocent III (1198–1216). It was *not* designed as a means of prosecuting heresy, but for crimes in general. In fact, Innocent did not seem to think of it as applying to heresy at all, as we will see. When it came to be applied to heresy after his death, it was soon recognised as a special form of inquisitorial procedure, *inquisitio hereticae pravitatis*, which should always be referred to not simply as ‘the inquisition’ (or, God forbid, ‘the Inquisition’) but as ‘heresy inquisition’.² Historians who use inquisition to refer only to heresy inquisition, and who fail to recognise other kinds of inquisitions, are thus giving a distorted view of the juridical realities.³

A very important requirement in starting an inquisition was *publica fama*, ‘public fame’, which has similarly been badly understood by many scholars, who take it to refer to a suspect’s general bad reputation.⁴ What it really means is that a certain suspect is widely held to be guilty of the *specific crime* that is being prosecuted. In other words, he has already been convicted in the court of public opinion. This was not a requirement in the older procedure of *accusatio* (described below), in which a private individual charged another person with a crime, whether widely known or not, and undertook to prove his guilt with convincing evidence.

The Church and Crime: Private Confession and Public Inquisition

By the end of the pontificate of Innocent III (1216), the church’s ways of dealing with crime were very different from how they had been at the beginning (1198). Innocent soon made it clear, in a decretal letter addressed to the bishops of France in 1204, that the church had the right to judge and punish all ‘mortal sins’, or—which was to say the same thing—‘criminal sins’, that is, crimes.⁵ But he also upheld the principle *Ecclesia de occultis non iudicat* [‘The church makes no judgement concerning secret matters’].⁶ That is to say, secret crimes were not subject to prosecution in the external forum of the courts, but only in the internal forum of

² For the widespread abuse of the term ‘Inquisition’ (with a capital ‘I’), see Edward Peters, *Inquisition* (New York: Macmillan, 1988), chapter 6, ‘The Invention of *The Inquisition*’, pp. 122–54.

³ An example of this usage can be seen in the essay of John H. Arnold, ‘Lollard Trials and Inquisitorial Discourse’, in *Fourteenth Century England II*, ed. by Chris Given-Wilson (Woodbridge: Boydell, 2002), pp. 81–94.

⁴ Recent examples of this misunderstanding can be found in *The Trial of Joan of Arc*, trans. by Daniel Hobbins (Cambridge, MA: Harvard University Press, 2005), p. 21, and Jennifer Kolpacoff Deane, *A History of Medieval Heresy and Inquisition* (Plymouth: Rowman and Littlefield, 2011), p. 111; both use the expression *mala fama* (meaning bad reputation not connected with any specific crime) instead of the term of art *publica fama*.

⁵ Innocent III, *Novit* (1204), X (the *Liber extra*, or the *Decretales Gregorii IX*, AD 1234) 2.1.3, in *Corpus iuris canonici* (CIC), ed. by Emil Friedberg, 2 vols (Leipzig: Tauchnitz, 1879–1881), II, 242–44.

⁶ Innocent III, *Sicut tuis* no. 1 (1199) and *Tua nos* (1207), X 5.3.33–34 (CIC, II, 762–63); see Stephan Kuttner, ‘Ecclesia de occultis non iudicat’, in *Acta congressus iuridici internationalis* [. . .] 1934, 5 vols (Rome: Pontificio Instituto Utriusque Iuris, 1935–1937), III, 225–46.

conscience. But when Innocent started to rule, the church exercised only moral authority over conscience. Confession of sins to a priest was only considered laudable practice, elaborately treated in Gratian's treatise *De penitentia* in his *Decretum* (c. 1140).⁷ However, at the Fourth Lateran Council, which Innocent called in 1215, every man and woman from thence onwards was required to confess all serious sins to his or her parish priest every year, as specified in the decree *Omnis utriusque sexus*, and the confessor was warned not to reveal, by word or any other way, any sins confessed to him, under threat of the most severe penalties.⁸

As for public crimes, there was little that church authorities (or civil authorities, for that matter) could do in cases that were explicitly or implicitly ceded to the secular courts. A judge could summon a suspected culprit before him and confront him with the matter, and, if he denied it or refused to confess it, make him undergo purgation. This process required the suspect to swear an oath declaring himself innocent of the crime, and then to find a specific number of 'compurgators' to swear in his support. These co-swearers would come to testify not to his innocence of this crime, but to his general good reputation—in other words, to testify that he was the sort of person who would not do such a thing. If he was not able to produce the set number, the judge could order punishment, but a lesser punishment than if he had confessed to the crime.⁹

There was no mechanism in place for a judge or other officials of his court to try to prove the suspect guilty of the crime. The most he could hope for was to have a third person come forward, out of good will or ill will, and undertake to prove it by the procedure of *accusatio*: he had to accuse the suspect of the crime and prove it, much in the way that in a civil action a plaintiff brought suit against a defendant. In both cases, the judge acted as arbiter between the two sides. But in an *accusatio*, the accuser was at the added disadvantage that he agreed to the *talio* [retaliation]: that is, if he failed to prove his case, he would be punished in the same way as the accused would be if he were found guilty.¹⁰

While leaving accusatorial procedure in place as a possible means of prosecuting crimes, Innocent III perfected an alternative procedure, the *inquisitio*, which he set forth in its final form at the Lateran Council, in the decree *Qualiter et quando*.¹¹ In an inquisition, *clamor et fama* ['public outcry'] takes the place of the

⁷ Gratian of Bologna, *Tractatus de penitentia*, inserted into Causa 33 of the *Decretum* (CIC, I, 1159–1247).

⁸ Innocent III (Fourth Lateran, 1215, const. 21), *Omnis utriusque sexus*, X 5.38.12 (CIC, II, 887–88); see also *Constitutiones Concilii quarti Lateranensis una cum commentariis glossatorum*, ed. by Antonio García y García, Monumenta iuris canonici, Series A: II (Vatican City: Biblioteca Apostolica Vaticana, 1981), pp. 67–68.

⁹ See X 5, title 34: *De purgatione canonica* (CIC, II, 869–77).

¹⁰ See X 5, title 1: *De accusationibus, inquisitionibus, et denuntiationibus*; the first fifteen chapters deal mainly with accusation (CIC, II, 733–37). For the *talio*, see H. A. Kelly, *Canon Law and the Archpriest of Hita* (Binghamton, NY: SUNY, 1984), pp. 92–93, 173, n. 11. See *ibid.*, pp. 91–95, 108–12, for further aspects of accusatorial procedure.

¹¹ Innocent III (Fourth Lateran, 1215, const. 8), *Qualiter et quando* no. 2: X 5.1.24 (CIC, II, 745–47). For the development of inquisitorial procedure, see the essays in my *Inquisitions and other Trial Procedures in the Medieval West* (Aldershot: Ashgate, 2001), especially chapter I: 'Inquisition and the Prosecution of Heresy: Misconceptions and Abuses', originally appearing in *Church History*, 58 (1989), 439–51. For thorough studies of its origins, see Winfried Trusen, 'Der Inquisitionproceß:

accuser, and the judge (inquisitor) himself conducts the case against the defendant and attempts to prove the charge, with no penalty imposed on the judge for failing to prove it. Though *Qualiter* envisages a hue and cry against a specific person as having committed a crime, the decree was understood, less theatrically, as specifying that the starting point of inquisitorial procedure was a publicly known crime, like a killing, a burglary, or a simoniacal purchase of a benefice, which was brought to the attention of a judge in some way and connected to 'a person of interest' (as we would say now). If the connection between this crime and this person could be shown to be *publica fama* (that is, if the judge could find two or more reputable persons who testified that the suspect was widely believed to be guilty of the crime), he could take this as 'probable cause' to charge him or her (let's say it's a he) with the crime and hope for a confession of guilt. In a slightly earlier decretal, *Inquisitionis negotium* (1212), Innocent warned that it was not enough if two or three or even more people personally believed a man guilty of a crime, if there was no common belief of his guilt in the general community.¹²

In the new process of inquisition, the judge had to formally establish the fact of general suspicion; but inquisition soon borrowed the purgation policy of putting the suspect under an oath of telling the truth when stating whether or not he was guilty of the charge.¹³ Presumably the theory was that this was to be done only after *publica fama* was proved. Since the judge had the right at this point to put him under oath to undergo purgation, it was probably considered not too much of an abridgement of a defendant's rights to do the same thing in an inquisition. And if only *publica fama* were proved in an inquisition, the judge still had the option of ordering compurgation.

What if a suspect summoned to an inquisition spontaneously confessed that he had committed the crime in question before the judge established the probable cause of fame? Could he have his conviction thrown out on the grounds of a faulty process? The great authority Cardinal Hostiensis (Henry of Susa, d. 1271) said yes, and to contradict this view Pope Boniface VIII in his *Sext* (*Liber sextus*, 1298) issued a decree, *Postquam*, to the contrary. The decree is not taken from a decretal letter addressed to some query, but rather is cast in the form of an address by a judge to the hapless defendant who has sabotaged his case by making a confession when he should have kept his mouth shut and allowed the process to take its course.¹⁴ It says, in effect, 'If you had waited for the inquisitor to prove that there was public fame that you were guilty of crimes he was charging you with, you might have been able to avoid confessing your guilt'. In other words, he had 'a right to remain silent' up to this point.¹⁵

Seine historischen Grundlagen und frühen Formen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, 74 (1988), 168–230, and Lotte Kéry, 'Inquisitio-denunciatio-exceptio: Möglichkeiten der Verfahrenseinleitung im Dekretalenrecht', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, 87 (2001), 226–68.

¹² Innocent III, *Inquisitionis negotium* (1212): X 5.1.21 (CIC, II, 741–42).

¹³ See Adhémar Esmein, 'Le serment des inculpés en droit canonique', *Bibliothèque de l'École des Hautes Études, Sciences religieuses*, 7 (1896), 231–48.

¹⁴ Boniface VIII, *Postquam: Sext* 5.1.1 (CIC, II, 1069).

¹⁵ H. A. Kelly, 'The Right to Remain Silent: Before and After Joan of Arc', *Speculum*, 68 (1993), 992–1026 (Kelly, *Inquisitions*, chapter III).

John Andrew (Johannes Andreae) of Bologna, whose commentary on the *Sext* (finished c. 1305) became the *Ordinary Gloss*, observes in his gloss on *Postquam*, ‘There is nothing left for the judge to do except to pass sentence; for why should we inquire about infamy or chapters, after the crime is obvious? For now the crime is notorious’ (i.e. needing no further proof).¹⁶ The Archdeacon (Guy of Baysio, Archdeacon of Bologna), in his slightly later commentary on the *Sext* (c. 1306), makes the same point about notoriety. He expands the implications of the word ‘confessed’ (‘After thou hast confessed’) thus: ‘like a fool and an idiot—for he had the ability to testify against himself, and his testimony is believed, to his own disadvantage’.¹⁷

The situation indicated in *Postquam* is that the suspect foolishly jumped the gun and confessed to the crime before the judge had a chance to establish whether or not *publica fama* existed. But what if the judge himself skipped the fame phase? Once again, Hostiensis claimed that the trial could be voided on appeal, and once more Pope Boniface ruled against him in a companion decree, *Si is*, which stipulated that if the defendant did not object to the omission of proof of *infamia* (that is, widespread suspicion that he was guilty of this specific crime), the trial could not be invalidated. He addresses this ruling, as with the previous one, directly to the defendant, adopting the voice of a judge telling him that he has made a mistake by waiving his rights, which, once waived, cannot be regained:

If he who has been appointed to conduct an inquisition straightforwardly [*simpliciter*] against you, concerning specific crimes, should proceed in your presence to inquire into the *truth* about these crimes without first inquiring into your infamy, and if you make no protest or objection to it, you will not be able to impugn the trial on the grounds that there was no preliminary inquisition on infamy.¹⁸

The mindset evident in this short order, and in the previous one, is quite different from that of Innocent III, speaking for the Council Fathers at Fourth Lateran, in *Qualiter et quando*. There we were assured that the judge in an inquisition was required to give all necessary assistance to the accused to enable him to defend himself. Here, in Boniface’s decrees, it is assumed that the judge has no obligation to inform the defendant of his rights, and, if he does not know them, he is judged to have waived them if he does not object to the omission of procedures he could have insisted on.

¹⁶ For John Andrew’s *Ordinary Gloss*, see the official Roman edition of canon law authorised by Pope Gregory XIII in 1582, *Corpus juris canonici* (CJC), 3 vols (Rome: In aedibus Populi Romani, 1582), electronic edn (2008), <<http://digital.library.ucla.edu/canonlaw/index.html>> [accessed: 30 April 2012], iii, part 1 (*Liber sextus*), col. 610, v. *confessus*. Andrew explains here that this decree and the following one (*Si is*) were aimed against Hostiensis’s positions (*ibid.*, cols 609–10, v. *Postquam*).

¹⁷ Archdeacon Guy of Baysio (Guido de Baysio), *Super Sexto* [. . .] *Commentaria* (Lyons: [n. pub.], 1547), *Sext* 5.1.1 (*Postquam*), fol. 106v, v. *confessus*: ‘sicut stultus et fatuus, nam contra se testificari potuit, et ei creditur, in sui prejudicium’. He adds: ‘Et postquam sic confessus fuit, factum est crimen notorium’.

¹⁸ Boniface VIII, *Si is*: *Sext* 5.1.2 (CIC, II, 1069).

However, while we can readily see that a judge's proceeding without levying charges would be a miscarriage of justice, we can be more sympathetic to the impulse to omit the fame phase, since the necessity to show widespread public belief in a defendant's guilt before proving him guilty could give rise to miscarriages of justice in the other direction. It could result in the absurd situation that even if a bishop had solid witnesses to a suspect's actual guilt of the crime, he could not prosecute him if he could not be shown to be *thought* guilty by the wider community. Thus, Hostiensis said that if two witnesses agreed in testifying to a person's guilt of a secret crime, he could not be convicted, because it was not allowable to conduct an inquisition into secret crimes.¹⁹ Perhaps judges could be forgiven for replying that, if two people saw him do it, it was no longer secret.

In fact, even before Boniface's rules, canonists had decided that bishops, as ordinary rather than delegated judges, already had the right to proceed without establishing fame.²⁰ Practically speaking, then, such judges could act against persons on whatever grounds of suspicion they deemed adequate, and either prove the actual guilt or order purgation.

Inquisition Applied to Heresy Cases

It is important to understand, as I stated at the beginning, that the inquisitorial procedure, as it was first elaborated, was not aimed specifically at heresy. We might suppose, of course, that crimes against the faith would naturally be included within its scope: for instance, if a priest in preaching a sermon denied the divinity of Christ, it would be standard operating procedure for him to be cited before his bishop and charged with this offence, and, in case of a not-guilty plea, his guilt would be easy to prove by calling on parishioners present at the sermon to testify against him. But many crimes or sins of heresy were not as overt as this, and the new procedure was not well suited to dealing with them. And, in point of fact, at the Fourth Lateran Council, the problem of combating heresy was taken up separately from the conducting of inquisitions, and perhaps beforehand, since the constitution dealing with heresy, *Excommunicamus*, was issued as no. 3,²¹ and that dealing with inquisition as no. 8.

Instead of resorting to inquisitorial procedure, Innocent and the Council

¹⁹ Cardinal Hostiensis (Henricus de Segusio), *Summa aurea* (Venice: [n. pub.], 1574; repr. Turin: Bottega d'Erasmus, 1963), book 5: rubric *De inquisitionibus*, § 4, *Quando procedatur*, no. 5 (cols 1476–77): 'Sed et si duo concordant contra alium, occulto crimine, non condemnatur, cum nec inquiri debuerit de occultis'.

²⁰ John Andrew, *Ordinary Gloss on Si is, ad v. fuerat* (col. 610): 'If the pope, acting on his own, commissions an inquisition into the crimes of someone, he establishes him as already infamed, since bishop and metropolitan proceed also to inquisition with such article omitted.' See also his *In quinque Decretalium libros Novella commentaria*, 5 vols (Venice: Franciscium, 1581; repr. Turin: Bottega d'Erasmus, 1963) on X 5.1.24 (v, 15A, no. 10): 'Sed quandoque fit inquisitio debito officii urgente, etsi nulla fama precedat, ut cum agitur de matrimonio contrahendo corporali. [. . .] Idem ubicumque ex mero et puro officio procedit iudex, in his maxime in quibus vertitur periculum animarum' ['But sometimes an inquisition is conducted when the duty of office urges it, as when dealing with contracting corporal matrimony. [. . .] The same is true wherever the judge proceeds from his mere and pure office, especially in cases where danger to souls is concerned'].

²¹ Innocent III, *Excommunicamus* (Fourth Lateran, 1215, const. 3), X 5.7.13 (CIC, II, 787–89).

Fathers turned rather to the older practice of purgation, as it had been applied to heresy-hunting by Lucius III (1181–1185) in his decree *Ad abolendam*, issued at the Council of Verona in 1184,²² much of which was incorporated into the present decree. Both *Ad abolendam* and *Excommunicamus* were included by Raymond of Pennafort in the *Liber extra*, authorised by Pope Gregory IX in 1234, under the title *De hereticis*, whereas *Qualiter et quando* was placed under the title *De accusationibus, inquisitionibus, et denuntiationibus*.

Soon, however, heresy, like other crimes, was prosecuted by inquisitorial procedure, and by the time of Innocent IV (1243–1254), papal judges-delegate were being appointed to conduct inquisitions *only* into heresy.²³ These heresy inquisitors, *inquisitores heretice pravitatis*, were most often Dominican friars, members of the Order of Preachers founded by St Dominic.²⁴ In the *Sext* of 1298, there are only two entries in the title *De accusationibus, inquisitionibus, et denuntiationibus*, namely the two short orders of Boniface VIII that we have seen above, modifying inquisitorial procedure. In the title *De hereticis*, however, there are twenty entries, most of them dealing with the inquisitorial prosecution of heretics. Entries 3 to 8 are excerpts from decretals by Innocent IV's successor, Alexander IV (1254–1261), addressed to heresy inquisitors, preserved only here (in the *Liber extra*), with specifics of time and place having been discarded. In one of them, no. 6, *Presidentes*, we see the first appearance of the term *inquisitores heretice pravitatis*, and in no. 5, *In fidei favorem*, we find the phrase *negotium inquisitionis heretice pravitatis*—that is, 'heresy inquisition'.²⁵

The papally appointed heresy inquisitors, sometimes along with the bishops among whom they worked, began to adapt the practice of inquisition from pursuing only publicly known crimes to unearthing and prosecuting secret crimes and even provoking not-yet-committed crimes of speech (confessions under interrogation), and inflicting punishment upon the perpetrators. As noted above, in cases of purgation and eventually also in inquisitions, suspects were put under oath to tell the truth concerning the specific crimes with which they were charged. In heresy inquisitions, it became customary to put persons summoned as witnesses under such an oath to reveal hitherto unknown crimes committed not only by others but also by themselves. The bishops at the Council of Narbonne in 1244 instructed the heresy inquisitors in the opening general phase of their campaigns, when information was being gathered, to require persons to testify 'generaliter de se et aliis' ['in a general way *about themselves* and others'].²⁶

²² Lucius III, *Ad abolendam* (Council of Verona, 1184), X 5.7.9 (CIC, II, 780–82).

²³ See Mark Gregory Pegg, *The Corruption of Angels: The Great Inquisitions of 1245–1246* (Princeton, NJ: Princeton University Press, 2001).

²⁴ See *Praedicatores, inquisitores*, Vol. I: *The Dominicans and the Medieval Inquisition*, ed. by Wolfram Hoyer (Rome: Istituto Storico Domenicano, 2004), and the review by Edward Peters, 'Quoniam abundavit iniquitas: Dominicans as Inquisitors, Inquisitors as Dominicans', *Catholic Historical Review*, 91 (2005), 105–21; see also Christine Caldwell Ames, *Righteous Persecution: Inquisition, Dominicans, and Christianity in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2009).

²⁵ Alexander IV, *Presidentes*: *Sext* 5.2.6 (CIC, II, 1071); *In fidei favorem*: *Sext* 5.2.5 (CIC, II, 1071).

²⁶ Council of Narbonne, chapter 27, in Gian Domenico Mansi, *Sacrorum conciliorum nova et amplissima collectio*, 54 parts in 57 vols (Paris: Weller, 1901–1927), xxiii, 363; see Kelly, 'Inquisition and the Prosecution of Heresy', p. 447.

Proof that such self-incriminating interrogation was happening, and that it had come to the attention of Rome without being rebuked, is to be found in the final decretal letter of Alexander IV in the *Sext*, chapter 8: *Accusatus*. He makes the ruling that, since heresy is a *crimen exceptum*—an exceptional crime exempted from some aspects of due process²⁷—the testimony of a witness who has first perjured himself and later tells the truth can be accepted. Let us take note of the form of the oath that such witnesses swear (my emphasis):

Although perjurers are to be excluded from testifying even after they repent, if persons who swear before inquisitors to tell the truth *concerning themselves* and others about acts of heresy commit perjury by concealing the truth and later wish to correct what they have said by deposing *against themselves* and others, their accomplices: since a crime of this kind is exceptional, if it appears from clear signs that such persons wish to correct their statement not out of frivolity or hatred, or having been corrupted by money, but out of zeal for the orthodox faith, and now reveal what they first concealed, their testimony, both *against themselves* and against the others, should be upheld, in favour of the faith, unless some other reason should stand in the way.²⁸

The pope had obviously been told by the heresy inquisitors who wrote to him with their procedural questions what kind of oaths they were administering to witnesses, and Alexander simply repeated their words in his response, without pausing to note that ordinarily such a form would violate canonical procedure. It would only be acceptable if a person had come forward in response to the sort of standard appeal that heresy inquisitors made in the preliminary ‘general inquisition’: all those who were guilty of offences against the faith should come to confess their crimes and receive penance, and testify against other offenders. It would definitely be against the *ordo iuris* [‘the rule of law’] to require ordinary witnesses to testify against themselves.

Even though Pope Alexander did not take the time to include a caution against forcing self-incrimination, one would expect the commentators on the *Sext* to do so, but no such comment appears in John Andrew’s *Ordinary Gloss* or in the *Additiones* to the *Gloss*,²⁹ or in other commentaries that I have examined.

²⁷ Only three kinds of *crimina excepta* are ever named in canon law, viz., heresy, simony and lese-majesty. See Edward Peters, ‘*Crimen exceptum*: The History of an Idea’, in *Proceedings of the Tenth International Congress of Medieval Canon Law (Syracuse, 1996)*, ed. by Kenneth Pennington and et al., *Monumenta iuris canonici*, Series C: Subsidia, XI (Vatican City: Biblioteca Apostolica Vaticana, 2001), pp. 137–94.

²⁸ Alexander IV, *Accusatus*, *Sext* 5.2.8 §3 *Licet* (CIC, II, 1072).

²⁹ *CJC*, III, 1:621–22. Most of the apparatus of the 1582 *CJC* was already in place in Jean Chappuis’s edition 1500–1503; his edition of the *Sext* was published in 1500–1501. See Kelly, *Inquisitions*, chapter II, a reprint of ‘Inquisitorial Due Process and the Status of Secret Crimes’, in *Proceedings of the Eighth International Congress of Medieval Canon Law (UCSD, 1988)*, ed. by Stanley Chodorow, *Monumenta iuris canonici*, Series C: Subsidia, IV (Vatican City: Biblioteca Apostolica Vaticana, 1992), pp. 407–28 (p. 422); see also Kelly, ‘Right to Remain Silent’, pp. 998–99.

The Status of Non-Public Crimes Confessed in Court

Heresy inquisitors on the continent regularly administered the oath *de se et aliis* not only to witnesses (perhaps during preliminary sweeps and in specific cases) but also to the summoned suspects. The latter were required to guess why they had been summoned, and to respond to questions about what they believed on points of Christian doctrine. Their misstatements could then be taken as confessed crimes of heresy, which would be charged against them in the form of chapters, as called for by *Qualiter et quando*, and from that point there would be a show of due process according to the *ordo juris* (except, of course, for the establishing of *publica fama*, which would obviously be impossible). This routine was enshrined in practical manuals, most famously those by the Dominicans Bernard Guy (c. 1323) and Nicholas Eymeric (1376).

I have noted elsewhere that the use of such coerced confessions might be seen to be legitimated by Pope Boniface's legislation, at least in the cases where the victims did not protest against this treatment and could be taken to have waived their rights.³⁰ But there should have been at least two basic legal objections against this. First, Boniface was speaking of *certa crimina*, 'specific crimes', that is, publicly known crimes in which the defendant was being implicated, whereas in the inquisitorial interrogation of heresy suspects, sometimes no crime existed before the words of the suspect were spoken. Second, a person could hardly be said to have waived his rights if he did not know that he had the rights. It is surprising that the legal commentators do not seem to have noticed these problems. I have found only one legist who took a firm position on the second point, namely, Philip Lepreux of Bourges, writing in 1535, in commenting on *Si is*.³¹

Inquisition and the Seal of Confession

The trial of Joan of Arc in 1431 is a prime example of a case consisting entirely of a defendant being charged only with her own responses made under forced questioning. The interrogations were conducted in spite of her numerous protests, including appeals to the pope for redress.³² There was, however, one way in which Joan was able to stymie her inquisitor, Bishop Cauchon, when he demanded that she recite to him the prayers that she had learned from her

³⁰ E.g. Kelly, 'Right to Remain Silent', pp. 1001–02.

³¹ Philippus Probus's (I conjecture that his vernacular name was Lepreux) commentary, in Johannes Monachus, *Glossa aurea Johannis Monachi Cardinalis super Sexto decretalium* (Paris: [n. pub.], 1535; repr. Aalen: Scientia, 1968), fol. 342v (p. 804); for the text, see Kelly, 'Inquisitorial Due Process', pp. 412–13.

³² See Kelly, 'Right to Remain Silent', pp. 1009–26; see also Kelly, 'Joan of Arc's Last Trial: The Attack of the Devil's Advocates', in *Fresh Verdicts on Joan of Arc*, ed. by Bonnie Wheeler and Charles T. Wood (New York: Garland, 1996), pp. 205–38 (Kelly, *Inquisitions*, chapter IV). *Trial of Joan*, trans. by Hobbins, gives an account of the trial in his introduction that is more favourable to the judge, Bishop Cauchon, than in my analyses. I respond in 'Questions of Due Process and Conviction in the Trial of Joan of Arc', to be published in a volume on historic trials edited by Thomas Izbicki.

mother: she insisted on saying them to him only in confession.³³ This meant, of course, that whatever she said remained under the seal of confession and could not be used in court.³⁴

There are allegations of attempts on the part of Joan's adversaries to breach the seal of confession, namely, by hearing her confession under false pretenses, or eavesdropping on her while she was at confession.³⁵ This raises the question of whether confessors could legitimately be made to testify in court concerning the misdeeds of their confessants.³⁶ Let me cite the discussions of two authors, the Cambridge theologian John Burgh, in his *Pupilla oculi* (1385), and the prominent canon lawyer William Lyndwood, in his *Provinciale* (1434).³⁷ Though both writers were English, all of the authorities they refer to were standard works well known on the continent.

Burgh stresses that a priest should be cautious about what he receives under the seal of confession, but whatever he hears is privileged, and he has the obligation to conceal everything.³⁸ He is drawing on Thomas Aquinas's *Commentary on Lombard's Sentences*, which brings up the example of a heretic whom the confessor cannot persuade to stop corrupting the people.³⁹

What if the confessor is summoned to testify in court in violation of his obligation to the seal of confession? Burgh replies that remaining silent might raise suspicions in the judge's mind, so it would be better to deny all knowledge, meaning, 'As a man I know nothing about that which should be revealed to you.'⁴⁰ He concludes by taking up the question of a confessor's forced court appearance to testify about such a matter (he gives the example of money owed or received), and responds that the priest must answer truthfully, if the judge is conducting a legitimate process, even though he indiscreetly acquired his knowledge under the seal.⁴¹

³³ *Procès de condamnation de Jeanne d'Arc*, ed. and trans. by Pierre Tisset, with Yvonne Lanhers, 3 vols (Paris: Klincksieck, 1960–1971), I, 41, 126.

³⁴ See my essay, 'Saint Joan and Confession: Internal and External Forum', in *Joan of Arc and Spirituality*, ed. by Ann W. Astell and Bonnie Wheeler (New York: Macmillan, 2003), pp. 60–84 (pp. 63–64).

³⁵ *Ibid.*, pp. 68–69.

³⁶ See the treatment of this subject below in the essay by Mary Flannery and Katie Walter (Chapter 5).

³⁷ John Burgh (Johannes de Burgo), *Pupilla oculi* (Paris: [n. pub.], 1527); the edition of London: Hopyl, 1510, can be read in *Early English Books Online (EEBO)*; William Lyndwood, *Provinciale, seu Constitutiones Angliae* (Oxford: Hall, 1679; repr. Farnborough: Gregg, 1968) (available on *EEBO*), which also contains the thirteenth-century legatine constitutions of Cardinals Otto and Ottobono and the annotations of John Acton (or Athon) (d. 1349). For both Burgh and Lyndwood, see my chapter, 'Penitential Theology and Law at the Turn of the Fifteenth Century', in *A New History of Penance*, ed. by Abigail Firey (Leiden: Brill, 2008), pp. 239–317; repr. as chapter VI in my *Law and Religion in Chaucer's England* (Farnham: Ashgate, 2010). On this subject particularly, see p. 275 for Burgh, and pp. 256–57 and 312–14 for Lyndwood. On Lyndwood, see also Ian Forrest's essay below (Chapter 3). Lyndwood wrote his commentary from 1423 to 1430, and published his work after completing the index in January 1434.

³⁸ Burgh, *Pupilla*, part 5 (on the sacrament of penance), chapter 6, § ao.

³⁹ Thomas Aquinas, *Commentum in quatuor libros Sententiarum*, in Thomas Aquinas, *Opera omnia*, 25 vols (Parma: Fiacadori, 1852–1873), VI–VII, book 4, Distinction 21, q. 3, art. 1, [quaest' uncula 1], objection 1 (VII, 858).

⁴⁰ Burgh, *Pupilla*, 5.6 § aq.

⁴¹ *Ibid.*

In general, Lyndwood confirms Burgh's positions, but sometimes he is more specific and gives different examples.⁴² In his opening statement, he says that any secret other than a sin confided to a priest, like a debt owed, should not be received under the seal of confession, and, if it is, by the priest's indiscretion, he can be forced to reveal it by a judge, even though he took an oath not to reveal it.⁴³

The methods to be used in keeping the seal under illegitimate questioning in court are illustrated in an exchange that appears in *Dives and Pauper*, a dialogue composed in 1405.⁴⁴ Full-scale mental reservation is recommended: a priest can and should swear that he does not know about a person's sin if he only knows it in confession, because he only knows it as a stand-in for God; moreover, it is possible the person was not telling him the truth.⁴⁵

Inquisitorial Practices in England

Let us now move from these English works that interpret the common law of the church to consider local practices in England. Lyndwood notes that it was the local bishops who had the primary obligation to conduct inquisitions, but that in England such inquiries were by custom delegated to inferiors, notably, 'officials' (ecclesiastical judges) and archdeacons.⁴⁶ Many of the offences prosecuted in such courts are listed in the description of the archdeacon in Chaucer's 'Friar's Tale': fornication, adultery, pimping, witchcraft, theft from churches, usury, simony and cheating on tithes and offerings.⁴⁷ In important cases, like

⁴² Lyndwood makes his comments when glossing a constitution, *Prohibemus*, which he thinks is a provincial constitution issued by Archbishop Walter Reynolds (1313–1327), but which in reality was issued by an English diocese around 1225: *Provinciale*, 5.16.8, *Prohibemus*, pp. 334–35. See Kelly, 'Penitential Theology', p. 310, n. 202 and p. 312, n. 209. The provision we are concerned with reads: 'No priest should dare to reveal the confession of anyone, either in general or specific terms, from motives of anger, hatred, or fear, even fear of death'.

⁴³ Lyndwood, *Provinciale*, ad v. *confessionem* (p. 334, note n). He attributes this doctrine to Aquinas, Distinction 22 (mistake for 21), and to Hostiensis.

⁴⁴ *Dives and Pauper*, ed. by Priscilla Heath Barnum, 2 vols in 3 parts, EETS os 275, 280, 323 (London: Oxford University Press, 1976–2004). The arguments produced by Barnum (II, 3, pp. xix–xxi, 149, 197) to show that *Dives* refers to the Canterbury constitutions of 1407–1409 are not convincing, and, in fact, I believe that they prove the opposite.

⁴⁵ *Dives and Pauper*, Commandment 2, chapter 16 (I, 1.250–51). This passage appears in only one of the eight manuscripts of the work, Glasgow, Glasgow University Library, MS Hunterian 270, but the editor, Priscilla Barnum, thinks it more likely than not that it was in the original text, but was excised before the other manuscripts were copied because of its controversial nature, namely, as criticising the policies of Henry IV against Franciscan supporters of Richard II (II, 3, pp. lxxx–lxxxii, 112). But it would seem to be Richard himself and his advisers who are being blamed for this practice, since Pauper goes on to say that those who were responsible for the abuse of forcing confessors to testify against their penitents, and who refused to listen to the advice of their own confessors, have now lost this land: 'He þo [those] þat foundyn þis errour so to pursuyn confessoris & nou han lost þis lond dedyn nout ne woldyn don aftir her confessoris conseyl' (I, 1.251).

⁴⁶ Lyndwood, *Provinciale*, 1.3.2, *Exterior habitus*, ad v. *inquirere* (p. 17, note a).

⁴⁷ Geoffrey Chaucer, *The Riverside Chaucer*, ed. by Larry D. Benson, 3rd edn (Oxford: Oxford University Press, 1987), III.1301–20 (all references to Chaucer's works will be taken from this edition, and cited above by line number). For a general overview, see R. H. Helmholz, *The Oxford*

heresy or the removal of a prelate from office, all of the forms would be followed, but for lesser offences calling for simple detection and punishment of faults, the trials would be very spare. There is no need for *fama* in these cases, Lyndwood says, citing an interpretation of Hostiensis; the judges follow the example of Pope Gregory in the decretal *Crimina*, investigating crimes even when they are reported only a single time.⁴⁸ But for most run-of-the-mill cases, the requirement of *publica fama* was assumed to be satisfied by the reports of local churchwardens to the bishop or archdeacons on their regular visitations of the parish.⁴⁹

In formal inquisitorial trials conducted in England, there seems to have been a fairly strict adherence to the rules of procedure, as, for instance, in the various annulment trials of Henry VIII.⁵⁰ This is true even of most heresy trials.⁵¹ The English developed an interesting twist on the matter of *publica fama*: each witness would be asked to testify to the existence of public fame and, at the same time, to tell what he knows about the truth of the charge.⁵² For instance, each of the articles charged against Henry and Catherine of Aragon for entering into an incestuous marriage, in the legatine trial of 1529, ended with an assertion of notoriety: 'and that these things were and are true, public, and notorious, and that the public voice and fame have laboured and still labour under and upon the same'.⁵³

Where there are no official records of trials but only casual reports, it is often hard to recognise that inquisitorial procedure is being used. For instance, we

History of the Laws of England, Vol. I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s (Oxford: Oxford University Press, 2004), chapter 12, 'Crimes and Criminal Procedure', pp. 599–642. For office cases (that is, inquisitions brought *ex officio*) concerning sex and marriage in the diocese of Ely, see Charles Donahue, Jr, *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007), pp. 278–96.

⁴⁸ Lyndwood, *Provinciale*, 3.27.3, *Statuimus, v. inquisitio* (pp. 253–54, note u): when an inquisition is conducted not for removing a person from office but for correcting defects, no *fama* is necessary, citing X 3.12.1, *Ut nostrum* (CIC, II, 512), and X 5.22.2, *Crimina* (CIC, II, 823): 'Crimina semel audita Gregorius indiscussa nullo modo preteribat, etiamsi accusatus cum accusatore in gratiam redisset' ['Gregory would by no means leave unexamined crimes heard of only once, even when the accused came back into favour with the accuser']; see the commentary of Hostiensis on *Ut nostrum, v. maxime: In primum [-sextum] librum Decretalium commentaria*, 6 vols (Venice: [n. pub.], 1581; repr. 6 vols in 2, Turin: Bottega d'Erasmus, 1965), III, 51, no. 19. *Crimina*, which appears in the title *De collusione detegenda* ['On Detecting Collusion'], is attributed here to Gregory I, but actually refers to Gregory IV, as recorded by John the Deacon (see the note on the decretal). There are long and extremely valuable discussions of the fame inquiry, when it can be abridged or omitted, by the English canonist John Acton, writing around 1345, in his annotations to the *Constitutiones Legatinae* (printed with Lyndwood, *Provinciale* (and separately paginated)). See the constitution *Ad elidendum, v. ex relationum plurimum* (p. 29, note r) and the constitution *Quid ad venerabiles, v. corrigendo* (pp. 56–57, note o).

⁴⁹ Helmholz, *Oxford History of the Laws of England*, pp. 609–12.

⁵⁰ H. A. Kelly, *The Matrimonial Trials of Henry VIII* (Stanford, CA: Stanford University Press, 1976).

⁵¹ See H. A. Kelly, 'Thomas More on Inquisitorial Due Process', *English Historical Review*, 123 (2008), 847–94 (pp. 862–66).

⁵² R. H. Helmholz, 'Crime, Compurgation, and the Courts of the Medieval Church', *Law and History Review*, 1 (1983), 1–26 (p. 14). See Kelly, 'Inquisitorial Due Process', pp. 422–23.

⁵³ Kelly, *Matrimonial Trials*, p. 90.

can infer that Margery Kempe was prosecuted at least three times in formal inquisitions, but the mechanisms are not clear in her homespun recollections.⁵⁴ In one case, where she appears before the Archbishop of York, he can be seen to assert *publica fama* by telling her, 'I am evyl enformyd of the; I her seyn thu art a ryth wikked woman.' She responds that she has heard the same thing about him, and she advises him that if he does not reform he will not go to heaven.⁵⁵

Unlike in most jurisdictions on the continent, where the prosecution of sexual offences was largely limited to clerical suspects, the church courts in England pursued by the inquisitorial system such offences committed by the laity, and continued to do so until well into the Reformation period.⁵⁶ Modern scholars who study such procedures, however, usually do not recognise them as inquisitorial but refer to them as 'ex officio prosecutions' or 'office cases'.⁵⁷

As for the matter of heresy, England was not exposed to papally appointed heresy inquisitors, except in the case of the Knights Templar in 1309–1311.⁵⁸ During the trial of Joan of Arc in 1431, which was organised and funded by the English government, some prelates from England served as assessors, that is, consultants, and so they would have become acquainted, as in 1309, with some continental procedures different from English practice—such as, for instance, the availability of torture. In fact, canon law allowed torture to be used in all sorts of cases, both criminal and civil, as Lyndwood explains,⁵⁹ but it was not the custom to resort to it in England, as far as we know.

Another thing that the English bishops would have seen in the Joan of Arc trial was the practice of interrogating prisoner-suspects without first levying

⁵⁴ *The Book of Margery Kempe*, ed. by Sanford Brown Meech and Hope Emily Allen, EETS os 212 (London: Oxford University Press, 1940), 1.17 (p. 40): summoned by the official of the Bishop of Norwich; 1.48 (pp. 114–17): before the abbot of the Augustinian canons of Leicester and the dean of the collegiate church of Leicester; and 1.51–52 (pp. 121–28): before the Archbishop of York. See also the edition of Barry Windeatt (London: Longman, 2000; repr. Cambridge: Brewer, 2004), pp. 117, 233–38, 243–57.

⁵⁵ *Ibid.*, 1.52 (p. 125; Windeatt, p. 250).

⁵⁶ For inquisitorial cases dealing largely with clandestine marriages, see H. A. Kelly, *Love and Marriage in the Age of Chaucer* (Ithaca, NY: Cornell University Press, 1975; repr. Eugene, OR: Wipf and Stock, 2004), pp. 169–76, 198–201; for cases dealing with sexual offences, see Kelly, 'Bishop, Prioress, and Bawd in the Stews of Southwark', *Speculum*, 75 (2000), 342–88 (esp. pp. 373–78) (repr. as chapter II in *Law and Religion in Chaucer's England*); Kelly, 'The Law and Nonmarital Sex in the Middle Ages', in *Conflict in Modern Europe: Changing Perspectives on Society and Culture*, ed. by Piotr Gorecki and Warren Brown (Aldershot: Ashgate, 2003), pp. 175–93.

⁵⁷ For instance, R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), pp. 63, 70–72. The 'litigation' in Helmholz's title refers to non-inquisitorial 'civil cases' brought at the 'instance' of a plaintiff. See also Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), pp. 104–05, 110–12, and Martin Ingram, *Church Courts, Sex, and Marriage in England, 1570–1640* (Cambridge: Cambridge University Press, 1987). Ingram explains 'office procedure' on pp. 43–44.

⁵⁸ *The Proceedings Against the Templars in the British Isles*, ed. and trans. by Helen J. Nicholson, 2 vols (Farnham: Ashgate, 2011).

⁵⁹ Lyndwood, *Provinciale*, 5.5.4, *Finaliter*, ad v. *Testium receptionem* (p. 304, note g). See H. A. Kelly, 'English Kings and the Fear of Sorcery', *Mediaeval Studies*, 39 (1977), 206–38 (pp. 212–13) (Kelly, *Inquisitions*, chapter VII).

charges.⁶⁰ But a somewhat similar procedure had been initiated in England at a gathering of bishops and scholars held at Blackfriars in London in 1382, in the course of dealing with persons who followed the doctrines of John Wyclif. Instead of being charged with committing a specific crime (for example, preaching a heretical doctrine), suspects were required to give their views in writing concerning condemned Wycliffite propositions, and they were convicted on the basis of their answers.⁶¹ Most of the trials of lollards that took place afterwards did involve charges of actual offences, but some also included an element of investigation of current beliefs on the part of the suspect.⁶²

An example of such a process can be seen in a trial in the York Province, of the priest Richard Wyche before Walter Skirlaw, Bishop of Durham, which began in December of 1402. We can conclude from Wyche's responses to the initial charges,⁶³ and from a letter to a friend that he subsequently wrote from prison,⁶⁴ that he was not only accused of having preached fourteen erroneous conclusions, which was proper inquisitorial procedure, but that he was also accused of presently holding such opinions. This latter feature corresponds to the Blackfriars mode, as does the requirement imposed on him that he explain in writing what he held on the subject of each article. (One of the bishops who attended Blackfriars was Skirlaw's predecessor as Bishop of Durham, John Fordham.)⁶⁵ Wyche says that he denied both parts of the accusation: he does not

⁶⁰ See above at n. 33. When Lyndwood, *Provinciale*, 1.3.2, *Exterior habitus*, ad v. *inquirant* (p. 17, note e), says that a preparatory inquisition can be conducted against a specific person with no crime expressed, he does not mean that the person can be interrogated randomly. He refers to the decretal *Accepimus* (X 5.34.16, *CIC*, II, 877), where a person is accused of incontinence in general, with no specific instances named. In such a case, according to Hostiensis's *Decretalium commentaria*, 5:94A–95, nos 21–22, the judge must levy charges in general (theft, perjury, etc.) but then seek witnesses who will name specifics (which will then be charged).

⁶¹ H. A. Kelly, 'Trial Procedures Against Wyclif and Wycliffites in England and at the Council of Constance', *Huntington Library Quarterly*, 61 (1999), 1–28 (esp. pp. 1–20) (Kelly, *Inquisitions*, chapter V). See also Andrew E. Larsen, *The School of Heretics: Academic Condemnation at the University of Oxford, 1277–1409* (Leiden: Brill, 2011), pp. 195–99.

⁶² H. A. Kelly, 'Lollard Inquisitions: Due and Undue Process', in *The Devil, Heresy and Witchcraft in the Middle Ages: Essays in Honor of Jeffrey B. Russell*, ed. by Alberto Ferreiro (Leiden: Brill, 1998), pp. 279–303 (pp. 296–303) (Kelly, *Inquisitions*, chapter VI).

⁶³ Richard Wyche, '*Responsio Ricardi Wyche super articulis subscriptis nuper sibi impositis*', in *Fasciculi zizaniorum magistri Johannis Wyclif cum tritico*, ed. by Walter Waddington Shirley, RS 5 (London: Longman, Brown, Green, Longmans and Roberts, 1858), pp. 370–82. The *Fasciculi* is preserved in Oxford, Bodleian Library, MS e Musaeo 86; it was compiled beginning or ending in 1439, perhaps by the Carmelite provincial John Keninghale; see James Crompton, '*Fasciculi Zizaniorum*', *Journal of Ecclesiastical History*, 12 (1961), 35–45, 155–66 (pp. 158–61). Shirley has printed only the first part of the manuscript; for a list of the remaining contents, see his Introduction, pp. lxxii–lxxv.

⁶⁴ Richard Wyche, 'Letter from Prison, beginning *Reverende domine*', printed in F. D. Matthew, 'The Trial of Richard Wyche', *English Historical Review*, 5 (1890), 530–44; for an English translation of the whole letter, see Christopher G. Bradley, '*The Letter of Richard Wyche: An Interrogation Narrative*', *PMLA*, 127 (2012), 626–42. Richard Rex, 'Which is Wyche? Lollardy and Sanctity in Lancastrian London', in *Martyrs and Martyrdom in England, c. 1400–1700*, ed. by Thomas S. Freeman and Thomas F. Mayer (Woodbridge: Boydell, 2007), pp. 88–106, suggests that the addressee of the letter was the lollard knight, John Oldcastle (p. 89).

⁶⁵ *Fasciculi zizaniorum*, p. 286. Shirley wrongly characterises the Blackfriars sessions as a formal synod of the province of Canterbury.

hold such conclusions and has not preached them.⁶⁶ He prefaces his responses by asserting that if anything he says is not founded in scripture, he sorrowfully revokes it and asks that the church hold it as an error.⁶⁷ In responding to some articles, he states what it was exactly that he had spoken on the subject. He shows himself to be very familiar with some aspects of canon law, frequently citing Gratian and even the Archdeacon's *Rosarium* on Gratian (1300).⁶⁸ But he cites the *Liber extra* only once, and he clearly is not familiar with the rules of inquisitorial procedure, for there were several important violations of the *ordo juris* that he could have cited as cause for appeal, but instead he objected only to a pair of dubious technicalities (see below).

The fourteen conclusions charged against Wyche dealt with the following subjects: (1) images, (2) begging, (3) priestly powers, (4) papal excommunication, (5) mothers paying for their purification, (6) paying for baptism and communion, (7) priests who accept salaries, (8) status of bastards, (9) non-animal offerings, (10) blessing of bread (not referring to the eucharist), (11) tithes, (12) orders of friars, (13) orders of nuns and (14) priestly intercession. In his letter, Wyche mentions a disagreement only over the question of the mendicancy of friars (cf. nos 2 and 12), with Wyche saying that it was against the law of God and Skirlaw saying that the church had approved it.

It would seem that Skirlaw did not try to prove that Wyche had committed any of the charged offences (that is, that he had preached these propositions), but he may have declared that Wyche's written or oral responses on mendicancy and other points constituted a confession of guilt, whether past or present. Wyche, however, does not tell of any such declaration; instead, he says that the bishop insisted that he take an oath promising to obey all the laws contained in the *Decretum*, *Liber extra*, *Sext* and *Clementines*. This was a highly

⁶⁶ Wyche, 'Letter from Prison', p. 531: 'Septima die mensis Decembris accessi ante conspectum episcopi et coram eo negavi conclusiones et similiter me predicasse illas' ['On 7 December I appeared before the bishop and denied the conclusions and similarly denied that I had preached them']. It would have been at this stage that the oath to tell the truth to the charges would have been imposed. Rita Copeland in her analysis of the trial in *Pedagogy, Intellectuals, and Dissent in the Later Middle Ages: Lollardy and Ideas of Learning* (Cambridge: Cambridge University Press, 2001), pp. 166–79, deals with the later oaths presented to Wyche in the trial as if they were equivalent to the initial oath (later known in England as the oath *ex officio*).

⁶⁷ Wyche, 'Responsio', p. 370.

⁶⁸ Some of Wyche's canonistic references are missed by Shirley, notably the second citation of Jerome in article 2, p. 373, which is from *Adversus Iovinianum* 1.14 (PL 23:232D), excerpted in Gratian, *Decretum* C. 31, q. 1, c. 10 (CIC, I, 1111). In the answer to article 11, pp. 379–80, after citing Gratian's canon *Nullus*, D. 32, c. 5, he cites the next canon, *Preter hoc*, D. 32, c. 6, § 1 (*Quicumque sacerdotum*) (CIC, I, 117–18), and the Archdeacon's comment on it, which reads, in the original, 'Et talibus possunt laici subtrahere decimaciones, sed voluntarias, ex quo ab eorum officiis abstinere debent; alias decimas non, cum ad ecclesiam pertineant, in cuius dampnum factum prelati non redundat' ['Laymen can withhold tithings from such clerics, those that are voluntary, because they should abstain from their offices; but not other tithes, since they pertain to the church, which a prelate's deed does not damage']. See Guy of Baysio, *Rosarium Decretorum* (Strasbourg: [n. pub.], c. 1473), unpaginated; on D. 3, c. 6, § 1. The reference to the Archdeacon is noticed by Anne Hudson, 'Which Wyche? The Framing of the Lollard Heretic and/or Saint', in *Texts and the Repression of Medieval Heresy*, ed. by Caterina Bruschi and Peter Biller, *York Studies in Medieval Theology* IV (York: York Medieval Press, 2003), pp. 221–37 (p. 229).

uncanonical imposition, but Skirlaw may have considered such an oath to be a form of abjuration. When Wyche refused to comply, he was declared excommunicated and sent to prison.⁶⁹

On another day in court, Skirlaw was joined by the Archdeacon of Durham, Thomas Weston, and by the bishop's chancellor, whom Wyche would later identify as Richard Holme, when he was on trial for heresy again in 1419.⁷⁰ Holme was a prominent member of Skirlaw's diocesan staff, and it is almost certain that he served as the bishop's spiritual chancellor, though perhaps not as early as 1393, when the position was relinquished by Weston upon becoming archdeacon.⁷¹ A new and much more serious charge was now brought against Wyche: the bishop told him that he held Wyche 'suspect, and a member of the Lollard sect, in not believing in the truth of the Eucharist'.⁷² He gave no reasons for his suspicion (thereby omitting the public fame phase). Wyche responded by declaring his views on the eucharist, as truly containing the body of Christ. But when pressed on whether bread remained after consecration, he responded that he did not think it necessary to speculate on the matter.

Wyche did eventually take the oath that was being imposed on him (intending it to apply only to those laws that were pertinent to him),⁷³ but then he was

⁶⁹ Wyche, 'Responso', p. 370.

⁷⁰ *The Register of Henry Chichele, Archbishop of Canterbury, 1414–1443*, ed. by E. F. Jacob, 4 vols, Canterbury and York Society 44–47 (Oxford: Oxford University Press, 1937–1947), III, 56–57; also in *Records of Convocation*, ed. by Gerald Bray, 20 vols (Woodbridge: Boydell, 2005–2006), 'The Convocation of 1419 (7 Henry V)', v, 75–90 (pp. 82–83): 'Dixit idem dominus Ricardus et fatebatur quod ipse erat eciam coram domino Walter Skirlowe, Dunelmense episcopo, defuncto, et eciam coram magistro Ricardo Holme, adhuc superstite, propter heresim condempnatus, et diu in carceribus in partibus borealibus post condempnationem hujusmodi detentus' ['The same Sir Richard said and confessed that he had also been condemned before Sir Walter Skirlaw, Bishop of Durham, now deceased, and also before Master Richard Holme, who was still alive, and after this condemnation long held in prison in the north']; he clearly refers to a single trial that resulted in his conviction. For Holme, who died in 1424, see A. B. Emden, *A Biographical Register of the University of Cambridge to A.D. 1500 (BRUC)* (Cambridge: Cambridge University Press, 1963), pp. 311–12. See also Emden's entry on Wyche, *A Biographical Register of the University of Oxford to A.D. 1500 (BRUO)*, 3 vols (Oxford: Clarendon Press, 1957–1959), III, 2101; here he conjectures that, since Holme was a canon of York, he was probably acting for the Archbishop of York in the trial against Wyche (which I think unlikely, especially since it would mean that Wyche did not refer to Holme in his letter).

⁷¹ See the entry on Weston in Emden, *BRUO*, III, 2025: he served as spiritual chancellor from at least 1391 until 1393. Even though Holme is never explicitly identified as Skirlaw's chancellor, it is stated as a fact that he filled this position by Glynne Jarratt, *The Life of Walter Skirlaw: Medieval Diplomat and Prince Bishop of Durham* (Beverly: Highgate, 2004), p. 69, who assumes that when he served as chancellor to Skirlaw's successor, Thomas Langley, he was simply continuing in the post. On Holme's service under Langley, and on the legal duties of the spiritual chancellor, see R. L. Storey, *Thomas Langley and the Bishopric of Durham, 1406–1437* (London: SPCK, 1961), p. 169. Of Holme and Skirlaw, Storey says only that Holme had been employed by the bishop. Both Holme and Weston were executors of Skirlaw's will (7 March 1404 and later), and served together in other capacities (Jarratt, *Life of Walter Skirlaw*, pp. 137–38, 159–69). Another of Skirlaw's executors, Robert Wyclif, was his temporal or palatine chancellor (Jarratt, *Life of Walter Skirlaw*, pp. 76, 164, and 215, n. 731; Storey, *Thomas Langley*, p. 62).

⁷² Wyche, 'Letter from Prison', pp. 531–32: 'Nos habemus te suspectum et unum de secta Lolardorum qui non credunt veritatem Eukaristie'.

⁷³ A mental reservation of this sort, about which Wyche makes much, had no force in law; moreover, it is difficult to see how it would have affected the oath even if it had been voiced.

immediately presented with two more oaths, one on the eucharist and the other on confession,⁷⁴ which he refused to take. When he was back in prison, the bishop sent him a statement on the eucharist, specifying that no bread remained after consecration, and required him to write down his opinion about it.⁷⁵ The chancellor told him that he was bound to do so in virtue of the oath that he had sworn.⁷⁶ When he refused, the bishop warned him that he was near to relapse, and he excommunicated him again.⁷⁷ The next day, Wyche formally insisted on his right to a new trial, because of a procedural flaw (namely, no judge had appeared on one of the days announced),⁷⁸ which was denied. Bishop Skirlaw's sentence was then read by the chancellor, declaring Wyche excommunicated and heretical; he was to continue in prison until the time was set for his degradation from holy orders, and all of his goods were to be confiscated. Wyche concludes that his whole conviction was based on the oath, which he did not intend to swear, and which was moreover technically invalid, because it stated that he belonged to the diocese of Worcester, which was not true. At the end, he appealed to the pope, but they replied that he had missed his chance to do so ('tarde venisti' ['you have come late']).⁷⁹

The bishop's sentence must have been given in March 1403. Two or three years later, Wyche made a formal statement affirming his actual belief on the matters treated in his trial. His declaration has been termed a 'recantation', and it was doubtless taken as such, even though it contains no admission that he ever held or preached any of the erroneous beliefs mentioned.⁸⁰ He made the statement some time after hearing of the election of Pope Innocent VII on 17 October 1404, and before the death of Bishop Skirlaw on 24 March 1406. In this document, after identifying himself as a priest of Hereford, Wyche recounts that Bishop Skirlaw required him to state what he thought of certain articles touching the faith ('monuit me respondere certis articulis fidem catholicam tangentibus et me declarare qualiter sentirem in eisdem.') [We observe that the bishop is not said to have put his demand in the form of an accusation, whether of past conduct or present belief.]. When he refused to do so (as was entirely justified by canon law), the bishop excommunicated him twice. Wyche confesses now that he erred in refusing the bishop's demand, and he asks for absolution, promising to obey mandates of the church, and particularly those of Bishop Skirlaw

⁷⁴ Wyche, 'Letter from Prison', p. 535.

⁷⁵ *Ibid.*, pp. 537–38.

⁷⁶ *Ibid.*, p. 539.

⁷⁷ *Ibid.*, p. 540.

⁷⁸ *Ibid.*; explained on p. 537, where he states that he also complained that he had been imprisoned without outside counsel: 'qui sine advena incarceratus et absque consilio' ['who was incarcerated without an outsider and without counsel'].

⁷⁹ *Ibid.*, pp. 540–41. He adds that later on God sent him a bad case of constipation and *emaudes* ['haemorrhoids'], from which he still suffers, and says, 'Purgacio mea est dura, sicut purgacio ejus', meaning that his physical purgation is painful, like the purgation sent him by God.

⁸⁰ 'Recantation of Richard Wyche' (title given by Shirley), in *Fasciculi zizaniorum*, pp. 501–05, from London, British Library, MS Royal 8.F.12 (See *Fasciculi zizaniorum*, p. lxxx), beginning *Ego Ricardus Wyche presbyter Herfordensis*.

and his commissary (Holme?),⁸¹ and stating his willingness to do any penance set by the bishop or his commissary.⁸²

He proceeds to say that he was denounced to the bishop as having asserted, held and preached ('quod asseruissem, tenuissem, et predicassem') the following fourteen conclusions. He declares now that they are all false and erroneous, and says that he will never hold, assert or preach any of them.⁸³ (Note that he does not admit ever doing so in the past.) Except for the first, the fourteen conclusions are entirely different from those he responded to earlier. Here is a summary of both sets:

| Early | Late |
|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| (1) I preached that images are not to be adored but burned. | (1) Images are not to be adored. |
| (2) I would rather eat dirt than beg. (RW: this is true) | (2) God cannot make an image bleed. |
| (3) A good priest has the same power as the pope. | (3) Confession should not be made to a sinful priest. |
| (4) Persons excommunicated by the pope are not excommunicated. | (4) The laity should know and preach the Gospel. |
| (5) It is not licit for a woman to be purified by giving silver and candle. | (5) The laity should pray in their mother tongue. |
| (6) It is not licit to give silver and candles for baptism or offerings for receiving communion. | (6) Priests according to their capacity should know and preach the Bible and its four levels. |
| (7) A priest who takes a salary is excommunicated. | (7) There is no more benefit in going on pilgrimage than in staying at home. |
| (8) Anyone born outside of marriage cannot be saved. | (8) Pilgrims should always talk about the Bible. |
| (9) Only animals are licit as offerings. | (9) Priests should not beg. |
| (10) A boy can bless bread as well as a priest. | (10) Alms should be given only to the needy. |
| (11) No one should give tithes or mortuaries. | (11) Christ's cross is not to be adored. |
| (12) There should be no order of friars. | (12) Every place is as good as another for prayer. |
| (13) There should be no order of nuns. | (13) It is illegitimate to burn people. |
| (14) Masses said for souls do not help them but rather increase their suffering. | (14) It is stupid to say that Richard Wyche has erred in anything. |

⁸¹ Storey, *Thomas Langley*, p. 169, says that Langley's chancellors 'were often engaged as his commissaries in legal causes', and doubtless the same would have been true of Bishop Skirlaw. But Emden, *BRUC*, p. 311, is misleading when he says that Holme was 'commissary general of the bishop of Durham, 1406'. The reference that he gives, the *Calendar of Patent Rolls, 1405-1408*, pp. 313-14, refers to Holme under the date of 20 April 1407 only as commissary (not commissary general) of Bishop Langley of Durham when he was chancellor of the realm, and afterwards as commissary of the current chancellor Archbishop Arundel (who took office on 30 January 1407): 'Master Richard Holme, late commissary of Thomas, bishop of Durham, late chancellor, and afterwards of Thomas, archbishop of Canterbury, now chancellor'.

⁸² Wyche, 'Recantation', p. 501.

⁸³ *Ibid.*, pp. 501-03.

None of these propositions would seem to be classifiable as heretical, but at most only as erroneous.

Finally, Wyche says that six further articles were proposed to him by the bishop:

- (1) After consecration, there is no bread left.
- (2) After consecration, there is no wine left.
- (3) All canon law is to be obeyed as the church requires.
- (4) Four orders of friars are authorised by the Roman church.
- (5) No priest is to preach to any but his parishioners, without permission.
- (6) Friars may beg, even if they are able-bodied.

Wyche says that he acknowledges all of these propositions as true, and promises not to speak against any of them. He abjures all heresy under pain of relapse, particularly as specified in the above articles, and he promises to hold all that is taught by Holy Mother Church, now headed by Pope Innocent VII.⁸⁴ In stating that any future holding of these articles would constitute a relapse, he is acknowledging that he has been convicted of holding them in the past.

Wyche's trial was uncanonical in many ways, and probably would not have passed muster if his entirely legitimate appeal to the pope had not been brushed away.⁸⁵ However, the procedure, elaborated at Blackfriars, of interrogating suspects on their views of specific propositions was used against John Hus at the Council of Constance in 1415,⁸⁶ and at the end of the council Pope Martin V in his bull, *Inter cunctas* (1418), ordered it used against Wycliffites in England and Bohemia.⁸⁷ We can see the practice maintained at times in the sixteenth century, specifically in the joint trial of Thomas Bilney and Thomas Arthur in 1527, and that of John Lambert in 1531–1532, but in these instances the answers provided did not lead to the formulating of charges.⁸⁸

The penalty for a person convicted of heresy in an inquisition, if he or she did not abjure, or was convicted a second time, whether abjuring or not, was

⁸⁴ Wyche, 'Recantation', pp. 503–05.

⁸⁵ Wyche stayed in prison, as he reported to convocation in 1419, until he was freed on the king's writ (*Habeas Corpus cum causa*, and taken down to the royal chancery at Westminster and released (*Register of Chichele*, ed. by Jacob, III, 57). According to Christina von Nolcken, 'Richard Wyche, a Certain Knight, and the Beginning of the End', in *Lollardy and the Gentry in the Later Middle Ages*, ed. by Margaret Aston and Colin Richmond (Stroud: Sutton, 1997), pp. 127–54, Wyche 'submitted' before he was released (p. 143), meaning that it happened when he produced his so-called recantation; but there is nothing to suggest this in the Chichele report, which says only that he was 'adductus [. . .] usque Westm' et ibidem in cancellaria a carceribus liberatus'. His deliverance happened some time before 1410, when he is found associating with Oldcastle and writing to John Hus (Rex, 'Which is Wyche', p. 90). Wyche was brought before convocation in 1419 on suspicion of heresy, and was sent back to the Fleet prison until further deliberations could be made, but he obviously was not convicted (which would have entailed the penalty of relapse, that is, death). He was so convicted and executed in 1440.

⁸⁶ Kelly, 'Trial Procedures Against Wyclif', pp. 20–27.

⁸⁷ *Ibid.*, pp. 27–28; Kelly, 'Lollard Inquisitions', pp. 296–303.

⁸⁸ Kelly, 'Thomas More', pp. 866–70.

deliverance to the secular court, and it was understood, though nowhere specified in canon law, that the penalty was to be death by burning. In 1401 the English parliament, at the request of the clergy of the realm, passed a statute, titled *Contra Lollardos*, which ratified this procedure.⁸⁹ In recent times historians have given this statute the erroneous title of *De heretico comburendo*, which was the eventual name of the king's writ that needed to be secured for the burning of a specific convict. An earlier statute had been passed in 1382 mandating cooperation between the secular and ecclesiastical authorities in combating heretics, and another was added in 1414. Finally, *An Act for the Punishment of Heresy* was passed in 1534; ostensibly, it repealed *Contra Lollardos*, but essentially it confirmed its provisions.⁹⁰

Inquisition in England under Non-Inquisitorial Names

One problem in talking about how inquisitorial trials were thought about in England is that, while the rules and forms were observed in the local ecclesiastical courts, and the processes regularly referred to as *inquisitiones* in Latin, they were not known as such in English, but were referred to for the most part as actions of 'correction' by the bishop or archdeacon or his 'official' exercising this 'office'. Even in Latin the most frequent meaning of *inquisitio* was 'inquest', referring to investigations carried out in the common-law tradition, particularly *inquisitiones post mortem*. 'Inquisition' and 'inquisitor' were not used in English to refer to inquisitorial procedure until the sixteenth century, and even then they did not easily take hold.⁹¹ The adjective 'inquisitorial' did not arrive until the eighteenth century.

Thus, when Christopher St German in 1532 and 1533 attacked the procedures used by the bishops in heresy proceedings, he did not refer to 'inquisition' but rather to a 'suit *ex officio*', referring to the fact that the bishop himself, in virtue of his office, pursued charges against a suspect. In citing the *Sext* on inquisitorial procedure against heretics, he translates the phrase *episcopus vel inquisitores* as 'bishop or enquerours'.⁹² In fact, it seems to have been Thomas More in his second response to St German, *The Debellation of Salem and Byzance*, who first

⁸⁹ *The Statutes of the Realm, 1101–1713*, 12 vols (London: Record Commission, 1810–1828; repr. London: Dawsons, 1963; Buffalo, NY: Hein, 1993), II, 125–28: 2 Henry IV, cap. 15 (1401): *Contra Lollardos*.

⁹⁰ *Statutes*, II, 25–26: 5 Richard II, stat. 2, cap. 5 (1382); II, 181–84: 2 Henry V, stat. 1, cap. 7 (1414); III, 454–55: 25 Henry VIII (1533–1534), cap. 14: *An Act for Punishment of Heresy*. See Kelly, 'Thomas More', pp. 883–84, 886–88. The writ *De comburendo heretico* is named in the 1534 act (*ibid.*, pp. 884, 887).

⁹¹ Thus, Ingram, *Church Courts*, p. 44, explains that the term 'inquisition' was used in Reformation church courts for a fact-finding inquiry after the defendant was summoned *ex officio* (that is, following inquisitorial procedure!).

⁹² Christopher St German, 'A Treatise Concerning the Division Between the Spirituality and Temporality (1532)', in Thomas More, *The Yale Edition of the Complete Works of St Thomas More, Vol. IX: 'The Apology'*, ed. by J. B. Trapp (New Haven, CT: Yale University Press, 1979), pp. 173–212 (p. 189), citing the decretal *Statuta* of Boniface VIII, *Sext* 5.2.20 (*CIC*, II, 1078). See Kelly, 'Thomas More', p. 881.

introduced the word ‘inquisitor’ into English in reference to heresy, anticipating by a dozen years the first citation in the *Oxford English Dictionary*.⁹³

I have not found any evidence in England during the Middle Ages of objections against the inquisitorial system, whether used to prosecute heresy or other crimes, and nothing until the time that St German was writing in the Henrician era. By this time the bad reputation of continental heresy inquisitors seems to have spread to England, and English bishops began to be accused of using the same tactics of putting suspects on the spot without a specific charge and forcing confessions out of them. Thomas More repeatedly asked St German to come up with even a single example of such an instance in real life,⁹⁴ but St German continued to resort to the device of ‘some men say’, so that More nicknamed him Sir John Somesay.

St German and like-minded thinkers were labouring under a combination of prejudice and ignorance of the laws and rules of inquisitorial procedure. Proof of such ignorance can be seen in the 1534 statute against heresy, mentioned above. It requires that henceforth no person be convicted of heresy in a church court without the charge being proved by two witnesses.⁹⁵ As More repeatedly told St German, this provision had been part of ecclesiastical trial procedure from the beginning, and had been consistently observed by the English bishops. Such a requirement, of course, was in contrast to the English systems of jury trial and parliamentary attainder, where convictions could legitimately occur without any proof of guilt whatsoever. It must be confessed, however, that More himself seems to have admitted and approved of the practice of forcing persons to declare their beliefs on matters like papal supremacy.⁹⁶

Through the course of the thirteenth century and later, especially on the continent, there was an erosion in the due process established for inquisitorial procedure, much of it fuelled by those who adapted it for prosecuting heretics, whose crimes could be mere thoughts—especially after Pope Gregory IX defined ‘believers in heresy’ as actual heretics.⁹⁷ Some of the deviations that emerged received general papal sanction, like those permitted by Boniface VIII in the *Sext*

⁹³ Thomas More, *The Yale Edition of the Complete Works of St Thomas More, Vol. X: ‘The Debellation of Salem and Bizance’*, ed. by John Guy et al. (New Haven, CT: Yale University Press, 1987), pp. 184–86; Kelly, ‘Thomas More’, p. 854. The *OED*’s first citation is from Miles Coverdale in 1545. *Oxford English Dictionary*, 2nd edn (Oxford: Oxford University Press, 1989), online edn (2012), <<http://www.oed.com>> [accessed: 29 April 2012], s.v. ‘Inquisitor, n.’, def. 3a.

⁹⁴ One such example that St German could have cited, only to be denied by More, was the case of Richard Hunne in 1514. In ‘Thomas More’, pp. 864–65, I give More the benefit of the doubt in his report of this case, but on closer look I find that due process was severely compromised and the law was misstated (alleging that there was a church prohibition against translating the Bible into the vernacular). I treat this matter in a book in progress on the Middle English Bible (commonly but mistakenly designated as the Wycliffite Bible).

⁹⁵ Kelly, ‘Thomas More’, pp. 883–86.

⁹⁶ H. A. Kelly, ‘A Procedural Review of Thomas More’s Trial’, in *Thomas More’s Trial by Jury: A Procedural and Legal Review, with a Collection of Documents*, ed. by H. A. Kelly, Louis W. Karlin and Gerald B. Wegemer (Woodbridge: Boydell, 2011), pp. 1–52 (p. 29).

⁹⁷ Gregory IX, *Excommunicamus*: X 5.7.15 (*CIC*, II, 789).

(considering the rights of suspects to be waived without their being informed what their rights were), but in some places, notably in England, due forms continued to be observed. Other deviations did not receive papal approval, notably the policy of interrogating suspects before charging them, in the hope of getting them to incriminate themselves. This latter practice became a standard feature of heresy prosecutions on the continent (though not in England), and when it was discussed by legal authorities, they did not show how it was justified in law. The home-grown English policy in 1382 of forcing suspects to state their opinion concerning heretical propositions was later authorised (by Martin V in 1418), but though practised at times, it did not seem to lead to convictions.

The inquisitorial system left a great deal of latitude to the judge, allowing him to follow his conscience about how much to respect the rights of the suspects he summoned before him. He was required to consult with experts in the vicinity, but the number and selection of such consultants, or assessors, were up to him. And if the accused was unaware of his rights, he might quickly find himself confessing matters about which the inquisitor had no right to ask; and even if he had the right to appeal a conviction he might be told that he had no such right. The most crucial right that he had was this: to be told the precise crime of which he was suspected, and not to be subjected to interrogative fishing expeditions devised to discover hitherto unknown crimes. Innocent III's original requirement of public fame—that the suspect be widely believed to be guilty of *this* crime—could perhaps be neglected without undue harm to judicial probity, as long as a real and specific crime was being prosecuted, as long as there were at least some grounds for suspecting the defendant to be the culprit, and as long as he was not convicted without a spontaneous confession or adequate proof, in the form of witnesses or documents.

The prevalent attitude toward inquisitorial prosecution in England during most of the period under review was the fear that offenders would have about being summoned *ex officio* by the summoners of bishops and archdeacons to be charged for their offences and 'corrected'. Chaucer's 'Friar's Tale' gives a comic picture of how a severe archdeacon could hold a community in terror of being subjected to 'pecunyal peyne' (III.1314), not to mention corporal fustigations, for sexual delinquencies, and how an unscrupulous summoner could add to the general apprehension of the people. After making allowances for the farcical atmosphere of the tale, we can confidently conclude that there would have been substantial concern on the part of most parishioners about what church wardens and other summoned witnesses would report to bishops and archdeacons on their visitations of parishes. Of course, it goes without saying that persons who harboured and disseminated heretical ideas would live in much greater fear of being summoned by the bishop's 'office'. However, it was only after the advent of Lutheran ideas in the 1520s, and under the influence of the schismatic and anticlerical movements of Henry VIII's reign, that we find paranoia about the allegedly unfair tactics of the bishops in prosecuting heresy suspects, after the model of the abuses practised by continental heresy inquisitors.

Chapter 2

The Imperatives of *Denunciatio*: Disclosing Others' Sins to Disciplinary Authorities*

EDWIN CRAUN

Si autem peccaverit in te frater tuus, vade, et corripe eum inter te et ipsum solum; si te audierit, lucratus eris fratrem tuum; si autem te non audierit, adhibe tecum adhuc unum, vel duos, ut in ore duorum, vel trium testium stet omne verbum. Quod si non audierit eos, dic ecclesiae. Si autem ecclesiam non audierit, sit tibi sicut ethnicus et publicanus.¹

[If your brother shall offend against you, go and rebuke him, between you and him alone. If he shall hear you, you shall gain your brother. And, if he will not hear you, take with you one or two more, that in the mouth of two of three witnesses, every word may stand. And, if he will not hear them, tell the church. And, if he will not hear the church, let him be to you as the heathen and publican.]
(Matthew 18:15–17)

This *lex evangelica* (Gospel law, revealed law) or precept, as both pastoral writers and canonists term it, seems to establish a simple four-step procedure for dealing with sin within Christian communities: one-on-one admonition; if that fails to correct the sinner, admonition with witnesses; if that fails, divulging the sin to the church; if that fails, expulsion. Guillaume Durand, the most influential of late thirteenth-century writers on juridical procedures, illustrates this normative procedure with the case of a sinning bishop, backing up every point with references to specific canons, glosses, and the opinions of his predecessors:

ipse monens solus veniet ad episcopum et sibi dicit 'Domine, dicitur quod habetis concubinam, quod esse non debet' [references], 'luditis ad tabulas' [references] vel 'conversationem nimiam cum tale nepte vestra habetis' [references]. 'Unde moneo vos caritative et pro deo quod ab hoc cessetis,

* I am grateful to my colleague Genelle Gertz for her incisive questions about the conference paper that was the first form of this essay.

¹ *Biblia vulgata*, ed. by A. Colunga and L. Turrado (Madrid: Biblioteca de Auctores Christianos, 1977). In Latin quotations—whether from manuscripts, early printed editions or modern editions—I use *i* for the vowel, *j* for the consonant, *u* for the vowel, *v* for the consonant. I also modernise punctuation and capitalisation, as well as expanding contractions. All translations are my own. I will give names in the vernacular, not some in English and some in Latin (save for the very well-known English ones, like Thomas Aquinas).

ne sitis prodigus fame vestre [references] cum in odore bone fame debeatis delectare [references] quia crudelis est qui negligit famam suam' [references]. Et si episcopus non abstineat, tunc adhibeat secum unum vel duos et predicta coram eis sibi repetat, et hoc debet ter facere ut per testes possit de trina monitione constare [references]. Quod si nec sic abstinerit, tunc denunciaret hec superiori [references].²

[The admonisher himself will come alone to the bishop and say to him 'Lord, it is said that you have a concubine, which should not be' [. . .], 'that you play at dice' [. . .] or 'that you have excessive conversation with that "niece" of yours' [. . .], 'for which I admonish you charitably on behalf of God that you cease from this lest you be prodigal of your reputation when you ought to delight in the odour of a good reputation, because he is cruel who neglects his own reputation' [. . .] And, if the bishop does not abstain, then he should take with him one or two and before them repeat what he has said before. He ought to do this three times so he could establish threefold admonition through witnesses [. . .] And, if the bishop shall not have abstained, the admonisher should denounce these things to a superior.]

Here Durand casts the first three steps in legal terms: private admonition by a disciplinary inferior or equal; admonition before witnesses as a form of proof; denunciation to a disciplinary superior within the institutional church.

For all the verbal simplicity of the third step, 'tell the church' precipitated detailed and controverted analysis from pastoral writers and canonists alike during the thirteenth, fourteenth and fifteenth centuries. Consider what is at stake. Jesus the lawgiver, all agree, gave this precept with the intention that the procedure move sinners to repentance, amend their lives, and, if at all possible, restore amicable relations between injured people and those who had offended them. But to tell the church, to disclose a sin only the injured person knows or a limited number of people know—sin hidden or manifest, but not notorious, to use canonical terms³—to a disciplinary authority (a *praelatus*) through the procedure of denunciation (*denunciatio*), is to hand the sinner over for public

² Guillaume Durand, *Speculum iudiciale* [. . .] *cum additionibus Johannis Andree* (Rome: Pflugel and Lauer, 1474), 3.2 ('De denunciatione'), unpaginated. The *Speculum* was composed from 1271 to 1276, then revised from 1287 to 1291. As the title indicates, this edition includes the glosses of the influential Johannes Andreas (John Andrew) (1270–1348). I use ellipses in the translation to indicate where the strings of references fall. James le Palmer, a clerk of the Exchequer, transcribed Durand's 'De denunciatione' almost verbatim as part of his entry on *denunciatio* in *Omne bonum* (London, British Library, MS Royal 6.E.6, fols 492v–94v; this passage comes on fol. 493r). Lucy Freeman Sandler has identified James as the scribe, major illuminator and, quite probably, transcriber ('*Omne bonum*': *A Fourteenth-Century Encyclopedia of Universal Knowledge*, 2 vols (London: Harvey Miller, 1996)).

³ For this distinction, see Enrico da Susa (Hostiensis), *Summa super titulis Decretalium* (Lyons: [n. pub.], 1597), 5.3 ('de denunciationibus'), fol. 280r. In the case of Durand's bishop, there is talk about the bishop's conduct, but it is not firmly or widely known. The speaker is entitled—indeed, obligated—to admonish because he is a fellow bishop or because he has an interest in the case as a *subditus*, someone within the pastoral care of the bishop and therefore an injured party. On denunciation for the purpose of obtaining a good *praelatus*, see special canonical denunciation below. The 'Si peccaverit in te' of Matthew was conventionally interpreted as either an injury against the denouncer or a sin committed in his or her presence that injured by setting a bad example (for example, in Jacapo da Varazze's sermon on Matthew 18:15–22, in *Sermones quadragesimales*, Oxford, University College, MS 109, fol. 34r).

reproof by an authority, for public confession in a court (if the sinner is willing), then for penalties like legal punishment, penance, acts of restitution and excommunication. The legal process begun by such denunciation may be conducted by inquisition, and treatment of the two procedures is intertwined in canonical literature from the late twelfth century. To denounce such sin is to convert a process driven by charity, by concern only for reconciliation and a fellow Christian's spiritual well-being, into one driven, at least in part, by justice, by concern for fitting penalties and/or by concern for the good of the community.⁴ In the terms of pastoral moral theology, it is to move from fraternal correction into disciplinary correction. Moreover, such a step threatens to wreck the good repute (*bona fama*) of the offender, a state of public being necessary for transacting business, for securing compurgators in a case in law, or even for remaining in good standing in a community. Exposure of sin known to one or just a few to a larger group could also cause such intense shame that offenders, knowing that their good repute was lost, would turn to sinning recklessly, obviating the overriding purpose of the four-part process: to prompt them to amend their life. Then, as obdurate and public sinners, they would be severed from the church through excommunication.⁵

These destructive potential consequences of a process begun in charity drove moral theologians, pastoral writers, and canonists alike to extended research and thought. Under what circumstances was an injured person bound—'bound' since we are examining ethics and law founded in biblical precept—to forgo admonition designed for correcting a sinner's conduct privately and to divulge sin immediately to a *praelatus* as a judge, thus initiating legal proceedings in a court, ecclesiastical or civil, proceedings that might very well be conducted by inquisition? This essay will examine how pastoral writers and canonists thought through this question in genres invented or recast during the reform movement in the Western church from the late twelfth century on. While the canonists consider some legal issues pastoral writers do not, we will see that they share two large imperatives. Denunciation should always move sinners' wills so that they perform penance and amend their lives. Denouncers should make sin public immediately if the public good is endangered by it: if the temporal welfare of others may be threatened by the sin, if the sinner's example may infect others, or if a person does not dare to admonish an offender who has political, legal, economic or social power over her or him.

The reformers' desire to punish and eliminate clerical abuses, to bring lay and clerical sinners to confession and penance and to establish systematic rules

⁴ In his history of inquisitorial procedures, Edward Peters notes that the newly imperial church of the fourth century experienced the claims both of the Gospel injunction to settle conflicts within the Christian community and of the exercise of legally defined ecclesiastical powers modelled on Roman civil or criminal law (*Inquisition* (New York: Macmillan, 1988), p. 34).

⁵ For fraternal correction as a religious practice, a work of charity that all Christians are bound to perform in order to amend the lives of others, see Edwin D. Craun, *Ethics and Power in Medieval English Reformist Writing* (Cambridge: Cambridge University Press, 2010), pp. 10–34; for the dangerous consequences of making hidden sin public, see pp. 46–52.

for conduct gave impetus to the pastoral theology of correction, as well as stimulating legal commentary on denunciation as a mode of reporting a crime.

As I have established in a recent monograph, the new preaching orders, especially the Dominicans and Augustinians (friars and canons), took the practice of fraternal correction of sin out of the cloister into the whole Western church, where it became a work of charity obligatory for every Christian (*quilibet Christianus*) under the proper circumstances. In a sense, the clerics who constructed the ethics of fraternal correction with such care were enlisting the laity in the pastoral movement to reform the lives of clerics as well as laics, for they insisted that disciplinary subjects (*subditi*) were as bound to admonish sinning disciplinary superiors (*praelati*) as they were inferiors or equals.⁶ While several genres of pastoral writing disseminated the moral theology of fraternal correction (sets of *distinctiones*, for example, and sermons), the quasi-juridical *summae confessorum* treat the four-step procedure of Matthew 18 most thoroughly. Developed in response to the Fourth Lateran Council's constitution mandating annual confession, the *summae* included large chunks of moral theology since they were, in Leonard Boyle's words, 'directed toward the intellectual preparation of priests for a prudent, discreet, and informed exercise of the office of confessor'.⁷ On fraternal correction, the theology usually included much of Thomas Aquinas's eight *quaestiones* from the *Summa theologiae* (2.2.33, 1–8), which culminate in two lengthy ones on procedure.⁸ In this essay, I will draw most heavily on the three most expansive *summae* that survive in manuscripts in British libraries: the *Summa confessorum* (1297–1298) of the German Dominican Johann von Freiburg, the *Summa de casibus conscientiae* (1331) of the Italian Franciscan Astesano da Asti, and the *Summa de casibus conscientiae* (1338) of the Italian Dominican Bartolomeo da San Concordio (Bartholomew of Pisa).⁹ All three master confessors treat denunciation sporadically under inquisition and/or other legal topics, as well as under fraternal correction, but none of them has an entry on denunciation itself, save for Bartolomeo, who simply refers his

⁶ Craun, *Ethics and Power*, pp. 12–34.

⁷ Leonard Boyle, 'The Fourth Lateran Council and Manuals of Popular Theology', in *The Popular Literature of Medieval England*, ed. by Thomas Heffernan (Knoxville: University of Tennessee Press, 1985), pp. 30–43 (p. 34). Boyle is writing about the first wave of confessional works after the council, but this purpose shapes *summae confessorum* down through Niccolo da Osimo's in the mid-fifteenth century.

⁸ Thomas Aquinas, *Summa theologiae*, ed. by Thomas Gilby, 60 vols (London: Blackfriars, 1964–1981), xxxiv. Other theologians could be included in the chapters of the *summae* devoted to fraternal correction—Alexander of Hales (especially in Franciscan *summae*) and Hugh Ripelin, for example—but Thomas Aquinas almost always dominates. His articles on procedure explore the questions 'utrum in correctione fraterna debeat, ex necessitate praecepti, admonitio secreta praecedere denunciationem' ['Does the precept of fraternal correction oblige one to admonish someone privately before denouncing him or her?'] and 'utrum testium inductio debeat praecedere publicam denunciationem' ['Should witnesses be brought in before denunciation?'].

⁹ Fourteen manuscripts of Johann's *Summa* survive in British libraries, as do eight of Bartolomeo's (Thomas Kaeppli, *Scriptores ordinis praedicatorum Medii Aevi*, 4 vols (Rome: ad S. Sabinae, 1970–1993), II, 430–20, and I, 158–65). One copy (in two manuscripts) of Astesano's *Summa* is extant in England: Oxford, Bodleian Library, MSS Canon misc. 208 and 209.

readers to both 'correctio fraterna' and 'inquisitio'.¹⁰ Of the three, we know that Johann studied canon law, as well as theology, and that Astesano drew extensively both on all the major collections of canon law from the *Decretum* to the early thirteenth-century *Clementines* and on some legal commentaries.

At least from Gregory VIII, reforming popes conceived of Latin Christendom as a 'judicially regulated society, hierarchically directed', and Innocent III worked hard to link 'the ideas of sin and crime'.¹¹ For centuries in the Western church, *denunciatio*, along with the Roman imperial procedure of *accusatio*, had served as a way (though not a highly developed one) of reporting sin/crime, especially if hidden (*peccata occulta* or *crimina occulta*). In the twelfth century, decretists had slowly evolved *denunciatio* as a judicial procedure.¹² However, legal historians and historians of heresy have largely dismissed both *accusatio* and *denunciatio* as reformers' tools, stressing their limits in order to explain the creation of *inquisitio*, legislated from earlier canon law between 1179 and 1231, as a new mode of initiating criminal process in a court.¹³ Denunciation, historians agree, demanded a strict standard of proof arising from Matthew 18 (three witnesses); it could not be controlled closely by the hierarchy; a case could not proceed unless private admonition occurred first; private admonition could be painful and risky; and would-be denouncers could be discouraged by threats or actual violence.¹⁴ Inquisition was 'designed to remove the need for private accusers', as it was instigated by a judge acting *ex officio* on the basis of *fama*.¹⁵ Inquisition looms large for historians of heresy because most documented cases

¹⁰ Bartolomeo's entries are presented alphabetically, but not given pages in the edition used in this essay, Bartolomeo da San Concordio, *Summa de casibus conscientiae* (Speyer: [n. pub.], 1480). Johann von Freiburg treats denunciation under 'inquisitio' (3.31.4), as well as under 'De doctrina ordinandorum', especially in the section on procedure (3.9.9); see Johann von Freiburg, *Summa confessorum* (Augsburg: Zainer, 1476), unpaginated. While Astesano da Asti does not have an entry on *inquisitio*, he discusses denunciation as a process that inquisitors may use in his entry 'de hereticis' (*Summa de casibus conscientiae* (Nuremberg: Koburger, 1482), 2.58.8), and he treats canonical denunciation under kinship and consanguinity as impediments to marriage (8.34.3). In his expansion of Bartolomeo's *Summa*, *Supplementum summae Pisanellae* (1444), Niccolo da Osimo gives Bartolomeo's brief entry on denunciation, then treats it extensively under the same topics Bartolomeo does. I have omitted this late *summa* with great reluctance (given its richness of argument) because no manuscript of it survives in British libraries nor does it appear in any catalogue of a medieval British library, according to the volumes of the Corpus of British Medieval Library Catalogues published so far (to vol. 13).

¹¹ Peters, *Inquisition*, p. 51; Peters surveys the history of *accusatio* and *denunciatio* in the Western church before Innocent III on pp. 40–51.

¹² Charles Lefebvre traces the evolution of *denunciatio* in the works of the decretists in 'Contribution à l'étude des origines et du développement de la *denunciatio evangelica* en droit canonique', *Ephemerides iuris canonici*, 6 (1950), 60–93 (pp. 63–73).

¹³ On the major decretals, see Arnd Koch, 'Denunciatio': Zur Geschichte eines Strafprozessualen Rechtsinstituts (Frankfurt-am-Main: Vittorio Kosterman, 2006), pp. 43–50.

¹⁴ Richard M. Fraher, 'IV Lateran's Revolution in Criminal Procedure: The Birth of *Inquisitio*, the End of Ordeals, and Innocent III's Vision of Ecclesiastical Politics', in *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, ed. by Rosalio Card. Castillo Lara (Rome: Libreria Ateneo Salesiano, 1992), pp. 97–111 (pp. 102–03); Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Oxford University Press, 2005), pp. 70, 173; Koch, 'Denunciatio', pp. 40–42.

¹⁵ Forrest, *Detection of Heresy*, p. 8; see Fraher, 'IV Lateran's Revolution', pp. 108–09.

proceeded in that mode.¹⁶ Yet denunciation remains central in the literature of canon law. Certainly chapters entitled ‘de denunciatione’ (5.2) regularly precede ‘de inquisitione’ (5.3), while the material on denunciation is often roughly equal in size to the material on inquisition—or accusation, for that matter. Indeed, denunciation is one way of informing authorities about a sin/crime that could then be prosecuted by accusation or inquisition (and it is referred to frequently in chapters on inquisition). William of Paull’s (William of Pagula’s) widely disseminated and encyclopaedic *Summa summarum* (c. 1323) is necessarily a major source for this study. William, who both taught at Oxford and was a parish priest in Berkshire, set out ‘to provide every “literate cleric” from curates to lawyers with a compendium of canon law and pastoral theology in which an answer could be found to each and every question’.¹⁷ As a compiler, he includes the most recent legal texts, material from Johann von Freiburg’s *Summa confessorum* and extensive extracts from the great continental writings on canon law, some of which are also sources for this study since they were influential in England: the procedural *Speculum iudiciale* of Guillaume Durand and, to a lesser extent, the earlier commentary *Summa super titulis Decretalium* of Enrico da Susa (Henricus de Segusio or Hostiensis) (c. 1250). The chapters on denunciation in both continental texts are reproduced almost verbatim in James le Palmer’s encyclopaedic *Omne bonum*, which also contains extracts from William of Paull’s chapter on denunciation and the works of other canonists.¹⁸ Less ambitious than William, the Oxford doctor of law Thomas Chillendon put together a *reportorium* on the *Liber sextus* of Boniface VIII (1298), which provides, in several sections, a résumé of some continental commentaries on denunciation.¹⁹ Finally, I include the widely circulated *Provinciale* of William Lyndwood (begun in 1423), Chancellor, then Official of the court of Canterbury in the early decades of the fifteenth century.²⁰ Lyndwood’s glosses on selected provincial constitutions from Stephen Langton to Henry Chichele relate them to the *jus commune* of the Western church and to the great commentaries on it.²¹ He wrote an expansive

¹⁶ For example, Forrest, *Detection of Heresy*, pp. 171–76.

¹⁷ As translated by Leonard Boyle, ‘The *Summa summarum* and Some other Works of English Canon Law’, in *Proceedings of the Second International Congress on Medieval Canon Law*, ed. by Stephan Kuttner and J. Joseph Ryan, Monumenta iuris canonici, Series C: Subsidia, I (Vatican City: S. Congregatio de Seminariis et Studiorum Universitatibus, 1965), pp. 415–56 (p. 419). Boyle reports that thirteen manuscripts of the *Summa* are extant in England, with evidence for the circulation of at least seventy (pp. 426–31).

¹⁸ For Durand and *Omne bonum*, see n. 2 above.

¹⁹ Chillendon’s *reportorium* repeatedly refers the reader to Enrico da Susa’s chapter on *denunciatio*, at one point even listing all the subheadings (Oxford, New College, MS 204, fól. 158v). Six manuscripts of the *Reportorium super Sexto Libro Decretalium* are extant in British libraries (Boyle, ‘*Summa summarum*’, p. 418).

²⁰ On Lyndwood, see Kelly, Chapter 1, pp. 17–20, and Ian Forrest, Chapter 3, pp. 47, 59, in this volume.

²¹ B. E. Ferme sets forth Lyndwood’s career in relation to the *Provinciale*, developing his aims in producing such a standard gloss (*Canon Law in Late Medieval England: A Study of William Lyndwood’s ‘Provinciale’ with Particular Reference to Testamentary Law*, Studia et Textus Historiae Iuris Canonici VIII (Rome: Libreria Ateneo Salesiana, 1996), pp. 19–42).

gloss on the verb ‘denunciet’ in the twenty-first constitution of Archbishop Edward Rich (‘De denunciatoribus criminum in quolibet decanatu’ of 1236).²²

To read *summae confessorum* alongside literature on canon law is to recognise why, in part, denunciation had such strong claims for canonists and pastoral writers after inquisition had been legislated and put into practice. As they work to explain under what circumstances injured people were bound to report sin/crime to disciplinary authorities, they reveal a fundamental aim of the reform movement: to root out sin in individual lives and communities, lest it threaten or continue to jeopardise material and spiritual well-being and lest it become contagious—that is, habitual in individual lives and widespread in communities. In contrast to accusation and inquisition with their drive toward punishment, denunciation is designed primarily to move people to cease violating divine law and so to escape divine punishment.²³

That brings us to the canonists’ definition:

denunciatio est criminis alicuius apud iudicem sine inscriptio legitime facta delatio ad penitentiam peragendam vel ad penam legitimam imponendam, vet etiam ad utrumque.²⁴

[Denunciation is the lawful reporting of another’s crime to a judge, without written accusation, in order to carry out penitence or to impose a lawful punishment, or even for both.]

As a mode of instance procedure, denunciation differs from its longtime fellow, accusation, by not requiring a written statement (*inscriptio*) and by not subjecting the reporter of crime to retaliatory punishment, if the case were not proved. In place of the accuser’s written statement, the *Liber extra* required the denouncer, whether an individual or a corporate body, to prove that he, she or they had attempted charitable correction first through admonition. One of the two pivotal decretals on all three modes of reporting crimes, ‘Licet Heli’, requires that, just as the *inscriptio* binds accusers to punishment if their accusation is unprovable and just as inquisitors cannot proceed without widespread public outcry about the crime, denouncers must admonish the offender twice, privately and in front of one or two witnesses, in order to confirm the charitable intentions that should initiate the whole corrective process and in order to carry it as far as possible themselves.²⁵ When temporal punishment might be involved, denouncers must

²² See Forrest’s essay in this collection for the importance of provincial constitutions in the operation of canon law courts in England.

²³ Durand, *Speculum iudiciale*, 3.1–3. William of Paull, *Summa summarum*, Oxford, Bodleian Library, MS Bodley 293, 5.1–3.

²⁴ Durand, *Speculum iudiciale*, 3.2; see also Enrico da Susa, *Summa*, 5.3, fol. 280r.

²⁵ X 5.3.31 (CIC, II, col. 760). This section of ‘Licet Heli’, which was as a whole a decretal of Innocent III from 1206, was rephrased slightly as a part of Constitution 8 of the Fourth Lateran Council (*Constitutiones Concilii quarti Lateranensis una cum commentariis glossatorum*, ed. by Antonio García y García, Monumenta iuris canonici, Series A: II (Vatican City: Biblioteca Apostolica Vaticana, 1981), p. 56). The decretal moves to recount the famous case of the Abbot of Pomposa, whom his fellow monks had denounced for perjury, simony and despoliation of church goods. The abbot lodged a formal objection in court on the grounds that the monks had not first attempted to correct him privately by admonition, as Matthew 18:15–17 requires (‘secundum regulam evangelicam’); they contended in court that they had done so.

prove that they had performed threefold admonition, repeating three times before the witnesses the reproof they had already spoken to the offender.²⁶ Thus, they can establish themselves as *benevoli*, not the *malevoli* forbidden denunciation by the canonists and pastoral writers, those of ill will who desire to betray others by making their sins public, or more public, and so wrecking their reputations. Indeed, if they cannot prove the required admonition through the testimony of the witnesses included in the second step, they must be driven away ('repellitur') from denunciation by the *praelati* to whom they speak or write.²⁷ Guillaume Durand concludes his general exposition of denunciation with an insistence that charity must shape correction, envisioned as a process of consolation, spiritual formation and, finally, coercive discipline:

Dicitur autem caritativa quia fit propter deum, non ex odio nec ad ulciscendum, sed perfecto amore, quo ad proximum duci debemus quem sic tenemur diligere sicut nos ipsos—id est, ad id quod nos ipsos, scilicet, ad vitam eternam [references], et hoc evidenter probat Augustinus, dicens debet homo diligere proximum sicut seipsum ut quem potuerit hominem beneficiencie consolatione, vel informatione doctrine vel discipline coheritione adducat ad colendum deum.²⁸

[Moreover, it is said to be charitable if it is done for the sake of God, not from hate nor to avenge, but from perfect love, by which we ought to be led to the neighbour, whom we are bound to love as ourselves—that is, for the end which is our own, namely, for eternal life.] [. . .] And this Augustine approves, saying a man ought to love his neighbour just as himself so that he may lead any person whom he can to worship God by the consolation of beneficence, by the counsel of teaching or by the coercion of discipline.]

When pastoral writers and canonists alike follow scripture and the decretals in regarding denunciation as a third step in a work of charity, they open the door to weighing circumstances in determining how to proceed. The precepts of Matthew 18:15–17 are interpreted as affirmative ones. Unlike biblical prohibi-

²⁶ Enrico da Susa, *Summa*, 5.3, fol. 280r; Durand, *Speculum iudiciale*, 3.2.

²⁷ William of Paull, MS Bodley 293, 5.1–2; Astesano da Asti, *Summa*, 2.67.7; Raimondo de Peñafort (Raymond of Pennafort), *Summa de poenitentia et matrimonio cum glossis Joannis de Friburgo* (Rome: [n. pub.], 1603), p. 214; also the earlier *Ordo iudiciarius* of Tancred (1216) (Cologne: [n. pub.], 1564), p. 237. Johann and Astesano claim that before witnesses are drawn in, the injured person should divulge the sin informally to the sinner's *praelatus*, who may speak with him not as a judge but as a father and friend. Who can do more for the sinner, Astesano asks, than the *praelatus* as brother and friend? In this role, Johann writes, the *praelatus* may resort to precepts and ecclesiastical censure to compel him to speak the truth in private. Johann, who, like Astesano, grounds this prelatial intervention in the Rule of St Augustine, sees it not as an addition to the process of correction, but as an extension of private admonition (*Summa*, 3.9.9). Astesano posits that the *praelatus* in this mode may be considered the one witness required by Matthew 18. Following Thomas Aquinas (2.2.33, 8), both do not regard divulging sin to a *praelatus* in this role as 'telling the church'—that is, as denunciation. See also Bartolomeo, 'correctio.ii.fraterna'; also *Speculum curatorium* (1340), a pastoral handbook by Ranulph Higden, a Benedictine of Chester (Oxford, Balliol College, MS 77, fol. 21r).

²⁸ Durand, *Speculum iudiciale*, 3.2; included, with a few words omitted, in *Omne bonum*, MS Royal 6.E.6, fol. 493r.

tions, which must always be obeyed, these are binding only when the place, the time, the manner and other circumstances might enable the doer to achieve the end (*finis*) of the virtuous act and the ‘*intentio Christi legislatoris*’ [‘the intention of Christ the lawgiver’]: amendment of the offender’s life, the cessation of sin as violation of divine law.²⁹ Thus circumstances seen in terms of this end provide the grounds for determining when a denouncer must or should omit admonition altogether, immediately making a sin, even a hidden sin at times, known to the authority. In fact, writers of the *summae confessorum* sometimes go to great lengths to present grounds on which admonition should be omitted (Astesano, for example, citing the canons that seem to require it in every case before he reasons out exceptions).

Before we move to these circumstances, several distinctions must be made, distinctions that remove several types of denunciation from our consideration. As they commented on the canons about instance procedure collected in the *Liber extra*, canonists came over time to distinguish four types of denunciation, two of which have subtypes. The type they present last, monastic denunciation (*denunciatio regularis*), lies outside this study because it operates within the specific rules of whatever order is involved. Likewise, public judicial (*publica judicialis*), done *ex officio* through a judge, lies outside, in this case because the denouncer is not the injured party but the beadle or another court official appointed by the judge to report crimes. Because this process involves notorious crimes and has public authority, admonition is not required to move it forward.³⁰ By contrast, the injured party—say, someone who has been robbed—initiates private judicial denunciation (*privata judicialis*) with an eye both to the offender’s penitence and to temporal redress; the nature of the offence and the social and legal relations between the parties determine whether it is reported to a civil or ecclesiastical judge. Anyone aware of an ecclesiastical crime may initiate canonical denunciation (the third type) within an ecclesiastical court, the nature of the crime and the extent of personal interest determining whether it is general or particular (*specialis*) canonical denunciation. The fourth type, evangelical denunciation (*denunciatio evangelica*), must always be done in order to move the sinner to perform penitence, though penalties may be imposed. Given these different kinds of sins/crimes, these different types of denouncers and these different courts, let us take first what circumstances writers on canon law recognise as grounds for omitting admonition before denunciation. Then we can turn to the circumstances that, according to master confessors, compel injured people to cast aside admonition and immediately report a hidden sin/crime to a *praelatus* in the role of judge.

When injured parties act through private judicial denunciation, they seek, in

²⁹ Astesano da Asti, *Summa*, 2.67.6 and 7, which includes an elaborate defence of omitting admonition on principle, under appropriate circumstances, instead of following lockstep and literally the procedure of Matthew 18:15–17; from Thomas Aquinas, *Summa*, xxxiv, 2.2.33, 2.

³⁰ Durand, *Speculum iudiciale*, 3.2; William of Paull, MS Bodley 293, 5.2; William Lyndwood, *Provinciale*, Oxford, Bodleian Library, MS Laud misc. 608, fol. 171r. While Thomas Chillendon does not systematically expound the types as these three do, he refers clearly to all of them (New College, MS 204, fol. 158v and in the alphabetical table on fol. 240v).

part, restoration of stolen property and/or protection, including protection from financial harm. Such aims may be pursued in a civil court as well as in an ecclesiastical one. Indeed, William of Paull, Guillaume Durand, and, later, William Lyndwood are all concerned to designate the kinds of cases presented to church courts, lest everyone follow that route in prejudice to the secular jurisdiction. The ecclesiastical courts, they argue, should hear only cases in which the crimes are ecclesiastical, in which oaths between parties or the immunity of the denounced person necessitate proceeding there, in which justice is unattainable in a temporal forum (*defectum justicie*), and in which proceedings could not be carried through successfully in a secular court because the injured party is a wretched or oppressed person (*miserabilis persona et depressa*). In all of these cases, admonition is required. However, the canonists recognise that sometimes the injured people may be unable to rebuke offenders themselves, and, therefore, they should be admitted to a secular court and not required to admonish. Sometimes they are subject to powers outside the jurisdiction of any court they may approach (*potestati aliene subditus*). Sometimes they cannot reprove those who have injured them because of the offenders' superior social and legal standing, like servants or slaves aggrieved by their masters, wives by their husbands, sons by their fathers, or peasants by their lords. In all of these situations, institutionalised power relations make admonition difficult, even hazardous or impossible, and, by allowing these kinds of cases to proceed without admonition, the canonists seek to protect the subjected, disadvantaged person, as well as to move proceedings forward so that justice may be achieved, just as it may in other cases through an ecclesiastical court that is open to those shut out from a civil one.³¹

By contrast, special or private canonical denunciation allowed no such leeway with admonition. In cases of ecclesiastical crime, like the sexual offences and gambling of Guillaume Durand's sinning bishop, those subject to the sinner's discipline or those who were his superiors could denounce the sin/crime in an ecclesiastical court only if they had first admonished their *praelatus* or *subditus* three times. Since their personal interest, the only reason for their involvement, was in having a good disciplinary authority or subject, they were required to work to reform him, moving his will, if at all possible, to bring his life into conformity with the ecclesiastical law he was administering and to which he was subject. Denunciation itself in such cases was a last resort, aimed at removing the sinner from office, at least until he had performed penance.³²

³¹ William of Paull, MS Bodley 293, 5.2; Durand, *Speculum iudiciale*, 3.2; Lyndwood, MS Laud misc 608, fol. 171r. William has the longest list of reasons for cases to fall under ecclesiastical jurisdiction; Durand the longest list of people who should denounce crime to a civil court. Also Thomas Chillendon gives 'oppressio personarum miserabilium' as a ground for requiring a case to be pursued in an ecclesiastical court through private judicial denunciation (New College, MS 204, fol. 158v). On jurisdiction *ex defectu justicie* and for *miserabiles personae*, see R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 1996), pp. 116–44; also Helmut Coing, 'English Equity and the *Denunciatio Evangelica* of Canon Law', *Law Quarterly Review*, 71 (1965), 223–41 (pp. 227–32).

³² Durand, *Speculum iudiciale*, 3.2; William of Paull, MS Bodley 293, 5.2; Lyndwood, MS Laud misc 608, fol. 171r; Enrico da Susa, *Summa*, fol. 280r.

While general or public canonical denunciation could be used in order to correct sin in an ecclesiastical judge where no private interest was involved, it was also the procedure for offering impediments to an unlawfully contracted marriage. In his early and influential *Summa de poenitentia et matrimonio* (1234–1236), Raimondo de Peñafort, the compiler of the *Liber extra*, had firmly placed accusations of consanguinity and other impediments to marriage within the realm of Matthew 18:15–17. He even provides a form of words for such a denunciation:

ego talis dico, vel denuncio vobis, domine Episcopo, quod matrimonium Petre et Mariae stare non potest, quia sunt con san guinei in tali gradu: vel, si alia divortii causa.³³

[‘I tell you,’ or ‘I announce to you, Lord Bishop, that the marriage of Peter and Mary cannot continue because they are consanguineous in this degree’—or another cause for divorce.]

Although Raimondo did not address whether or not the admonition generally required before canonical denunciation should or could be omitted, Guillaume Durand did so later in the thirteenth century. He simply states that threefold admonition is not required before denunciation that might dissolve a contracted marriage. The reason is not far to seek. Such canonical denunciation involves a sin about to be committed (sexual intercourse within a marriage-to-be that is prohibited by canon law), not a sin that has been committed and must be repented of and atoned for through penance.³⁴ So, sin must be prevented by immediately denouncing the couple to a disciplinary authority who can dissolve the contract as soon as possible.

The purpose of correcting sins, instead of preventing them or ensuring they are adequately prosecuted, also sometimes determines under what circumstances admonition may be omitted according to the writers of *summae confessorum*, who deal largely with correction of sin the corrector alone knows about. If an offended person considers it likely that his sinning brother would not only refuse to heed his rebuke, but would sink further into sin, he should refrain from administering it. Astesano da Asti uses this principle to explain the troublesome example of Jesus rebuking Judas publicly when he says before all the disciples (denouncing to the church, as it was then, Astesano notes), ‘He who eats bread with me shall lift up his heel against me’ (John 13:18). Since the Gospel does not indicate that Jesus placed charitable admonition first, Astesano reasons, perhaps he knew beforehand private rebuke would make Judas worse. Johann von Freiburg develops an even more general principle for not resorting first to private conversation: the injured person has no hope of correcting the

³³ Raimondo de Peñafort, *Summa*, p. 572. Likewise, Astesano places accusations of kinship or consanguinity under the Gospel precept of Matthew 18, giving a similar form of words (Astesano da Asti, *Summa*, 8.34.3).

³⁴ Durand, *Speculum iudiciale*, 3.2; this is incorporated into the entry ‘denunciatio’ in *Omne bonum*, MS Royal 6.E.6, fol. 493v. William Lyndwood gives an opinion opposite to Durand about a century and a half later: that threefold admonition is required (MS Laud misc 608, fol. 171r).

sinner. Sometimes, he writes as a master confessor, it looks as if someone has sinned only because of fragility or an opportune moment. These are grounds for hoping that private conversation may succeed in correcting the brother. Only if sin springs from malice, if it is rooted in a settled will to do evil, can the offended person immediately denounce the sin to a disciplinary authority.³⁵ Since the first two steps of charitable correction would not move the sinner toward penitence and amendment of life, perhaps public action by a *praelatus*, representing the entire church, might do so.

For all that correction is governed by the intention of reforming the sinner, as the master confessors examine the welfare of those affected by sin—the person directly sinned against and the whole community, as well as the sinner—they judge that several crucial goods outweigh the amendment of a person's hidden sin, even at the cost of his or her salvation. The first is, unsurprisingly, the spiritual well-being of the injured person. Sometimes, writes Astesano da Asti, the injured do not have power to rebuke without staining themselves with an offence (*culpa*). They must judge whether or not the offender is likely to resist and, in the process, draw them also into sin. If so, they should recognise that they cannot properly fulfil the first stage of charitable correction and proceed directly to denounce the sin to a disciplinary authority.³⁶

The next good, far more developed in the *summae confessorum*, is a social extension of the first: the common good, the well-being of others in political communities designed not only to sustain material life and provide security, but to enable people to pursue virtue.³⁷ As Johann von Freiburg asks in the words of Jerome, 'Que misericordia est parcere uni et multos in discrimen adducere?' ['What mercy is it to spare one and to lead many into danger?']. First of all, this good compels a would-be corrector to set aside private admonition if the sin is known by a few others or is in the process of becoming known. Denunciation is necessary in such cases because only public punishment of some kind can remove scandal caused, or about to be caused, by the offence ('ut vel scandalum factum per culpam tollatur per penam vel futuro scandalo occurratur' ['so that either the scandal caused by the offence may be taken away by punishment or it may become an obstacle to future scandal']). Otherwise, those who sin with impunity will infect the susceptible by their destructive example, seducing them into committing the same sin.³⁸

The confessors are concerned equally for the spiritual and temporal harm an undetected sinner—that is, someone not within the eye of authorities—could inflict on all those around him or her. Bartolomeo da San Concordio's reasoning, derived from Thomas Aquinas, is typical:

³⁵ Astesano da Asti, *Summa*, 2.67.6; Johann von Freiburg, *Summa*, 3.9.7.; Johann draws extensively on Thomas Aquinas, *Summa*, xxxiv, 2.2.33, 6.

³⁶ 'Nam sunt nonnulli qui in ipsa familiarium conversatione corrigi nequeunt sine culpa corrigentis.' ['For there are some who cannot be corrected in ordinary social exchanges without offence [or guilt] by the corrector'] (Astesano da Asti, *Summa*, 2.67.6).

³⁷ M. S. Kempshall, *The Common Good in Late Medieval Political Thought* (Oxford: Clarendon, 1999).

³⁸ Johann von Freiburg, *Summa*, 3.9.9.

Ideo distinguendum est quia si huiusmodi peccata occulta sunt in nocuum proximatorum vel tempore vel spirituale (puta si aliquis occulte tractet quomodo civitas tradatur hostibus, vel si hereticus privatim homines a fide avertat), debet quis statim ad denunciationem procedere nisi forte aliquis firmiter estimaret quod per admonitionem secretam statim posset huiusmodi mala impedire.³⁹

[Therefore, we ought to make the distinction that if hidden sins of this kind are harmful temporally and spiritually to neighbours (for example, if someone plots how the city may be betrayed to enemies or if a heretic secretly is turning men from the faith), one should immediately proceed to denunciation unless, perhaps, someone judges firmly that he can immediately prevent evils of this kind by secret admonition.]

The confessors' common examples involve threats to a whole community, the contagion of hidden spiritual sin that may turn others from the faith, damning them, or sedition that may place citizens in the power of their enemies. In both cases, the sinner uses the cloak of secrecy to plot actions that will damage the neighbours to whom he or she should be bound by ties of charity. Yet even the claims of an individual's temporal good could compel would-be correctors to set aside the claims of the sinner's spiritual welfare and of his good reputation. Private admonition is the means an injured person should originally adopt to correct a sinner, but if someone is aware that a sinner has injured another and harmed him or her in temporal matters, admonition is inappropriate. Johann gives the example of secret theft, where the would-be corrector must immediately denounce the sin to a disciplinary authority because it injures another, not him. As a principle, the common good entails protecting others from damage of any kind by those who have imperilled the spiritual or temporal well-being of others. Astesano insists 'quod periculum vitari possit per denunciationem non est contra legem correptionis, sed secundum illam est demittere privatam admonitionem' ['That peril ought to be avoided by denunciation is not against the law of correction [that is, Matthew 18:15–17], but it is according to it to let private admonition go']. To defend this claim, he develops the concept of the utility of law. Law ought to be interpreted for the utility of the person in behalf of whom the law is given, he argues, bolstering his claims with Cicero's fundamental principle for interpreting law:

Unde Tullius primo rhetorica.ca.ix: 'Ex utilitate rei publice non est ex legis inspectione, que in litteris est, leges interpretari debent, ob quam institute sunt'. Hoc enim est epytkeia, et habetur.v.ethyrorum.⁴⁰

³⁹ Bartolomeo, under 'correctio.ii.fraterna'. From Thomas Aquinas, *Summa*, xxxiv, 2.2.33, 7. See also Johann von Freiburg, *Summa*, 3.9.9, and Higden, Balliol College, MS 77, fol. 21r.

⁴⁰ Astesano da Asti, *Summa*, 2.67.6. The loose reference seems to be first to *De inventione* l.xi (Marcus Tullius Cicero, *De inventione, De optimo genere oratorum, Topica*, trans. by H. M. Hubbell, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1949), p. 30). Also to Aristotle's *Nicomachean Ethics*, 5.10, where the discussion of equity includes a contrast between judging a case by the law itself and judging it by the intention of the lawgiver (*Nicomachean Ethics*, trans. by H. Rackham, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1926), pp. 312–17).

[Cicero in the first rhetoric, chapter 9: ‘Laws ought to be interpreted not from the inspection of the law, which involves the literal sense, but from the benefit to the republic for which they were created’. This is equity, as book 5 of the *Ethics* has it.]

So strong was the claim of others’—even one other’s—spiritual and temporal welfare that Astesano argues that a corrector could be required to denounce a sin even after his or her admonition had succeeded: after the sinner had amended his or her conduct and had been reconciled with the corrector. A disciplinary figure may instruct the corrector to do so when a hidden sin later becomes known by others. In such a case, the corrector must explain that the sin occurred and was corrected in the presence both of the authority and of all those who know so that the latter will not be corrupted by a seductive example, by scandal and *infamia*. They must come to understand that the sin has ‘died’—that is, it has been ended by the sinner who has amended his or her life. Otherwise, they may lose the fear of *infamia* and of punishment that holds many of them back from committing the same sin.⁴¹

For all the weight that the master confessors give to preventing evil, temporal or spiritual, from affecting the innocent, the end of correcting a sinner’s life remains fundamental. Remember that Bartolomeo and his fellows attach one exception to the imperative of publicly disclosing heresy, sedition, theft and other hidden sins: the person who judges firmly that he can avert the evil to others by private admonition may do so, if he acts immediately. Such an exception may seem to grant astonishing power and discretion to the one person, perhaps lay, who knows of the sin. Yet that grant is justified by the chance that the private admonisher may move the sinner to amend, saving the soul that may be lost if the sin is disclosed publicly and the sinner’s good reputation is destroyed.

This exception brings back to the fore the considerable discretion and pastoral power the pastoral movement conferred on those who ventured themselves in the process of correcting sin commanded by Jesus in Matthew 18:15–17. By pastoral power, I mean the power to discern the inner lives of others and to make decisions concerning their spiritual welfare—and, to some extent, their temporal welfare, since punishment and ill repute could result from the decisions of correctors, just as protection of the innocent could. The pastoral movement engaged all lay people and all clerics, no matter what their social or institutional relation to sinners, in the fundamental reformist enterprise of extirpating sin and of reconciling the injured and the offender. Yet if charitable correctors, particularly the lay or lower clerical correctors, were to judge well when circumstances allowed or even obligated them to proceed in the crucial stage of denunciation, as in other stages, they needed to be taught to weigh the various and sometimes seemingly competing goods involved.

In the sections of their *summae* devoted to fraternal correction, master confessors like Astesano sought to provide charitable correctors with the circum-

⁴¹ Astesano da Asti, *Summa*, 2.67.8.

stances that would determine how they handled the first three steps of charitable correction: admonition, use of witnesses and denunciation. When these would-be correctors think through what justifies omitting the initial two steps commanded by Jesus and so disclosing hidden or partially known sin/crime to disciplinary authorities who do not know of it, they share with canonists writing about denunciation a concern with proper procedure and with the nature of the sin/crime. And while the canonists may address issues that the confessors do not, like jurisdiction, legal safeguards and the legal status of the parties, they, too, are directed by a conviction that denunciation should operate as a part of a process of charity that is designed to move the sinners' wills so that they perform penance, so that the *pena* incurred by sin is removed, and so that they may begin a life free from that sin. Within the process, private admonition should be bypassed only when public disciplinary action is more likely to be efficacious in correcting sin (or, in the case of an unlawfully contracted marriage, of preventing it). For the canonists, as for the master confessors, there is only one exception to this overriding aim of the corrective process: the spiritual and temporal welfare of others the sinner has affected or may affect by sin. The welfare of the relatively powerless person who may not dare to admonish an offender requires that the crime be placed in a civil court that does not require admonition in order to initiate legal proceedings. While the master confessors are concerned with the potential of sin to infect others as it becomes known, they are also concerned with threats to peoples' temporal welfare, like theft or sedition. To understand why charitable admonition should be omitted in such cases is to understand why denunciation mattered so much to pastoral writers and canonists alike, engaged together in the movement to eradicate sin/crime in the Western church: legal processes initiated by denunciation could both protect the innocent from the destructive power of sins/crimes and move offenders to amend their lives through penitence, the *finis* of charitable correction as a whole.

Chapter 3

English Provincial Constitutions and Inquisition into Lollardy

IAN FORREST

It is now accepted that the moment when the English church first faced popular heresy was a moment of cultural transformation, not least in the sphere of law. A new problem called for new methods, and perhaps a new way of thinking. Between 1382 and 1428 a distinctively English anti-heresy law emerged, and aspects of this have been well studied by recent historians.¹ Historians of Wycliffism and lollardy have often in particular attributed great significance to Archbishop Thomas Arundel's constitutions, drafted in 1407 and promulgated in 1409, as a major step in the legal response to heresy, and literary scholars, too, have seen these constitutions as a watershed. There is much debate about their impact on the production of theological and pastoral texts in the vernacular, with scholars giving varying weight to Arundel's legislation in shaping a new cultural world.² The 1409 constitutions were, however, just one part of the legal response to heresy and, furthermore, they sat within a long tradition of provincial ecclesiastical legislation. This tradition had its roots in the late twelfth century, and gained pace with English responses to the Fourth Lateran Council of 1215, most notably at the Council of Oxford in 1222. From then on a great deal of what was considered practical canon law, for use in courts and diocesan government, was adopted in England and re-affirmed, often with significant additions or variations, at many provincial and diocesan synods and in convocation. But because the English church had not faced a widespread popular heresy before the challenge of Wycliffism, by the late fourteenth century this

¹ John H. Arnold, 'Lollard Trials and Inquisitorial Discourse', in *Fourteenth Century England II*, ed. by Chris Given-Wilson (Woodbridge: Boydell, 2002), pp. 81–94; Andrew E. Larsen, 'Are all Lollards Lollards?', in *Lollards and their Influence in Late Medieval England*, ed. by Fiona Somerset, Jill C. Havens and Derek G. Pitard (Woodbridge: Boydell, 2003), pp. 59–72; Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Oxford University Press, 2005), pp. 19–27; Andrew Cole, *Literature and Heresy in the Age of Chaucer* (Cambridge: Cambridge University Press, 2008), pp. 3–22.

² Nicholas Watson, 'Censorship and Cultural Change in Late Medieval England: Vernacular Theology, the Oxford Translation Debate and Arundel's Constitutions of 1409', *Speculum*, 70 (1995), 822–64; Vincent Gillespie, 'Vernacular Theology', in *Middle English*, ed. by Paul Strohm (Oxford: Oxford University Press, 2007), pp. 401–20.

legislative tradition had not incorporated the papal and conciliar texts on *inquisitio hereticae pravitatis*, despite 'plain vanilla' inquisition being widely used in the church courts and a range of other jurisdictions in England.

In *The Detection of Heresy* I dealt at length with the English church's legislative response to heresy, looking at the ways in which the canon law on inquisition influenced the development of English constitutions against lollardy. A fascinating aspect of this significant moment in legal history, to which I failed to give sufficient attention in that book, is the relationship between the response to lollardy and wider developments in the culture of canon law, particularly the English church's interest in its long history of provincial legislation. A peculiar feature of the period in which lollardy was being defined and prosecuted—the period in which the English church finally engaged with the universal canon law on heresy—was the coincident rediscovery of the English provincial tradition of canon law. This rediscovery is suggested by the energetic updating of old manuscript volumes containing provincial constitutions, and the intensive production of new ones. The phenomenon is quite marked, but it has not been noted by any of the major scholarly works on either lollardy or the provincial canon legal tradition. This, it seems, is because lollard studies have not until recently been terribly aware of law, while canon law scholarship has valued the recovery of the original legislative text over the study of subsequent manuscript traditions.

At first glance a connection between the reception of the canon law on inquisition, and an interest in provincial constitutions that on the whole did not deal with heresy, may seem unlikely. A certain dissonance is suggested by the dual activities of looking outwards to the universal canon law, and inwards to purely local texts. However, it must be remembered that there is no real life left in Stubbs's position that the English church was not bound by the universal canon law. That has been laid to rest by several generations of work on legal learning and practice, and the present position would be that every province of the church applied a law that was an amalgam of the local and the universal.³ But it seems interesting that at a moment of true internationalism, epitomised by papal and conciliar interest in Wyclif, English churchmen were dusting off their old collections of provincial constitutions, and making new updated ones. Given the lack of any English provincial treatment of heresy in the old constitution collections, the links between these two changes in canon legal culture might not be immediately obvious. However, a careful examination of the extant manuscript collections of constitutions, and an attempt to contextualise their production and use, reveals strong links between lollardy, inquisition and a renewed interest in provincial traditions of canon law. A number of waves in the legal, religious and constitutional history of the church cross in the early fifteenth century, creating the conditions for this peculiar revival of provincial canon legal texts.

³ Charles Donahue, Jr, 'Roman Canon Law in the Medieval English Church: Stubbs vs. Maitland Re-examined after 75 Years in Light of Some Records from the Church Courts', *Michigan Law Review*, 72 (1974), 647–716.

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Collections of constitutions issued by archbishops of Canterbury in provincial councils or after 1340 in convocation, together with those issued by papal legates, form a distinctive genre of ecclesiastical writing in the later Middle Ages. These collections are sometimes called *libri synodales*, particularly in French scholarship, but this term seems to have meant something more akin to 'pastoral tracts' in the Middle Ages.⁴ In the present essay they will be referred to as constitution collections, reflecting the active processes of selection and preservation that went into the production of each manuscript family.

Constitution collections survive in large numbers across Europe, for the most part in manuscript books compiled in the later fourteenth and fifteenth centuries.⁵ The early fifteenth century in England was a period during which their production reached an intensity that had not been seen for several generations, and would not be seen again. Such was the intensity of this phase of manuscript production, and of so great importance its ultimate scholarly product—William Lyndwood's *Provinciale*—that the reasons for its occurrence and timing deserve explanation. In brief, the professionalisation of ecclesiastical justice, the career paths of the episcopate and pan-European church politics combined to create the conditions in which this rediscovery of provincial canon law could take place. The thing that brought all these conditions together—in the work of church courts, the involvement of bishops and the attention of popes and councils—was the fight against heresy.

The battle against heresy animated the English church hierarchy to such an extent that a tradition of provincial canon law that had seemed stagnant in the 1350s was revived. In Lyndwood it arguably reached its apotheosis. Lyndwood wrote in the 1420s, but I will argue here that many collections of provincial constitutions were copied and updated with the latest statutes in the 1410s, after a long fallow period during which interest in provincial constitutions had waned from the days of Archbishops Pecham and Stratford. Lyndwood's

⁴ For *liber synodalis* as a general term for a constitution collection, see *Les statuts synodaux angevins de la seconde moitié du XIII^e siècle*, ed. by Joseph Avril (Paris: Bibliothèque Nationale, 1988), p. 20; for criticism, see Bernardo A. Rodríguez, Francisco C. Rodríguez and Antonio García y García, 'Liber Synodalis: Para la historia de un concepto', in *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, ed. by Rosalio Card. Castillo Lara (Rome: Libreria Ateneo Salesiano, 1992), pp. 1–11 (esp. p. 10); P. Erdö, 'Libri sinodali tardo medievali in Ungheria: Il libro sinodale di Esztergom', *Revista Española de Derecho Canonico*, 50 (1993), 607–22. Although the criticism seems correct, the insistence of Rodríguez and others on a distinction between the pastoral tract issued by a bishop, and the constitution issued by a synod, does not seem justified in light of the English evidence, where texts such as the *summula* of Peter Quinel, Bishop of Exeter, merge seamlessly with the more terse lists of *statuta: Councils and Synods with other Documents Relating to the English Church, II: A.D. 1205–1313*, ed. by F. M. Powicke and C. R. Cheney, 2 vols (Oxford: Oxford University Press, 1964), II, 1060–77.

⁵ In *Councils and Synods, II*, Powicke and Cheney sought to establish, so far as possible, accurate texts of the constitutions issued by English bishops and archbishops. For discussion, C. R. Cheney, 'Legislation of the Medieval English Church: Part I', *English Historical Review*, 50 (1935), 193–224, and 'Part II', 385–417. The same principle lies behind *Les statuts synodaux français du XIII^e siècle*, ed. by Odette Pontal and Joseph Avril, 5 vols (Paris: Bibliothèque Nationale, 1971–2001); *Synodicon Hispanum*, ed. by Antonio García y García, 7 vols (Madrid: Biblioteca de Autores Cristianos, 1981–1997); and also *Pražské Synody a Koncily Předhusitské Doby*, ed. by J. V. Polc and Z. Hledíková (Prague: Univerzita Karlova, 2002).

achievement rested on the momentum built up by a generation of churchmen who were active in making new manuscript collections, who exhibited a renewed interest in the historic law of the English church, and whose responsibilities now included inquisition into heresy.⁶

Constitution collections contain a relatively stable body of texts. Often the first to be recorded are the constitutions of Stephen Langton's 1222 Council of Oxford, which became the de facto limit of legal memory in the English church.⁷ In some collections the earlier constitutions of Richard of Dover (1175) predate those of Langton.⁸ The other major sets of provincial constitutions that regularly appear in English collections are those spuriously attributed to Edmund of Abingdon (archbishop from 1233 to 1240), those issued at Lambeth by Archbishop Boniface in 1261,⁹ by John Pecham at Reading in 1279 and Lambeth in 1281,¹⁰ those attributed to Robert Winchelsey at Merton in 1305 or 'in his visitation' (but having various known and unknown actual origins),¹¹ those issued by Simon Mepham at London in 1329,¹² and those issued by John Stratford at London in 1341 and 1342.¹³ In addition, the collections regularly contain single-issue constitutions: Simon Islip, 1362 (observance of feast days, stipendiary priests),¹⁴ Simon Sudbury, 1378 (stipendiary priests, reissued by William Courtenay in 1391),¹⁵ Thomas

⁶ For Lyndwood, see Frederic William Maitland, *Roman Canon Law in the Church of England* (London: Methuen, 1898), pp. 1–50; C. R. Cheney, 'William Lyndwood's *Provinciale*', in C. R. Cheney, *Medieval Texts and Studies* (Oxford: Oxford University Press, 1973), pp. 158–84; B. E. Ferme, *Canon Law in Late Medieval England: A Study of William Lyndwood's 'Provinciale' with Particular Reference to Testamentary Law*, *Studia et Textus Historiae Iuris Canonici VII* (Rome: Libreria Ateneo Salesiano, 1996), pp. 19–41.

⁷ For example, Oxford, All Souls College, MS 42, fols 212r–217r; Balliol College, MS 158, fols 136r–141r; Balliol College, MS 301, fols 183r–186r; Bodleian Library, MS Bodley 794, fols 158r–164r. For the text of the constitutions see *Councils and Synods*, II, I, 106–25.

⁸ See for example, Hereford, Hereford Cathedral, MS P.vii.7, fols 122v–122*; All Souls College, MS 42 fols 221v–222v; Balliol College, MS 158, fols 179v–183r. For discussion see Cheney, 'Legislation: Part II', pp. 387–88, 401. The text of Richard of Dover's 1175 constitutions can be found in *Councils and Synods with other Documents Relating to the English Church, I: A.D. 871–1204*, ed. by D. Whitelock, M. Brett and C. N. L. Brooke, 2 vols (Oxford: Oxford University Press, 1981), II, 983–92.

⁹ *Councils and Synods*, II, I, 669–85.

¹⁰ *Councils and Synods*, II, II, 834–51, 892–918.

¹¹ *Councils and Synods*, II, II, 1382–93. For discussion see Cheney, 'Legislation: Part II', pp. 408–14; C. R. Cheney, 'So-called Statutes of Archbishops John Pecham and Robert Winchelsey', *Journal of Ecclesiastical History*, 12 (1961), 14–34.

¹² *Records of Convocation, III: Canterbury, 1313–1377*, ed. by Gerald Bray (Woodbridge: Boydell, 2005), pp. 110–14. While the transcriptions are not always reliable, they provide a convenient printed reference work.

¹³ *Records of Convocation, III*, pp. 173–79, 187–99, 203–19. For discussion of the two sets of constitutions issued in 1342, see Cheney, 'Legislation: Part I', pp. 193–224, 'Legislation: Part II', pp. 415–17; Roy Martin Haines, *Archbishop John Stratford: Political Revolutionary and Champion of the Liberties of the English Church c. 1275/80–1348* (Toronto: Pontifical Institute for Mediaeval Studies, 1986), pp. 394–405; Brenda Bolton, 'The Council of London of 1342', in *Councils and Assemblies*, ed. by G. J. Cuming and Derek Baker, *Studies in Church History* 7 (Cambridge: Cambridge University Press, 1984), pp. 147–60.

¹⁴ *Records of Convocation, III*, pp. 292–96. Bray finds no extant manuscript evidence for these, but see for example, All Souls College, MS 42, fols 262r–263r, and Balliol College, MS 158, fols 167r–167v, 184v–185r, 186r.

¹⁵ *Records of Convocation, IV: Canterbury, 1377–1414*, ed. by Gerald Bray (Woodbridge: Boydell, 2005), pp. 15–16.

Arundel, 1407 (preaching, translation, education and heresy),¹⁶ and Henry Chichele, 1414 (lay exercise of spiritual jurisdiction).¹⁷ Several royal charters, writs and statutes were sometimes included, such as Magna Carta, the Charter of the Forest, *Circumspecte agatis, Contra Lollardos*, and Edward II's 1320 reply to the complaints of the clergy. Regularly preceding all of these, however, were the legatine constitutions of Otto (1237) and Ottobono (1268), whose importance in English canon law can be inferred from the prominent position given to them in the collections.¹⁸

The matters dealt with in provincial and legatine constitutions encompassed all aspects of ecclesiastical life including points of theology, liturgy and ritual; the role, behaviour and status of the clergy; pastoral care and the transmission of rules and expectations to the laity; the regulation of the religious life; the conduct of confession, visitation, the church courts and diocesan government; the solution of disputes in all such cases as fell under spiritual jurisdiction.¹⁹ Such constitutions were issued because the universal canon law of the church—the *jus commune* as contained in the *Decretum*, papal collections of decretals and the major commentators—required frequent reiteration and refinement in order to have an impact on the ground in the different provinces of the church. Legatine constitutions carried papal authority directly into English church law, while provincial constitutions enshrined some specifics (taken from the Lateran councils in 1179 and 1215 and the councils of Lyons in 1246 and 1274) and much general principle in terms relevant to English concerns. In some areas of canon law, notably defamation, testaments and the fight against heresy, English practice was more prescriptive than the *jus commune*, and in these cases provincial canons were preferred to papal when making legal arguments and judgements. C. R. Cheney recognised that constitution collections were 'useful but unofficial reference books' for men employed in diocesan government or as lawyers in the church courts.²⁰ The work of these men is in evidence in the collections—their physical form, contents and

¹⁶ London, Lambeth Palace Library, Register of Thomas Arundel, ii, fols 10r–12v; *Records of Convocation*, IV, pp. 311–18.

¹⁷ *Records of Convocation, V: Canterbury, 1414–1443*, ed. by Gerald Bray (Woodbridge: Boydell, 2005), p. 9. This constitution is not recorded in Chichele's register, but is referred to there as 'constitutio nostra provincialis que sic incipit *Cum ex eo quod clerici conjugati*': *The Register of Henry Chichele, Archbishop of Canterbury, 1414–1443*, ed. by E. F. Jacob, 4 vols, Canterbury and York Society 44–47 (Oxford: Oxford University Press, 1937–1947), iv, 186. Bray's text comes from London, Guildhall Library, MS 9531/4 (Register of Richard Clifford), fols 159v–160r.

¹⁸ *Councils and Synods*, II, i, 245–59, II, 747–92. These legatine constitutions frequently appear with the mid-fourteenth-century gloss by John Acton (or Athon), with which they are printed in Lyndwood, *Provinciale*, part 2, 1–155. Legatine constitutions precede provincial ones in London, British Library, MS Harley 335; Bodleian Library, MSS Bodley 794 and Hatton 109; Oxford, Brasenose College, MS 14; and Cambridge, Pembroke College, MS 131. For Otto see Jane E. Sayers, *Papal Judges Delegate in the Province of Canterbury, 1198–1254* (Oxford: Oxford University Press, 1971), pp. 32–34; for Ottobono, see Brenda M. Bolton, 'Ottobuono [Ottobuono or Ottobono Fieschi; later Adrian V] (c. 1205–1276)', in *The Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), electronic edn (2004), <<http://www.oxforddnb.com/view/article/50348>> [accessed 30 April 2012].

¹⁹ Succinct discussions of ecclesiastical jurisdiction are provided by R. N. Swanson, *Church and Society in Late Medieval England* (Oxford: Blackwell, 1989), pp. 166–74, and James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), pp. 70–97.

²⁰ Cheney, 'Legislation: Part I', p. 221.

use—and there is also some (rather diffuse) evidence in bishops' registers and court books that possession of such reference works shaped legal and administrative practice in a meaningful way.²¹

Many manuscripts containing constitution collections show clear signs of the use to which they were put. It is common to see marginal notes intended as finding aids, together with running headers identifying the constitutions. In some cases we can see that more than one reader has gone through the text carefully, making notes on points of law with the occasional cross-reference, and every so often noting the relevance to a particular case.²² Sometimes a reader has shown an especial interest in one aspect of provincial law, such as Thomas Arundel's 1407 constitutions against unlicensed preaching, Bible translation and heresy, or John Pecham's 1281 syllabus for pastoral instruction, his *Ignorantia sacerdotum*.²³ But perhaps the most telling piece of evidence for the practical nature of constitution collections is the small size and ragged appearance of several pocket-sized manuscripts, some in their original oversized and folded covers, battered from travel and protracted litigation.²⁴ Such books clearly travelled with lawyers and diocesan administrators, perhaps a bishop's official, a commissary-general; or with archdeacons, maybe even rural deans. The identity of some owners of constitution collections is known, and they include four archdeacons.²⁵

The material with which constitution collections were bound into codices in the fourteenth and fifteenth centuries further reveals two clear categories of reader. Diocesan administrators concerned with visitation, pastoral care and the supervision of the parish clergy would have been the natural audience for tracts on the instruction of priests (Peterhouse 84, Harley 335), the visitation of the sick and the office of the mass (Brasenose 14); also for the general sentence of excommunication (Peterhouse 84, Harley 335), John Burgh's *Pupilla oculi* (Brasenose 14,

²¹ Examples in *Select Cases on Defamation to 1600*, ed. by R. H. Helmholz, Publications of the Selden Society 101 (London: Selden Society, 1985); R. H. Helmholz, *The Oxford History of the Laws of England, Vol. I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), pp. 157, 162; for testaments, see Ferme, *Canon Law*, pp. 55–68; for the use of Stratford's 1342 constitution *Humana concupiscentia* in the Ely consistory court, Charles Donahue, Jr, *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007), pp. 281–82; for the citation of Arundel's 1409 constitutions in heresy cases, Lincoln, Lincolnshire Archives, MS Vj/0, fols 13v, 14v, 22r, 26r, and for discussion, Forrest, *Detection of Heresy*, pp. 215–18.

²² Cambridge, Cambridge University Library, MS li.3.14 contains marginal notes in two distinct hands. All Souls College, MS 42, fols 212r–285v, has notes in several fifteenth-century hands providing finding aids and making cross-references between provincial constitutions and the *Liber extra*, the *Sext* and *Hostiensis*; at fol. 226r beside Archbishop Boniface's statute on citing ecclesiastics to secular courts, the reader has noted 'quod balliuos archiepiscopi Cantuar' que nituntur compellere rectorem de Newchurche ad sectam curie de Alyngton' ['that the bailiffs of the Archbishop of Canterbury tried to compel the rector of Newchurch to pay suit of court at Allington'].

²³ Cambridge, Peterhouse, MS 84 is littered with marginal notation, with summary lists of constitutions at fols 135v–139v, and a more detailed summary of Arundel 1407 at fol. 139v. Cambridge, Cambridge University Library, MS Dd.9.38 has extensive marginal annotation at fols 49r–53v beside *Ignorantia sacerdotum*.

²⁴ For example, Cambridge, Cambridge University Library, MS Add. 3575; Bodleian Library, MSS Bodley 794 and Hatton 109: the latter two in original covers and bindings.

²⁵ Cambridge University Library, MS li.3.14; Balliol College, MS 158; Hereford Cathedral, MS P.vii.7, fol. 239r.

Exeter College 41), William of Monte Lauduno's *Sacramentale* (Cambridge, Corpus Christi, MS 84), or the *Speculum Christiani* (Hereford Cathedral P.vii.7).²⁶ On the other hand, judges, advocates and proctors in the ecclesiastical courts would perhaps have had more use for canon law material such as the *Liber sextus* (Balliol 301), Johannes Andreae's *summa* on the same collection (Cambridge University Library Add. 3575), Bartolus of Sassoferrato on fame and denunciation (Brasenose 14), or Martinus Polonus's dictionary of canon law (Exeter College 31). It should be noted, however, that these two categories of reader were not wholly separate since the pastoral and judicial work of the church intersected at many points. London, British Library, MS Royal 11.A.xiv interestingly contains the legatine constitutions of Otto and Ottobono, then just a few folios of miscellaneous provincial constitutions, various tracts on canon law procedure (rescripts, visitation, excommunication, defences, the election of prelates, reserved cases, homicide, marriage), together with a further collection of provincial constitutions arranged in the order used by Lyndwood, according to the chapter headings of the *Decretals*. This last item has led to it being described as 'Lyndwood minus gloss'.²⁷ Such a volume gives a strong flavour of the extent to which provincial and legatine constitutions were woven into the textual culture of canon law in fourteenth- and fifteenth-century England.

Ascriptions to particular places can cautiously be made. Several constitution collections may be associated with London clerics,²⁸ and there are manuscripts containing additional material relating to Norwich,²⁹ Lincoln³⁰ and Chichester³¹

²⁶ For John Burgh, see William Abel Pantin, *The English Church in the Fourteenth Century* (Cambridge: Cambridge University Press, 1955), pp. 213–14. For the *Speculum Christiani*, see Vincent Gillespie, 'The Evolution of the *Speculum Christiani*', in *Latin and Vernacular: Studies in Late-Medieval Texts and Manuscripts*, ed. by A. J. Minnis (Cambridge: Brewer, 1989), pp. 39–62. The field of anonymous pastoral texts into which a number of these works fall is surveyed in the still-invaluable Leonard E. Boyle, 'A Study of the Works Attributed to William of Pagula with Special Reference to the *Oculus Sacerdotis* and *Summa Summarum*', 2 vols (unpublished doctoral thesis, University of Oxford, 1956).

²⁷ Amongst the various tracts, William Durand the younger, William Roving and Berengar Fredoli may be identified as authors.

²⁸ British Library, MS Harley 335 is entirely a London collection, including Roger Niger's statutes for the rectors and parishioners of London churches, a selection of constitutions relating specifically to London and the usual provincial constitutions (some in the form of letters to the Archdeacon of London). Bodleian Library, MS Bodley 794 was owned by Thomas Langley, vicar of Holborn in 1461 and includes, in a space between constitutions of Simon Sudbury and Stephen Langton, a letter from Bishop Robert Braybrooke of London to the Archdeacon of London in 1398.

²⁹ Balliol College, MS 301 and Dublin, Trinity College, MS 526 both contain a series of synodal constitutions for Norwich diocese, but C. R. Cheney, *English Synodalia of the Thirteenth Century* (Oxford: Oxford University Press, 1941), pp. 125–36, casts doubt on that provenance. However, the same statutes also appear in Cambridge, Trinity College, MS 1245 at fol. 47v where they are followed by a comment on them by William Bateman, Bishop of Norwich and noted canonist, in response to a query from the vicar of Mildenhall in Suffolk. The manuscript was later in the possession of a rector of Fowlmere in Cambridgeshire who was also a fellow of Trinity, so the East Anglian connection seems strong.

³⁰ In London, Lambeth Palace Library, MS 538, Arundel's 1407 constitutions are followed by a letter to the Bishop of Lincoln ordering their promulgation.

³¹ Cambridge University Library, MS Add. 3575 contains documents relating to the election of a bishop of Chichester at fols 229r–248v, which suggests it was in the possession of the dean and chapter there.

dioceses. A very interesting and complex manuscript in this regard is All Souls College 42, which is a large and varied collection of texts, including two chronological series of provincial constitutions. It was probably owned by an Oxford lawyer in the early fifteenth century, who bequeathed it to his executor Thomas Bishop, the chaplain of St Mary's church in Abingdon around 1440; he in turn gave it to Richard Gaunt, a fellow of All Souls, in 1497. Whoever the original owner/compiler was, his career seems to have involved stints working in the Lincoln consistory court and the Court of Arches. Bishop Henry Burghersh's statutes for the former are included at folios 199r–200v, while three out of its seven distinct sections deal with procedure in the latter court.³² Constitutions issued by Archbishops Winchelsey, Reynolds, Sudbury, Kilwardby, Courtenay, Stratford, Arundel and Chichele for the Court of Arches appear amongst various procedural notes, and these constitutions are followed by a section where the book resembles more a lawyer's formulary, containing several forms for the writ of *consultatio* which returned cases from the royal to the church courts, some excerpts from royal statutes dealing with church–crown relations, a writ of prohibition from Sussex in 1445 and a writ of *praemunire* from Norfolk c. 1438.³³ Such geographical miscellaneity would make sense among the papers of an advocate or official dealing with cases from across the province, but the interesting point for our purposes is that provincial constitutions, and not texts culled directly from *jus commune* literature, were chosen for inclusion in this much-used reference work. Provincial constitutions may thus be regarded as central to the operation of canon law in the English church courts, as well as being indispensable to the government of dioceses and the oversight of pastoral care.

Having addressed the contents and purposes of constitution collections, we are now in a position to look more closely at the production of these manuscripts in order to find out why so many were made in the first quarter of the fifteenth century. Almost none of the manuscripts show signs of having been compiled piecemeal over the years, decades or centuries.³⁴ Instead, the evidence of copying (and evolving textual corruption) amassed by Cheney indicates the private and professional copying of whole constitution collections at once.

³² Also London, British Library, MS Cotton Vitellius A.x, fols 161r–162v; *Concilia Magnae Britanniae et Hiberniae, A.D. 447–1718*, ed. by David Wilkins, 4 vols (London: Gosling, Gyles, Woodward et Davis, 1737), II, 571–74, where the text is from All Souls College, MS 42.

³³ The 'formulary' section is at fols 296v–307v. On constitutions for the Court of Arches, *The Medieval Court of Arches*, ed. by F. Donald Logan, Canterbury and York Society 95 (Woodbridge: Boydell, 2005); on formularies, Geoffrey Barraclough, *Public Notaries and the Papal Curia: A Calendar and a Study of a 'Formularium Notariorum Curie' from the Early Years of the Fourteenth Century* (London: Macmillan, 1934); Dorothy M. Owen, *The Medieval Canon Law: Teaching, Literature and Transmission* (Cambridge: Cambridge University Press, 1990), pp. 30–42.

³⁴ The one possible exception is British Library, MS Harley 335. This contains a constitution collection at fols 32r–98r, ending with constitutions of Simon Islip, Simon Sudbury and Pope Urban VI (on the new feast of the Visitation, 1389) to which a later hand has added (at fols 98r–111v) the 1407 constitutions of Thomas Arundel, Edward II's reply to clerical *gravamina*, Henry Chichele on laymen exercising spiritual jurisdiction, the 1414 parliamentary statute against lollardy in Latin, Chichele on the liberties of the church and Courtenay on chantry priests. These items appear to have been added piecemeal.

There are a few extant collections that were produced between the thirteenth and mid-fourteenth century,³⁵ and also some that date from the late fourteenth century.³⁶

More numerous amongst the extant manuscripts are collections whose latest constitutions are those issued by Archbishops Thomas Arundel and Henry Chichele in the early fifteenth century. This period seems to have been the high-water mark of constitution collection production in England, a period of particularly intense demand for collections of provincial and legatine constitutions. Some of this demand was met privately by simply adding later constitutions to late fourteenth-century constitution collections. For example, Cambridge, Cambridge University Library, MS Ii.3.14 is a collection of constitutions dating from 1222 to 1342, to which Chichele's constitution against married clergy and laymen exercising spiritual jurisdiction has been added in a later hand, presumably, as there are no later contents, shortly after it was issued.³⁷ Some collections to which fifteenth-century material was added contain alphabetical indices dating from the fourteenth century, indices that do not refer to heretics, inquisition, lollards or preachers. Given the intense concern felt by the English church in the face of heresy in the early decades of the fifteenth century, this suggests that these indices were compiled well before the volume was finally updated in the 1410s.³⁸

A good deal of insight into the process of addition is provided by the two collections bound together in Oxford, Balliol College, MS 158. The first collection contains constitutions dating from 1222 to 1362, and the second much shorter selection runs from 1175 to 1391 with the omission (possibly excision) of Langton.³⁹ The second collection ends (out of chronological order) with constitutions of Robert Walden, after which there is a gap at the foot of the left-hand column before a different, but contemporary, hand has added the 1407 constitutions of Thomas Arundel, plus Chichele on laymen exercising spiritual jurisdiction.⁴⁰ We might conclude that the second collection and its additions were written in the early fifteenth century, perhaps at the 1414 convocation when Chichele's constitution was issued, or in its immediate aftermath. There was then a further occasion on which more material was added. In 1428 convocation met to discuss measures for the prosecution of heresy, including articles for interrogating suspects. Much convocation discussion never made it as far as official promulgation, and this was the case with the 1428 heresy interrogatories.

³⁵ The London-specific sections of British Library, MS Harley 335; the synodal compilations in Cambridge University Library, MS Dd.9.38 and Bodleian Library, MS Hatton 109.

³⁶ Oxford, Exeter College, MS 31, fols 205r–242r; Balliol College, MS 158, fols 136r–175v; Bodleian Library, MSS Wood empt. 23 and Bodley 794; Brasenose College, MS 14, fols 137v–190v; Cambridge, Gonville and Caius College, MS 38; Trinity College, MS 1245; Dublin, Trinity College, MS 526 (section 'A').

³⁷ Cambridge University Library, MS Ii.3.14, fols 224v–225r.

³⁸ See for example, London, British Library, MS Harley 3705, fols 130v–153r; Pembroke College, MS 131, fols 1r–7v; Peterhouse, MS 84, fols 124v–132r.

³⁹ The first collection is at fols 136r–175v, the second at fols 176r–187r.

⁴⁰ Arundel at fols 187r–190r, Chichele at fols 190r–v.

They might have been seen as too proscriptive for a problem that frequently required very local solutions, as J. Patrick Hornbeck II's recent book on the variation in lollard beliefs suggests.⁴¹ They did, however, achieve a limited circulation and some practical application. One of the copies of the articles follows Arundel and Chichele in Balliol 158.⁴² This hand, scrappy and distinctively different from that of either constitution collection in the volume, has also squeezed another constitution of Chichele's on the augmentation of vicarages into blank space between the two collections.⁴³ We may thus postulate the convocations of 1414 and 1428 as two occasions on which this volume was updated with recent material.

The revival or intensification of demand for provincial and legatine constitutions was also met by the production of entirely new constitution collections that included Arundel's and sometimes Chichele's constitutions. These fifteenth-century constitutions were sometimes included out of chronological order in the middle of a sequence,⁴⁴ and sometimes at the end of a sequence, but integrally.⁴⁵ Peterhouse 84 furnishes further evidence that Arundel's 1407 constitutions were integral to the sequence in such books: the scribe, presumably copying from another constitution collection, mistakenly wrote out the rubric for Arundel before the text of the Charter of the Forest, indicating that the whole was written after the 1407 constitutions were available.

Can we be more precise about the date at which this generation of constitution collections was made? After all, they could in theory have been produced at any time later in the fifteenth century. That this was not the case is indicated by the fact that almost no constitutions made later than 1414 were included in any of these manuscripts. Given the textual similarities and errors of identification shared between many of the manuscripts, we should perhaps be looking to major gatherings of the clergy, such as convocation, as likely occasions on which constitution collections were compiled and copied by men keen to own copies of these useful volumes. That being so, there is evidence that points to the later meetings of convocation under Arundel, and the earlier ones under Chichele, as the likely moments.

Besides Lyndwood's scholarship in the 1420s, the most intensive recorded use of constitution collections occurs in March 1413 at Arundel's final convoca-

⁴¹ J. Patrick Hornbeck II, *What is a Lollard? Dissent and Belief in Late Medieval England* (Oxford: Oxford University Press, 2010).

⁴² At fols 190v–192v. For the formulation and use of the interrogatories, see Anne Hudson, 'The Examination of Lollards', in Anne Hudson, *Lollards and their Books* (London: Hambledon, 1985), pp. 125–40; Forrest, *Detection of Heresy*, pp. 107–09.

⁴³ At fol. 175v. This constitution, in *Records of Convocation*, V, pp. 408–09, was issued in 1439, making this constitution collection unusual for including material later than 1414.

⁴⁴ References are to Arundel 1407. All Souls College, MS 42, fols 257v–262v; Hereford Cathedral, MS P.vii.7, fols 155r–158r; London, British Library, MS Cotton Vitellius A.ii, fols 89r–94v; Dublin, Trinity College, MS 526 (sequence B); Cambridge, Cambridge University Library, MS Gg.6.21, fols 80v–87r.

⁴⁵ British Library, MS Harley 3705, fols 109r–116v; Oxford, Exeter College, MS 41, fols 206r–208v (abridged text); Cambridge, Peterhouse, MS 51 (unfoliated); Peterhouse, MS 84, fols 174v–179v; Cambridge University Library, MS Add. 3575, fols 348v–355v; Holkham Hall, MS 226, fol. 48r.

tion before his death. On 26 June 1413, after convocation had dealt with the heresy of John Lay, chaplain to John Oldcastle, the proctors of the clergy submitted proposals for the reiteration, clarification and better enforcement of twenty-eight papal, legatine and provincial decrees. Their list was annotated with numerous references to Langton's constitutions of 1222, Otto's of 1237, Ottobono's of 1268, Pecham's of 1281, Stratford's of 1342 (although these are only referred to once, perhaps indicating their lesser importance) and Arundel's of 1407. Alongside them were references to the *Decretum*, the *Liber extra*, the *Liber sextus*, the *Clementines* and Acton's gloss on the legatine constitutions.⁴⁶ The proctors for the clergy must have been familiar with constitution collections, which were the most readily available source for the texts they cited, and they seem to have been using the most up-to-date versions that included Arundel's constitutions of 1407. The 1407 constitutions were not officially promulgated until the convocation of April 1409, but they seem to have been available in constitution collections by March 1413.⁴⁷

Other collections point to Chichele's archiepiscopate as the time when the tradition was most thoroughly revived. Several manuscripts include his constitution on laymen exercising spiritual jurisdiction as an integral part of the sequence of constitutions, suggesting they were made from scratch at the October 1414 convocation.⁴⁸ In the case of Harley 3705 this impression is strengthened by the rubric given to Arundel's 1407 constitutions: 'Preamble to the constitutions of the lord Thomas Arundel, sometime Archbishop of Canterbury, issued against preachers not properly authorised.'⁴⁹ This may seem an oddly partial way to summarise a major raft of anti-heresy legislation covering a wide range of topics, but by 1413 this was exactly the way in which Arundel's legislation was being used: the consensus of practising canon lawyers was that checking preaching licences was the most foolproof way of proceeding against heretics.⁵⁰

The explanation for this burst of interest in provincial constitutions is to be found in some general trends converging at a specific moment. In England the late fourteenth and fifteenth centuries saw an increasing professionalisation of ecclesiastical justice, with the development of more elaborate institutions, and the growth of a formally educated cadre of proctors, advocates and judges. In the church as a whole the services of canon lawyers were in ever greater demand. More records begin to survive from the consistory and commissary courts of this period than from those of the thirteenth century, suggesting increased bureaucratisation if not increased levels of litigation, and the appellate jurisdictions of the province (the Court of Arches) and the papacy likewise saw a

⁴⁶ *Records of Convocation*, IV, pp. 394–96.

⁴⁷ *Records of Convocation*, IV, pp. 349–50.

⁴⁸ For example, Cambridge University Library, MS Gg.6.21, fol. 95r; Balliol College, MS 158, fols 190r–190v; see also British Library, MS Harley 3705.

⁴⁹ At fol. 109r. 'Constitutiones domini Thome Arundel quondam Cant' Archiepiscopus edite contra predicatores non admissos prohemium'.

⁵⁰ Forrest, *Detection of Heresy*, pp. 213–19.

growth in judicial business.⁵¹ Strain on the institutions prompted periodic calls for reform, of which Archbishop Stratford's constitutions of 1342 for the regulation of the Arches and the correction of abuses in diocesan courts are the most significant.⁵² At the same time the profile of men appointed to the episcopate was changing, with more lawyers on the bench by the early fifteenth century than ever before,⁵³ a generational shift exemplified by the arrival of Chichele (a canonist himself) at Canterbury, and the formidable groups of lawyers with whom he surrounded himself: Lyndwood, Henry Ware, John Kemp, John Estcourt, Robert Raulyn.⁵⁴ In the light of these general trends, the 1413 convocation may be seen as the moment when a critical level of professionalisation and an associated interest in the historical law of the English church was reached.

But the trends were not merely English. The growing business of church courts was bound up with the burgeoning size and complexity of the papal curia, especially in its Avignon phase. Naturally, the relationship between papal and provincial justice was a dynamic of church life across Europe, and the collection of provincial and legatine constitutions was likewise common to many lands. In southern France, we find that the majority of manuscripts of the thirteenth-century constitutions for Nîmes, Arles, Béziers, Lodève and Uzès date from the mid-fourteenth to fifteenth centuries.⁵⁵ In the Empire the provinces of Mainz and Rheims produced historic collections of constitutions in the 1310s and 1330s, while two Genevan collections made in the early fifteenth century gather constitutions from the period 1317 to 1409.⁵⁶ In Spain the Bishop of Salamanca, Gonzalo de Alba, incorporated the constitutions of his predecessors into a *liber synodalis* in 1410, while a major period of collection across the Iberian kingdoms began around 1450.⁵⁷ In Poland the Archbishop of Gneizno made a historic collection of constitutions in 1420.⁵⁸ In Italy a number of manuscripts contain constitutions of the Archbishops of Florence and Fiesole dating from 1306 to 1393, while a *libro sinodale* made in Turin in 1465 contains a collection

⁵¹ Substantial records relating to consistory courts begin in the 1340s at Rochester, the 1370s at Ely, the 1380s at Exeter, the 1400s at Hereford, the 1410s at Norwich (court of Prior and Chapter), the 1420s at Worcester and the 1440s at Lincoln: *The Records of the Medieval Ecclesiastical Courts, II: England*, ed. by Charles Donahue, Jr (Berlin: Duncker & Humblot, 1994); for the Court of Arches, see *Medieval Court of Arches*, ed. by Logan, p. xxx; for the papal curia, Barraclough, *Public Notaries and the Papal Curia*, pp. 122–31; James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago, IL: University of Chicago Press, 2008), pp. 344–64.

⁵² *Records of Convocation, III*, pp. 195–97; *Medieval Court of Arches*, ed. by Logan, pp. 23–45.

⁵³ Richard G. Davies, 'The Episcopate', in *Profession, Vocation, and Culture in Later Medieval England*, ed. by Cecil H. Clough (Liverpool: Liverpool University Press, 1982), pp. 51–89 (p. 63).

⁵⁴ *Register of Chichele*, ed. by Jacob, I, pp. lxxxvii–lxxxviii; Ferme, *Canon Law*, pp. 23–35; Jeremy Catto, 'The World of Henry Chichele and the Foundation of All Souls', in Jeremy Catto et al., *Unarmed Soldiery: Studies in the Early History of All Souls College* (Oxford: All Souls College, 1996), pp. 1–13 (pp. 1–4).

⁵⁵ *Les statuts synodaux français*, ed. by Pontal, II, 41–42, 239–41.

⁵⁶ Cheney, 'William Lyndwood's *Provinciale*', p. 161; Louis Binz, *Vie religieuse et réforme ecclésiastique dans le diocèse de Genève pendant le grand schisme et la crise conciliaire, 1378–1450*, Société d'histoire et d'archéologie de Genève, Mémoires et documents XLVI (Geneva: Alexandre Julien, 1973), p. 172.

⁵⁷ Rodríguez et al., 'Liber synodalis', p. 3; *Synodicon Hispanum*, ed. by García y García.

⁵⁸ Cheney, 'William Lyndwood's *Provinciale*', p. 161.

whose misattributions and confused chronology of older texts bears a resemblance to the English manuscripts examined here.⁵⁹ Clearly the rediscovery, consolidation and application of provincial canon law in the late fourteenth and fifteenth centuries were common to all Latin Christian polities. However, the English situation is distinguished in two ways: there are more manuscripts of this genre extant, and Lyndwood, while not being unique as a commentator on provincial canons, was one of only two men to produce such a work, the other being an anonymous canonist in Florence who in 1427 glossed the statutes of Angelo Acciaiuoli (c. 1340) and Onofrio dello Steccuto (1393).⁶⁰

General developments in canon law and the curia go some way to explaining this surge of manuscript production, but the tide of international politics must also be taken into account. The early fifteenth century was, of course, the period of the schism and the reforming councils of Pisa and Constance. As major gatherings of the higher clergy and secular powers of Europe, the councils facilitated the exchange of ideas. This may have had the effect of reinforcing a shared legal culture, but at the same time it is likely that bishops and lawyers from different parts of Christendom began to see local and national differences between their churches in sharper relief than had hitherto been the case. National churches had for some time been asserting their independence from Rome under the influence of royal authority, and the creation of canon law collections that rooted ecclesiastical authority in the historic tradition of diocese, province and kingdom was but one product of waning papal leadership at this time.⁶¹ Local identity is perhaps most readily apparent in the production of vernacular translations of constitution collections, though this did not happen in England. The 1410 Salamanca collection was translated for the dioceses of Segovia and Cuenca in the 1440s, and the Florentine collection of 1393 appeared in Tuscan in the 1450s.⁶²

However, there is also evidence that a more particular set of circumstances was significant to the English example: heresy and its prosecution. The year 1413 has already been suggested as a significant date for the interest of the clergy in provincial and legatine constitutions focusing on Arundel's final convocation, but it was also a key date in the prosecution of heresy, when, prompted by a major inquisition into heresy in Leicestershire undertaken by the former Wycliffite, Bishop Philip Repingdon, both church and crown were changing the way they imagined inquisition. There was a distinct shift from reactive to proac-

⁵⁹ R. C. Trexler, *Synodal Law in Florence and Fiesole, 1306–1518* (Vatican: Biblioteca Apostolica Vaticana, 1971), pp. 175–77; Antonio Olivieri, 'Il Sinodale del vescovo Ludovico di Romagnano e la tradizione sinodale nella diocesi di Torino (secoli XIII–XV)', *Bollettino Storico-Bibliografico Subalpino*, 103 (2005), 183–224 and 553–94.

⁶⁰ Trexler, *Synodal Law*, p. 176.

⁶¹ J.-P. Genet, 'English Nationalism: Thomas Polton at the Council of Constance', *Nottingham Medieval Studies*, 28 (1984), 60–78; John Watts, *The Making of Politics: Europe, 1300–1500* (Cambridge: Cambridge University Press, 2009), pp. 291–301.

⁶² Rodríguez et al., 'Liber synodalis', p. 3; R. C. Trexler, 'The Episcopal Constitutions of Antoninus of Florence', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 59 (1979), 244–72 (pp. 246–47).

tive investigation.⁶³ The constitution collections themselves also hint at the importance of heresy and inquisition as a stimulus to interest in practical canon law. In two books Arundel's 1407 constitutions are followed by letters ordering their implementation,⁶⁴ and in another by a detailed marginal summary of its provisions,⁶⁵ while the 1401 and 1414 parliamentary statutes against lollardy appear in several others.⁶⁶ Balliol 158, as we have seen, includes a copy of the 1428 interrogatory for heresy suspects. In addition to the legislative material, three books contain a short tract on the veneration of images, providing ammunition for the refutation of lollardy,⁶⁷ and All Souls 42 also contains a list of Wyclif's books that were condemned at Oxford in 1411,⁶⁸ together with a tract by the former heretic John Barton on the 'confutation of lollards'. This work, dedicated to Henry V, is a comparison between the Athanasian creed and a supposed lollard creed, ending with the cry: 'These are the perfidies of the lollards. God save us from their lies!'⁶⁹ Faced with the new problem of widespread heresy, English churchmen needed the legal tools to act against it, but why should the search for these have revived their interest in provincial legislative traditions, as well as sending them to the major papal decrees? Given that provincial constitutions before 1407 did not deal with inquisition into heresy, this is a puzzle. To solve it we need to remember that inquisition into heresy was the pressing cause of the moment around which more general trends converged. The professionalisation of justice, the growth in the business of the church courts, the legal learning of the episcopate, Europe-wide trends in provincial canon law and vernacularisation, and the pressures of schism and conciliarism were the factors shaping the legal culture of the men now adapting to the practice of inquisition into heresy.⁷⁰ When we also consider that Arundel's constitutions of 1407 were the first major tranche of provincial legislation since the 1340s, that they were arguably the most radical of such constitutions (in terms making significant additions to the *jus commune*) and that Arundel rooted

⁶³ Forrest, *Detection of Heresy*, p. 47.

⁶⁴ Lambeth Palace Library, MS 538, fols 207r–208v; Cambridge University Library, MS Gg.6.21, fols 87r–87v.

⁶⁵ Peterhouse, MS 84, fol. 139v.

⁶⁶ 1401 (*Contra Lollardos*, which is also widely known by the name of the writ, *De heretico comburendo*, derived from the statute) is in All Souls College, MS 42, fols 266v–268r, and British Library, MS Harley 335, fols 105v–107v. 1414 (Leicester parliament) is excerpted in All Souls College, MS 42, fols 299r–302r, but appears unabridged in Cambridge University Library, MS Gg.6.21, fols 95r–98r.

⁶⁷ Cambridge University Library, MSS Gg.6.21, fols 99v–102r and Add. 3575, fols 355v–357v; All Souls College, MS 42, fols 268r–269v.

⁶⁸ At fol. 8r; on the 1411 condemnation and the circulation of information about Wyclif's books, see Anne Hudson, 'Notes of an Early Fifteenth-Century Research Assistant, and the Emergence of the 267 Articles against Wyclif', *English Historical Review*, 118 (2003), 685–97.

⁶⁹ At fols 308v–314r. An edition of this work is under preparation by Monica Hedlund. See 'Johannes Barton – magister, medicus, hereticus purgatus', in *Hortus Troporum: Florilegium in honorem Gunilla Iversen*, ed. by Alexander Andrée and Erika Kihlman (Stockholm: University of Stockholm, 2008), pp. 281–89.

⁷⁰ I am indebted to Alex Russell for discussing with me his unpublished research on English responses to the general council between 1409 and 1563.

his limitations on preaching in that other great radical text *Ignorantia sacerdotum* (1281), we can understand why it was that as heresy rose higher up in the political agenda it intensified an interest in provincial constitutions that had been swelling for some time. This was the wave that Lyndwood crested when he wrote his monumental gloss on the provincial and legatine constitutions. The wave broke across Europe, but in England it drew particular energy from the experience of legislating against heresy *ab initio*.

By way of an epilogue we may ask why there was no continuation of such collections through the fifteenth and sixteenth centuries. Why do we not have collections to which further constitutions were added as they were issued by convocation or individual archbishops? We know that constitutions on important subjects continued to be made, and that the ecclesiastical courts continued to operate through the fifteenth century to the Henrician reformation and beyond, so the apparent sufficiency of collections that end in 1407 or 1414 is remarkable. The answer to this conundrum brings us back to Lyndwood, whose labours in the 1420s seem to have produced so definitive a collection and commentary on the canon law of the English church that it acquired actual legal, rather than merely scholarly, authority. Something similar had happened to Gratian's *Decretum* during the late twelfth and thirteenth centuries, as it gradually became more than a textbook. As early as 1446, one unremarkable late fourteenth-century collection was identified by its scribe as a copy of Lyndwood's provincial constitutions.⁷¹ So much it certainly is not: it ends in 1378, does not follow the chapter-headings of the *Decretals*, and has no gloss. And yet its ascription to Lyndwood tells us that his reputation was now attached to the manuscripts that had in fact been his sources. The collections with which we have been concerned likely fell into some degree of desuetude, relative to their high-water mark in the 1410s, to be replaced by the *Provinciale*.

Historians are now much more likely than they were a generation ago to study inquisition for its own sake, and not solely as a route into the study of heresy. We are keenly aware, nonetheless, that inquisition left a mark on those prosecuted in the judicial campaigns of fifteenth-century England; for many people the possibility of inquisition was frightening and unwelcome. But for English churchmen, inquisition was an intellectually creative activity and an activity inseparable from their broader pastoral and judicial operations. As the bishops and lawyers of the English church faced the need to deal with heresy, their preoccupation with inquisition channelled a renewed interest in provincial canon law, leading to the burst of scribal and juridical activity we have seen in the many manuscripts of provincial constitutions that date from the early fifteenth century. English interest in provincial constitutions was not unique, and much more work could be done on the particular relationships that churches across Europe had with local canon law traditions, especially in the late-medieval period of 'national churches'. What the investigation of the English case has shown is that heresy and inquisition could have a significant impact on much broader aspects of legal culture.

⁷¹ Cambridge, Trinity College, MS 1245, fol. 149r.

Chapter 4

The Contest over the Public Imagination of Inquisition, 1380–1430

DIANE VINCENT

Trawling through the questions and answers recorded as part of official records of medieval inquisitorial processes, which seem to end most often in convictions and abjurations, a reader might wonder what the point of it all was when apparently the crucial question was whether the suspect was willing to submit their opinions to the determinations of the church. As Paul Strohm puts it in his discussion of William Sawtre's 1401 trial, 'If resignation to the authority of the Church is all that is actually sought, and if interrogation about eucharistic belief is only a pretext for demanding such a resignation, then can the question be said really to matter?'¹ But for those in England from 1380 to 1430, the question was not *whether* the questions mattered so much as *how* they mattered.

When in May 1382 Archbishop William Courtenay circulated a general mandate to the bishops reminding them that they held the office of inquisitors into heretical depravity and ordering them to proceed against anyone holding any of the twenty-four Wycliffite conclusions condemned at Blackfriars the week before, he inaugurated systematic heresy prosecutions in England. From then, until the centralisation and standardisation of anti-heresy measures were completed in 1428, clerics and laity, bishops and suspects were learning how to make inquisition as they went.² It was far easier to identify heretical or erroneous opinions in a list than it was to discern the sin and crime of heresy in an actual person. It was not clear what questions would reliably detect heresy and not merely give voice to doctrinal errors in the mouth of an uneducated layperson. There was little practical experience of widespread heresy investigations, nor was it obvious to the watching public what the social and spiritual significance of the various elements of those investigations—like detection, citation, examination, imprisonment and condemnation—and the legal fictions they created would actually be.

Just as procedural knowledge about inquisitions into heresy was evolving

¹ Paul Strohm, *England's Empty Throne: Usurpation and the Language of Legitimation, 1399–1422* (New Haven, CT: Yale University Press, 1998), p. 51.

² For this learning process and a detailed discussion of the practical experience of heresy investigation in England after 1380, see Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Oxford University Press, 2005), especially pp. 19–27, 35–51.

in England at this time, so too was the public discourse that was produced by those trials; both were in the process of discovering what inquisitorial questioning was capable of making and doing in cases of heresy. As a result, this period marked a crucial moment in shaping the public imagination of inquisition and its questions and answers in late-medieval England. In what follows, I will juxtapose the records of ecclesiastical administration and their supporters with public Middle English bills cast on behalf of defendants. In the case of John Oldcastle, I will also look more broadly at how fifteenth-century chronicles and the poetry of Thomas Hoccleve tried to influence the public imagination of the process against him. Putting these differing accounts into conversation demonstrates what John H. Arnold has called the problem of legibility: 'how to "read" the interior person from the external shell', Arnold claims, 'lay at the heart of all heresy prosecutions and drove forward the inquisitorial mechanism'.³ The problem of legibility concerned lawyers and bishop-inquisitors, but it also involved the laity who were necessary to detect heretics, isolate offenders and monitor penances. Inquisitorial questions, too, were subjected to different readings by those who reported them, and these differing accounts constituted a public contest over precisely what inquisitorial question and answer signified in late-medieval England.

A few of the first suspects examined before Courtenay thought the particular questions of inquisition mattered so much that they published them in an attempt to give their own reading of those questions' meaning. In mid-June three key Oxford clerics—Nicholas Hereford, Philip Repingdon and John Aston—appeared in London for examination.⁴ The three were asked to respond to the twenty-four condemned conclusions in writing. The next day or shortly thereafter, all three did something Margaret Aston has called 'utterly unorthodox': they circulated bills in English that gave a brief account of their examination.⁵ Hereford and Repingdon posted theirs at St Mary's and St Paul's. John Aston is said to have distributed his separate bill in the streets. Wycliffites out for popular support were not the only ones presenting and interpreting inquisitorial questions in the public sphere; after John Aston's tumultuous trial, an anonymous orthodox contemporary struck back with a counter-broadsheet. This bill has only survived in Latin, and it is unclear whether an English version ever existed, but even so, this exchange demonstrates that engagement between the ecclesiastical hierarchy and Wycliffites over inquisitorial question and answer was deliberately placed in the public sphere *by both sides*.

³ John H. Arnold, 'Margery's Trials: Heresy, Lollardy and Dissent', in *A Companion to the 'Book of Margery Kempe'*, ed. by John H. Arnold and Katherine J. Lewis (Cambridge: Brewer, 2004), pp. 75–93 (p. 90).

⁴ For accounts of their trial, see *Concilia Magnae Britanniae et Hiberniae, A.D. 447–1718*, ed. by David Wilkins, 4 vols (London: Gosling, Gyles, Woodward et Davis, 1737), III, 159–72; *Fasciculi zizaniorum magistri Johannis Wyclif cum tritico*, ed. by Walter Waddington Shirley, RS 5 (London: Longman, Brown, Green, Longmans and Roberts, 1858), pp. 289–90, 318–19, 331–33. All translations from the Latin from this edition are my own unless otherwise stated.

⁵ Margaret Aston, *Faith and Fire: Popular and Unpopular Religion, 1350–1600* (London: Hambledon Press, 1993), p. 42.

The opinions of a watching public were not only important to Wycliffites eager to reform the church or prone to demagoguery, but something that ecclesiastical authorities also valued highly because they regarded the participation of the wider populace as essential to uprooting heresy.⁶ Inquisitorial process and the questions that drove it forward were on trial, at least in practice. The bill of Hereford and Repingdon represents their questioning over what they believe of the eucharist: their answer involves a eucharist-framed reiteration of the creed that affirms the real presence of Christ's body in the host that legitimises inquisitorial questions while subtly delegitimising earthly judges:

[W]hen we were required to sey oure byleve of þo sacrament of þo auter, as to oure understondynge to þo puple we knowleche and zitte we knowleche, first þat þo bred þat þo prest takes in his hondes thorw þo virtue of þo sacramental wordes is made and turned vereyly in to Cristis body, þo same þat was taken and borne of þo mayden Marie, and þat suffred deth on þo crosse for monnes kinde and þat laye in þo sepulcre and þat roose fro deth to lyve þo thrid day, and steyed up in to heven and sittes in ioye in þo blis of þo Fadir, and þat schal cum at þo day of dome to deme þo queeke and þo deed.⁷

By invoking the creed to identify which body the bread is transformed into, Hereford and Repingdon have inserted into their defence the larger narrative of the incarnate Christ that ends with an affirmation of his future coming as a judge of the world. While this move affirms their orthodoxy in a widely known vernacular form, it also serves to suggest the contrast between the temporal lordship of the archbishop 'requiring' them to answer and the eternal lordship of Christ the judge. At the end of their bill, they 'praye alle cristen men to whom þis confessioun schal cum to þat 3e bere us wittnesse of þis byleve at þo day of dome byfore þo hyest iuge Iesu Crist', a petition addressed not to the archbishop in whose court they stand accused of heresy, but to those who would act as witnesses on their behalf in the final judgement before Christ.⁸ While the archbishop's questions are legitimised by the bill's answers standing as answers to the 'hyeste iuge' at the day of doom, the archbishop's ability to adjudicate their answers is called into question by the references to a higher judge and to the existence of the broadsheet itself as a form of evidence, both to influence this ongoing trial and to be procured at an altogether different one.

John Aston's bill makes the same move, but goes on explicitly to cast aspersions on the inquisitorial process to which he was subjected. Aston's bold reiteration of one of the condemned conclusions regarding the eucharist—'Material bred leeves in þo sacrament after þo consecracioun'—goes beyond Hereford and Repingdon's careful generalisations to a specific question. Aston first makes an important legal move: he denies he ever publicly affirmed the conclusion put to him. But he goes on to deny more broadly the inquisitorial question's

⁶ Forrest, *Detection of Heresy*, pp. 60–76.

⁷ Aston, *Faith and Fire*, p. 70. John Aston uses almost identical language at a similar moment in his bill (p. 71).

⁸ *Ibid.*, p. 71.

answerability since ‘þo mater and þo speculacioun þer of passes in heght myne understandinge’.⁹ Both answers are ways of not answering the specific question that Aston has taken such pains to record. Even so, Aston’s answer should not be regarded as mere evasion, if only because he has flung it to public scrutiny. The moment he opted for wide, popular dissemination in the form of a public bill, he transformed his answer into a commentary on inquisitorial questioning, specifically on its scope: there are some questions which ought not to be answered unambiguously. Such questions include those that are de facto unanswerable, but also those that are de jure irrelevant, as in the case where there is no evidence that the suspect believes such a thing and therefore, by procedures of inquisition which relied on public reputation to prosecute public crimes, technically inadmissible.¹⁰ So Aston posits a reading of inquisitorial questioning here that rules some kinds of questions literally out of court.

It is this reading of inquisitorial questions’ scope that the orthodox counter-bill opposed some time after Aston’s later conviction as ‘vehemently suspect’ of heresy:

Noverint universi christicolae magistrum Johannem Astone esse damnatum tanquam haeticum, *non quia confitetur*, ut ipse dicit, quod panis ille quem tenet sacerdos in manibus suis fit vel efficitur, virtute verborum sacramentalium, vere et realiter corpus Christi; *sed quia noluit confiteri*, sicut ecclesia sancta docet, quod corpus Christi est in sacramento altaris, identice, vere, et realiter, in propria praesentia corporali [. . .] Immo ad XXIV. haereses, et errores, ab ecclesia solemniter condemnatos, et ab inquisitore pravitatis haereticae sibi propositos, contempsit expresse dicere fidem suam, canonicè monitus, et publice requisitus.

[May all Christians know that Master John Aston is condemned as a heretic, *not because he confessed*, as he said, that the same bread that the priest holds in his hands becomes or is made, by the virtue of the sacramental words, truly and really the body of Christ; *but because he refused to confess*, as holy church teaches, that the body of Christ is in the sacrament of the altar identically, truly, and really, in its own bodily presence [. . .] Indeed, although he had been canonically warned and publicly required, he contemptuously refused to say his belief with regard to the twenty-four heresies and errors solemnly condemned by the church and proposed to him by the inquisitor into heretical depravity.]¹¹

Clearly at issue for the author is not what Aston said, but what he did *not* say and his refusal to answer directly to the twenty-four condemned conclusions. Under this bill’s reading of inquisitorial questioning, one could be condemned for a telling omission or heretic-like performance when lawfully required to answer a question. But whether it was right to be labelled a heretic for what one did *not* say in an inquisition is a point that was clearly not obvious to the

⁹ Ibid.

¹⁰ See, however, the caveat noted by Edwin Craun in this volume, to wit that a private belief which might endanger the public good need not be subject to a private preliminary admonition before being subject to denunciation, at p. 32.

¹¹ *Fasciculi zizaniorum*, p. 331, my emphasis.

public, who turned out on the second day of Aston's examination in riotous support for him.¹²

Together these three bills and the orthodox bill countering John Aston's suggest that those involved sensed that it was not just salutary, but urgently necessary to shape the public imagination of inquisitorial question and answer. Thirty years later under another archbishop there was a much more extensive vernacularisation of inquisitorial question and answer via another set of public exchanges, in an even more infamous heresy trial: that of Sir John Oldcastle. The problem of how the public were to read the process against Oldcastle involved not only the challenge of discerning whether Oldcastle was a heretic or a victim, but again judging the legitimacy of the process and the judges. The public portrayals of the inquisitorial questions of Oldcastle's case were concerned not merely with the verdict, but with the disputed relationships between legal, social and spiritual realities.

In the bills and official proclamations surrounding Oldcastle's 1413 trial, Archbishop Arundel and Oldcastle's supporters conducted a public debate in which representing the *performance* of inquisitorial question and answer was the principal means by which an argument was made or subverted.¹³ All involved were well aware that Oldcastle's ecclesiastical trial was paralleled by a trial in the court of public opinion. Oldcastle signalled his awareness of this when, just prior to his sentencing, he turned to the crowd of observers—including some laity—and publicly warned them that his judges were seducing them and leading them to hell.¹⁴ In another episode, Oldcastle's butler, Edmund Frith, ripped down, 'with temerity and in anger', the notice of Oldcastle's excommunication and citation posted at Rochester Cathedral within three miles of Oldcastle's Cooling Castle.¹⁵ From the point of view of the church authorities such notices were meant to reach the eyes and ears of a wide, vernacular audience in order to enlist key members of the public to bring social pressure on the accused as well as to provide anti-heresy education for the wider populace.¹⁶ Judging from Frith's reported vehemence, Oldcastle and his supporters also recognised that these notices—which typically specified charges and reiterated condemnations—were very effective in mobilising public opinion and action.

On 10 October, two weeks after Oldcastle's condemnation and likely prior to his escape from prison, Arundel commanded that the entire registered process against Oldcastle (hereafter referred to as the *Processus*) be read out in English in front of a great crowd of people in all the churches of the province of Canterbury. The *Processus* provides an extensive presentation of the proceedings, including a detailed account of inquisitorial question and answer. Although such an extended account of the trial of an influential heretic is not

¹² Aston, *Faith and Fire*, p. 43.

¹³ For a narration of his trial, see *Fasciculi zizaniorum*, pp. 414, 433–50.

¹⁴ 'Isti qui iudicant, et volunt damnare me, seducent vos omnes, et seipsos, et vos ducent ad infernum; ideo caveatis ab eis' (*Fasciculi zizaniorum*, p. 445).

¹⁵ Translation from Forrest, *Detection of Heresy*, p. 202.

¹⁶ *Ibid.*, pp. 128–30.

unprecedented in Arundel's register, it was highly unusual that what should be published to the people was not merely the sentence of excommunication, as was customary.¹⁷ Rather, the *Processus* was to be translated in its entirety and widely published: '[C]um major in eisdem affuerit populi multitudo, alta et intelligibili voce, et in lingua materna, prout supra seriusius continetur in hoc processu, declarent, publicent, et exponant' ['They should declare, publish, and explain [these things] when a great multitude of the people may be present, in a high and intelligible voice, in the mother tongue, just as they are contained above in fuller detail in this process'].¹⁸

Arundel's explicit reason for promulgating the inquisitorial process—one which included a vernacular, indented bill of belief Oldcastle submitted to the court¹⁹—was 'so that these erroneous opinions may be publicly annulled before the people, who otherwise would firmly understand these things to be the truth'.²⁰ I suggest that the 'erroneous opinions' may in fact refer to the public's opinions *about Oldcastle*, not about doctrine, since it is hard to imagine each of Oldcastle's heterodox views as having that strong and dedicated a following. Doctrinal errors could have been countered in the customary fashion—through preaching, public condemnations in parish churches and public penances which included vernacular abjurations—without the extraordinary move of detailing the process against Oldcastle at such length. But to Arundel, in this case it was just as vital to publish the inquisitorial process as the result that it generated. The public imagination of the process was just as important as the public knowledge of the verdict. Those loyal or sympathetic to Oldcastle, or those suspicious of clerics or of a process initiated by the politically ambitious Arundel, needed to be persuaded that Oldcastle's guilt was lawfully established and that Arundel did not conspire the downfall of an intimate of the young Henry V. A brief, perfunctory proclamation of Oldcastle's sentence and excommunication would have been far less effective at convincing the public of his lawful guilt than narrating the full story of how Oldcastle revealed himself to be a heretic.

Arundel's vernacular publication of the *Processus* was not a proactive move, but a reaction to Oldcastle's prior public responses to his citation and condemnation. There are some suggestive indications that Oldcastle and his supporters

¹⁷ Margaret Aston notes that the process is often recorded for influential heretics and as a means of centralisation (*Faith and Fire*, pp. 77–80); however, the dissemination of the account commanded here is not merely one of information pooling among the bishops because the entire process was to be translated and read to a great number of laity around the province.

¹⁸ *Fasciculi zizaniorum*, p. 448.

¹⁹ John Capgrave refers to the document submitted by Oldcastle as 'a bille endented' (*Abbreviacion of Cronicles*, ed. by Peter J. Lucas, EETS os 285 (Oxford: Oxford University Press, 1983), p. 240). In order to distinguish this 'bille' from the other bills in this discussion, I will refer to it alone as Oldcastle's 'bill of belief' or his 'indented bill'. Both the *Processus* and subsequent bills refer to the bill of belief as an indented document ('*schedulam indentatam*'), which meant identical copies were kept by Oldcastle and the court, possibly in the form of a chirograph (*Concilia*, ed. by Wilkins, III, p. 354).

²⁰ '[U]t sic opiniones erroneae populi, qui aliter concepit forte in hac materia quam se habet rei veritas, hac declaratione publica rescindantur' (*Fasciculi zizaniorum*, p. 448; trans. by Forrest, *Detection of Heresy*, p. 148).

papered London with two separate bills, both of which represented and interpreted inquisitorial question and answer. The bills appear in *The Examinacion of the Honorable Knight Syr Jhon Oldcastell Lorde Cobham* (c. 1530–1531), which was influential in the English Reformers' portrayal of Oldcastle.²¹ The *Examinacion* is clearly a composite work that amalgamated fifteenth-century sources with sixteenth-century dramatisations and commentary, and therefore should be regarded with caution as a historical witness, but there are some good reasons to accept its testimony that such bills were part of a campaign of public defence. Bill-casting was indeed a form of lollard publication, and later chronicles and trials of lollard rebels tell of bills that were cast in Oldcastle's support.²² Furthermore, bill-casting would have been advantageous for Oldcastle: he was far more capable of commanding popular support than the Oxford clerics. That such support for Oldcastle was in fact there to be found is confirmed by his escape and long avoidance of recapture.

The first of the *Examinacion's* putative bills (hereafter referred to as the citation bill) frames and then copies verbatim Oldcastle's 'bill of belief' recorded in the official register. This bill of belief had been proffered by Oldcastle as a defence on the first day of his 1413 trial.²³ The *Examinacion's* citation bill frames the original bill of belief as follows:

I Johnn Olde castell knyght *and* lorde of Cobham will þat all christen men wete, how þat Thomas of Arundell Archebisshop of Canterbury hath now leyde maliciously *and* vntreuly by his letter *and* his seale written of me in sclauderous wyse þat I sholde otherwyse feale and teache of þe sacramentis of holy chirche, assyning in speciall þe sacrament of þe altare, the sacrament of penaunce, *and* also in worshipping of ymagis, *and* in goyng on pilgrimadis otherwyse than feaeth and teacheth the vniuersall holy chirche. I take almightie god to witnes þat [...].²⁴

The citation bill begins by acknowledging Oldcastle's public citation by Arundel's 'letter and seale' and re-casts the citation as an illegal libel—a personal and malicious public slander by Arundel. The four charges against him are recounted and then the bill of belief indented at the trial is provided as his

²¹ *The Examinacion of the Honorable Knight Syr Jhon Oldcastell Lorde Cobham* (Antwerp: J. van Hoochstraten, [1530–1531(?)]), STC 24045, sigs H.3–I.4v. For description and short discussion of STC 24045, see *Two Wycliffite Texts*, ed. by Anne Hudson, EETS os 301 (Oxford: Oxford University Press, 1993), pp. xxx–xxxvii.

²² Capgrave mentions several times that lollards posted bills at Westminster, St Paul's and church doors around the countryside (Capgrave, *Abbreuiacion*, pp. 260, 303). More evidence of lollard bill-casting on religious and political matters can be found in Margaret Aston, 'Lollardy and Sedition, 1381–1431', *Past and Present*, 17 (1960), 1–44, and in Wendy Scase, *Literature and Complaint in England, 1272–1553* (Oxford: Oxford University Press, 2007), pp. 87–100.

²³ Although there is no mention that Oldcastle's bill of belief was made public until the printing of the *Examinacion* in 1530–1531, Oldcastle's contemporaries certainly knew of it, whether by the proclamations in various dioceses or by the copying of Arundel's mandate into bishops' registers. Some fifteenth-century chronicles also note the bill's role in the trial, but without copying it, e.g. Thomas Walsingham, *St Albans Chronicle, 1406–1420*, ed. by V. H. Galbraith (Oxford: Clarendon Press, 1937), p. 73; and, based on Walsingham, Capgrave, *Abbreuiacion*, p. 240.

²⁴ *Examinacion*, sig. H.6r. Punctuation modernised, expansions of abbreviations italicised.

answers to the scandalous charges. If genuine, the citation bill likely would have circulated after Oldcastle's public citation and just prior to Oldcastle's September 1413 trial.

The second putative bill (hereafter referred to as the Tower bill) attested by the *Examinacion* would have been disseminated soon after the trial but prior to Oldcastle's escape from the Tower in mid-October. The *Examinacion* claims that while imprisoned Oldcastle asked his friends to write this bill, 'commending it to þe people, that they sholde cease þe sclaunderes and leasynges, þat his enemies made on hym'. The *Examinacion* then furnishes a copy of the Tower bill, which reads as follows:

For as mekill as Sir Johnn oldcastell knyght and lorde of Cobham is vntreuly conuicted and prysoned, and falsly reported and sclaundered among the people by his aduersaries, þat he sholde other wyse feale and speke of the sacramentis of holy chirche, and specially of the blessed sacrament of the altare, than was written in his beleue which was indented and takyn to the clergie and set vp in diuerse opyn placis in the cite of London. Knowen be it to all the worlde that he neuer varied in ony poynte there fro but this is playnly his beleue that all the sacramentes of holy chirche ben profitable and medefull to all them that shall be sauyd takyng them after the entent that god and holy chirche hath ordenyd. Ferther more he beleuith that the blessed sacrament of the altare is verely and treuly Christes body in fourme of breade.²⁵

The Tower bill refers to the 'endented' bill of belief as having been broadly distributed in London. It protests against Oldcastle's conviction on the basis of the answers in the indented and circulated bill of belief and his subsequent statements during his trial.

The odd concern of the Tower bill is to establish the limits of Oldcastle's performance: it insists, above all, that what was legally acknowledged and publicly proclaimed in his bill of belief was all Oldcastle said *and no more*. Emphasising what he refused to say as an argument for exoneration is a fascinating inversion of how the anonymous counter-bill of May 1382 had *condemned* John Aston for what he had refused to say. These contests indicate the extent to which, in the laws governing *inquisitio* as well as in the popular imagination of *inquisitio*, silence was ambiguous: under certain circumstances silence could be a legal right, but in others it could be taken as an indication of guilt, often because it signified one's refusal to defend oneself at a key moment.²⁶ The implicit claim in the Tower bill is that Oldcastle's answers in the bill of belief comprise the only evidence by which to make a judgement of his innocence or guilt, since 'he neuer varied in ony poynte there fro' during the trial. Given the ambiguity of those answers—and the temerity and offensiveness of his answers to other questions later in the trial—the Tower bill's insistence that they alone

²⁵ *Examinacion*, sig. I.4r–4v.

²⁶ See the widely disseminated 1428 procedural notes in Anne Hudson, 'The Examination of Lollards', in Anne Hudson, *Lollards and their Books* (London: Hambledon Press, 1985), pp. 125–40 (p. 138).

were the legally relevant answers to the inquisitorial questions posed to him also insinuates that Oldcastle's consistency of confession should not be read as heretical obduracy, but as a martyr's steadfastness under persecution. A fully articulated set of questions and answers is nowhere to be found in these bills, yet two bills proposed to the public a reading of Oldcastle's inquisitorial question and answer that called into question the legitimacy of the original citation, the extent of the questioning and the verdict reached by the ecclesiastical court. To outside observers aware of the inherent difficulties of judging heresy, the answers in the bill of belief would not have been clearly heretical per se, nor had they been identified as such in court. But these bills attempted to reject the guilty verdict while still accepting both the legitimacy and the legibility of some of the questions and answers that created it. Moreover, the Tower bill, like those of Aston, Hereford and Repingdon, transformed Oldcastle's answers to heresy charges into evidence for the prosecution of a wholly different trial with different judges: that of the charge of public slander lodged against Arundel and Oldcastle's 'aduersaries'. The answers recorded in these bills were not merely defensive evasions, even though the bill of belief they relied on may have in part been intended to avoid a condemnation. The answers also stood as accusations, raising questions about the competence and good faith of the ecclesiastical hierarchy and the social significance of their condemnations. If we accept that these two bills were disseminated in 1413, then, like Aston's bill, they too conscripted inquisitorial questions into a shrewd attack that attempted to refigure their significance in the crucial, ongoing trial in the public imagination.

If we take the *Examinacion's* bills as representing and attesting to texts which circulated on Oldcastle's behalf in late September and early October 1413, then Arundel's 10 October publication of the *Processus* constituted a calculated, rhetorically crafted public rebuttal of the legally simplified representation of inquisitorial answers in the bills. In their place, he provided a comprehensive counter-narrative that detailed the questions and answers that drove the legal process forward towards conviction instead of exoneration. The argument of the Tower bill was that in his examination Oldcastle never varied from his publicised and legally certified bill of belief. Arundel parried by presenting far more questions to a far wider audience in a way that not only demonstrated the validity of the legal process and highlighted the good faith of the judges, but also demonstrated that Oldcastle's initial answers were far from the whole story. In contrast to the Tower bill's assertion that 'this is playnly his beleue', the *Processus* emphasises in its rhetoric Oldcastle's refusal to answer plainly ('plene' and 'clare') to the questions Arundel asked 'benigno', 'affibili' and even 'suaviter', and so directly contests the highly selective representation of his examination in the bills.²⁷

The *Processus* thus offered an alternative reading of the significance of Oldcastle's performance of inquisitorial question and answer. How it did this becomes clear when we consider it in its legal context. When Oldcastle was

²⁷ *Fasciculi zizaniorum*, p. 440.

brought to trial on 23 September, he had already been excommunicated (on 10 September) for contumacy, not heresy: for failing to appear in response to his public citation and then fortifying himself in Cooling Castle. The combination of his contumacy with the charges of favouring, receiving, protecting and defending heretics, and of holding heretical beliefs then changed his formal *fama*, his legal status.²⁸ Knowingly failing to respond to public citation transformed one's informal *fama*—one's reputation amongst trustworthy citizens that had not yet been tested or established in court—into one's formal *fama*, which was admissible as evidence in light of the fact that non-appearance suggested that one's presumed guilt was justified. Oldcastle was at that point 'vehemently suspect' of heresy, and were he knowingly to continue in his excommunication for contumacy for more than a year, 'vehement suspicion' would turn into 'violent presumption' of heresy and he would then be condemned a heretic on that basis.²⁹ At his hearing on 23 September, he was reminded of his current standing and asked whether he would like to be absolved.³⁰ This question was not about Oldcastle's beliefs per se, but about his legal status. Arundel was not asking Oldcastle to confess himself a heretic, but to admit, repent and ask for absolution from the *contumacy* for which he had incurred excommunication. Instead, Oldcastle ignored the offer and presented to the court the bill of belief, which although indented as a form of evidence addressed neither his contumacy nor the other accusations which the prelates had earlier presented to the king in Oldcastle's presence. By doing so, Oldcastle attempted simultaneously to exploit and short-circuit the legal process, and thereby to redefine what the first session of his trial was actually about: his beliefs.

But Oldcastle dangerously miscalculated his legal situation. Technically, his trial was *not yet* about his beliefs, but about his contumacious actions. It appears that he thought himself to be in a discussion in which he would maintain an acceptable answer about his beliefs without compromising his reformist tendencies, whereas from the court's perspective he was in a conversation about his legal status—excommunicated for deliberate and rather pugnacious non-appearance—and whether or not he wished to change it. This disjunction between the immediate aims of the two parties is registered by the *Processus* and immediately interpreted as a tell-tale sign of heretical obstinacy:

Ipse tamen dominus Johannes ad hujusmodi oblationem non advertens, petere absolutionem omnino distulit; sicque ad alia divertens dixit, quod libenter recitaret coram nobis, et dictis confratribus nostris, fidem suam quam tenet, et affirmat.

²⁸ For a discussion of fame (*fama*) in inquisitions, see Forrest, *Detection of Heresy*, pp. 197–206.

²⁹ *Fasciculi zizaniorum*, p. 437. According to the 1428 procedural notes, in cases of non-appearance, one should proceed with witnesses, and 'Si vero non habeat probaciones vnde posset condemnare hereticum abcentem, in penam contumacie reputet eum, vehementer suspectum, et excommunicet eum. Et si steterit per annum in excommunicatione animo indurato, potest vt hereticus condemnari, quia vehemens suspicio propter contumaciam suam transit in violentam' (Hudson, 'Examination of Lollards', p. 137).

³⁰ *Fasciculi zizaniorum*, p. 438.

[Sir John, turning not toward this offer to ask for absolution, delayed entirely; but turning away towards other things, he said that he would willingly recite before us, and our aforementioned brothers, his faith which he held and affirmed.]³¹

Here, the *Processus* conflates Oldcastle's attempt to bypass the issue of contumacy with a rejection of the turn towards the unity of the church ('advertens') scripted in abjurations; instead it portrays Oldcastle as turning away ('divertens') to an alternate confession of what he holds and affirms.³² The *Processus's* play on *vertens* and on the language of abjuration in the phrase 'tenet et affirmat' draws attention to the way Oldcastle's answers could be read as signifying a deliberate choice to turn away from the church. Thus, Oldcastle appears to veer dangerously close to performing the truth of one of the charges against him: that he denies the legitimacy and authority of the penitential system and the ecclesiastical court's role therein. The *Processus* depicts Oldcastle's unrepentant contumacy after repeated offers of absolution as a confirmation that he rejects the prelates' authority to confess and absolve him within inquisition. When Oldcastle was prompted by Arundel to ask the question of a confessed penitent, he insisted on legally registering his answers to an appreciably different set of questions about the eucharist, penance, image worship and pilgrimage. He gave a set of answers when he was supposed to ask a single question: 'Will you absolve me of contumacy for failing to appear in response to a citation?' In doing so, he neglected the necessary performance of his acceptance of some of the legal fictions of the ecclesiastical courts that might have enabled him separately to negotiate doctrinal answers acceptable to both sides. Consequently, the *Processus* was able to represent Oldcastle's offer of his bill of belief to the entire province of Canterbury as a heretical performance of inquisitorial question and answer before a word of it was even copied.

Ultimately, Oldcastle could not substitute an account of his beliefs for an account of his deeds because the very accounting of his beliefs could be read as a heretical act. The bills argued that what Oldcastle did not say indicates his innocence; the *Processus* countered that this moment signalled Oldcastle's turn away from the unity of the church and portrayed his apparently orthodox answers as perverse evasions that obscured his real beliefs. After the bill of belief was indented, Arundel acknowledged that it contained 'plura bona [. . .] et satis catholica', but that it had not entirely answered the questions about his beliefs.³³ Although the ensuing dialogue about specific charges regarding the eucharist and penance do probe Oldcastle's opinions, it was primarily about his performance of inquisitorial question and answer. Would he answer more fully and expressly and thereby signify his faith in the penitential system? Would he thereby acknowl-

³¹ *Fasciculi zizaniorum*, p. 438.

³² Compare the 'turne to' midway in John Yonge's abjuration in the mid-fifteenth century: 'I willing with a pure hert and free wyl to fursake the forsaied errors and herresyes and all other, and to turne to the unyte of Holy Chirche', in *The Register of Thomas Bekynton, Bishop of Bath and Wells, 1443-1465*, ed. by H. C. Maxwell-Lyte and M. C. B. Dawes, 2 vols, Somerset Record Society 49-50 (ln. p.: n. pub.), 1934-1935), 1, 126, my emphasis.

³³ *Fasciculi zizaniorum*, p. 440.

edge or deny wholly the significance of the legal fiction of formal *fama* that inquisitorial questions had already created for him? This is not to say that his beliefs were incidental to the process, but to note that since the charges against him concerned actions as well as words, the judgement of his heresy was linked to the manner or illocutionary force of his answers as much as to the content of what he said. As Arundel openly declared: ‘Caveatis, domine Johannes, quia, si ad haec vobis objecta clare non respondeatis [. . .], poterimus vos pronuntiare et declarare haeticum’ [‘Beware, Lord John, because if you do not respond clearly to these things which have been charged against you [. . .], I will be able to proclaim and declare you a heretic’].³⁴ The *Processus* and the bills both represented inquisitorial questions as part of a carefully structured performance of asking and answering with the accused that signifies guilt or innocence. While belief was still crucial, for Oldcastle his performance of question and answer was more important because his manner of answering had the legal status of actions.

Let us now move beyond the documents produced by Oldcastle and the church hierarchy in 1413–1414 and into fifteenth-century Middle English chronicles and their portrayals of Oldcastle. While the chronicles only rarely represent question and answer, they frequently allude to Oldcastle’s examination, the integrity of the inquisitorial process, or the legitimacy of the verdict. In the first Middle English printed chronicle, Caxton’s *Chronicles of England* (c. 1480), whose source for this episode can be found in a mid-fifteenth-century manuscript, the chronicler notes that the judgement for heresy was separate from the judgement of treason, even though the punishments for the crimes had been combined: ‘[Oldcastle] was conuicte of the clergie for his heresie and dampned before the Iustices vn to the dethe for treson.’³⁵ This observation betrays an awareness of the separate spheres of competence for such judgements, especially at a time when ecclesial and secular jurisdictions were overlapping in ways prompted by the 1414 Oldcastle Revolt.³⁶ Along similar lines, the chronicler of London, British Library, MS Harley 53 focuses almost exclusively on the quality of Oldcastle’s examiners: ‘he was examynt at þe ffrere prechours, before al the clergy of þe wurthiest of religion, and bisshoppes, and doctours of dyvinite; and þer were temperal lordes to here hys opynions’.³⁷ The *Great Chronicle of London* ignores the trial of Oldcastle and only notes the universality of Oldcastle’s condemnation—‘dampned for a lollard and an heredyeke by all holy chirche’.³⁸ In subtle ways, chronicles asserted the integrity of the process against Oldcastle and of his unified inquisitors, who were qualified by their own virtue, their lawful authority and their learning. The implication was that proper judges and due process together enable a legitimate

³⁴ Ibid.

³⁵ STC 9991, sig. U.2r. A similar manuscript version of this episode is found in *The Brut or The Chronicles of England*, ed. by Friedrich W. D. Brie, 2 vols, EETS os 131, 136 (London: Kegan Paul, Trench, Trübner, 1906–1908), II, 373–74, 386.

³⁶ Forrest, *Detection of Heresy*, pp. 43–47.

³⁷ *Brut*, ed. by Brie, p. 551, my emphasis.

³⁸ *The Great Chronicle of London*, ed. by A. H. Thomas and I. D. Thornley (London: George W. Jones, 1938), p. 91, my emphasis. This section of the chronicle was written in the mid-fifteenth-century hand which records events up to the year 1439.

verdict, something the chronicles, like the *Processus*, were concerned to substantiate. Capgrave's *Abbreviacion of Cronicles*, based on Thomas Walsingham's selections from the *Processus*, is the only relatively full rendition of the *Processus* in Middle English that I know to have survived. There, as in the *Processus*, Oldcastle is revealed to have been convicted not only because of what he said to his lawful judges, but also because of *how* he performed inquisitorial question and answer. As Peter Lucas has pointed out, Capgrave at times augments his source to bring out the obstinacy and blasphemy of Oldcastle's replies.³⁹ In a similar vein, Caxton's *Chronicles* notes that after the final 1417 recapture, Oldcastle was 'examined of certeyne pointes that were put vpon him, and he said not nay and so he was conuicte of the clergie for his heresie'.⁴⁰ Here, Oldcastle's reticence constitutes a disruption of an otherwise legitimate process. Caxton intimates that a refusal to deny the accusations was procedurally an acknowledgement of guilt: Oldcastle 'said not nay' in a script where saying 'nay' was a necessary part of performing innocence.

Thomas Hoccleve's poetry offered a far more extended reading of what Oldcastle's inquisitorial question and answer signified to loyal orthodox observers. In 'To Sir John Oldcastle', written after Oldcastle's condemnation and his escape from the Tower, Hoccleve takes up the theme, common to Latin chronicles, that Oldcastle had been convicted by his own assertions, such as 'Thow seist "confessioun auriculer / Ther needith noon" / but it is the contrarie'.⁴¹ The first half of the poem, which addresses Oldcastle directly, aims to persuade the escaped heretic to submit to the penitential authority of the church hierarchy.⁴² For Hoccleve, inquisition had fashioned Oldcastle into an object of exhortation to penance, and while the figure of Oldcastle is presented in the poem as argumentative, Hoccleve does not directly dispute with him. Instead of arguing with his fictional Oldcastle over the specific issues detailed in the *Processus*, Hoccleve defers point-by-point debate to the second half of the poem, where the address shifts away from Oldcastle to his lollard seducers. Whereas Hoccleve only challenges Oldcastle on two of his heresies—penance and, briefly, the eucharist—in the latter half of the poem he voices and then refutes several lollard positions, including the relationship between temporal and spiritual power, papal and priestly authority, church possessions, common

³⁹ Capgrave, *Abbreviacion*, p. 240, and see also notes 2–3 and 9 on p. 311.

⁴⁰ *STC* 9991, sig. U.2r.

⁴¹ Thomas Hoccleve, *Hoccleve's Works: The Minor Poems*, ed. by Frederick J. Furnivall and I. Gollancz, 2 vols, EETS es 61, 73 (London: Kegan Paul, 1892–1897), I, 8–24 (lines 81–82). All further quotations will be to this edition and given by line number in the text. Latin chronicles typically represent the conviction as the consequence of Oldcastle's intractable, volunteered *assertions*, instead of as *answers* to inquisitorial questions; see *Gesta Henrici Quinti: The Deeds of Henry the Fifth*, ed. and trans. by Frank Taylor and John S. Roskell (Oxford: Clarendon Press, 1975), pp. 2–5; Thomas Elmham, 'Elmhami Liber Metricus de Henrico Quinto', in *Memorials of Henry the Fifth, King of England*, ed. by Charles Augustus Cole, RS 11 (London: Longman, 1858), pp. 77–166 (pp. 157, 159); John Capgrave, *The Book of the Illustrious Henries*, ed. and trans. by Francis Charles Hingeston (London: Longman, Brown, Green, Longmans & Roberts, 1858), pp. 141, 127.

⁴² For example, 'pouurge thee of thy trespas!' (line 32) and 'To god & holy chirche thow thee bende! / Caste out thy venym thurgh confessioun!' (lines 79–80); the second half of the poem addressed to Oldcastle's lollard seducers begins in line 273.

ownership and so forth.⁴³ Hoccleve attributes these positions to lollards more generally, even though Oldcastle had, according to the *Processus*, criticised in his trial the Constantinian donation, refused to acknowledge a need to confess to a priest, disdained customary worship of the cross, claimed that obedience was only owed to the pope and the prelates insofar as their lives reflected those of Christ and Peter, and affirmed that the true successor of Peter was he who lived the best life with the purest character.⁴⁴ Hoccleve separates the figure of Oldcastle from the imagined lollards and moves from penitential exhortation of the former in the first half of the poem to argumentative sparring with the latter in the second half. In doing so, Hoccleve gives the two entirely different relationships to doctrinal question and answer. After Oldcastle's 1413 conviction as a heretic had established his new legal identity, inquisition and its loyal orthodox observers had only a single question to ask him: would he 'to [Christ's] feith torne agayn' (490), turn back to the church, thus acknowledging her penitential and legal authority? Like the *Processus*, the script Hoccleve writes for a man lawfully convicted is one of repentance, not disputation; but dissenters still at large have a different legal status and therefore receive from Hoccleve the different remedy of counter-arguments and stinging rhetorical questions.

Oldcastle, however, disagreed: debate was still possible. After his recapture in 1417, Oldcastle attempted to widen the significance of inquisitorial question and answer by portraying it as a disputation with the Antichrist that would necessarily result in martyrdom. Oldcastle is reported to have invoked the figure of Elijah just prior to his execution. According to medieval apocalyptic tradition, Elijah along with Enoch debated the Antichrist, thereby exposing his deception to the kings of the earth and converting the apostate world back to Christ.⁴⁵ The result initially was their martyrdom by the Antichrist, but, ultimately, resurrection. We see Oldcastle take up this motif in John Capgrave's account of his final days:

Finxerat se Heliam ad conversionem totius orbis missum, et prophetia sua impleta est, ut dicunt, quidam, dum in curru sedens ad ignem ductus est, quoniam raptus est unus de curru ad Paradisum, et alter ad infernum.

[He had pretended that he was Elias, sent for the conversion of the whole world; and his prophecy was fulfilled, as some say, while he was being taken to the fire sitting in the cart, since the one was borne off in a chariot to heaven, the other to hell.]⁴⁶

⁴³ Hoccleve, 'To Sir John Oldcastle', lines 325–27, 345–46, 393, 425, 452.

⁴⁴ *Fasciculi zizaniorum*, pp. 444–45.

⁴⁵ For examples of this tradition in late-medieval England, see Richard Kenneth Emmerson's "'Nowe ys common this daye": Enoch and Elias, Antichrist, and the Structure of the Chester Cycle', in *The Chester Mystery Cycle: A Casebook*, ed. by Kevin J. Harty (New York: Garland, 1993), pp. 171–98 as well as his *Antichrist in the Middle Ages: A Study of Medieval Apocalypticism, Art, and Literature* (Seattle: University of Washington Press, 1981).

⁴⁶ *Liber de Illustribus Henricis*, ed. by Francis Charles Hingeston, RS 7 (London: Longman, Brown, Green, Longmans & Roberts, 1858), p. 122. Translated in Capgrave, *Illustrious Henries*, pp. 141–42. Capgrave's source was Henry V's chaplain Thomas Elmham, who twice recounts Oldcastle's claim to be Elijah in the characteristically obscure verse of his 'Liber Metricus': 'Fingitur Helias Oldcastel' (line 1106) and, dripping with irony, 'nam curru fictus Helyas / Ad furcas scandens, turbine torret ibi' (lines 1252–53).

But Oldcastle's claim to be Elijah and his later prophecy that he would rise from the dead was not a crazed assertion by a desperate man, nor need it have been a slur invented by vindictive Lancastrian partisans. Rather, Oldcastle was tapping into Wycliffite speculation about the impending arrival of Elijah and the apocalypse in order to reimagine his 1413 trial examination and imminent death in the light of a familiar narrative.⁴⁷ The role of Elijah was remarkably apt for a condemned man who had asserted that the pope was the Antichrist and who was disputing his condemnation as a heretic.⁴⁸ In the only extant Middle English play from this tradition, the Chester *Coming of Antichrist*, Elijah confronts the Antichrist in a context that mixes trial examination and disputation about which of them is the true heretic and which the true imitator of Christ.⁴⁹ Like the Chester play's Elijah, Oldcastle saw himself in a public conflict with the Antichrist, who was leading people to damnation through false teaching and self-interested deception. Along with Elijah, he found himself cursed on the recommendation of learned doctors in a context that conflated trial and public debate. By 1417, Oldcastle could have seen himself as having been sent to convert those who had been led astray, his inquisition standing as a kind of disputation, his punishment as a martyrdom, his hope for resurrection as a hope for vindication of his apocalyptic role.⁵⁰ Whatever he may have believed, simply by superimposing himself onto this apocalyptic narrative, he transformed his doctrinal project—converting the whole world to what the Antichrist says is 'heresy'—and his death as a 'heretic' into signs not of his own heresy, but of the heresy of his persecutors.

If the judge is the Antichrist, who falsely claims ultimate spiritual authority, lawful process becomes a moot point; the falseness of the Antichrist's claim undermines the relevance of the ecclesiastical law supporting it. Furthermore, a heresy trial under such a judge is no trial at all, but is—as it is in the Chester *Antichrist*—a debate before befuddled onlookers unsure of whom to trust. To the most orthodox observers, however, the canonically lawful inquisitorial process against Oldcastle delivered neither an open-ended debate nor an infallible conviction, but an unarguable legal and social status that could only be altered by the right answer to the sole remaining question: would Oldcastle 'to holy chirche go / & ther fecche / The holsum oyle of absolucion', as Hoccleve

⁴⁷ William Taylor's 1406 sermon recalled that Christ prophesied that "'Helie shal come and restore alle þingis," declaring þe gilis of antecrist and his ypocrisie, and as Abraham, Moyses and Crist shal renewe þe lawe of God in þe puple and bringe þe puple to þe knowing of God. But wheþir þis shal be Helye in persoon, as it semeþ to manye men, or ellis wiþ Ion Helye in condicioun, or wheþer he be now comun longiþ not to me for to seie, for I kan not' (*Two Wycliffite Texts*, ed. by Hudson, p. 10, my emphasis). Further lollard apocalyptic writings can be found in Curtis V. Bostick, *The Antichrist and the Lollards: Apocalypticism in Late Medieval and Reformation England* (Leiden: Brill, 1998).

⁴⁸ *Fasciculi zizaniorum*, p. 444.

⁴⁹ *The Chester Mystery Cycle*, ed. by R. M. Lumiansky and David Mills, 2 vols, EETS ss 3, 9 (London: Oxford University Press, 1974–1986), 1, 408–38. For the late fifteenth-century manuscript of the Antichrist play with the same motifs, see the Peniarth *Antichrist* in the same volume, pp. 491–516.

⁵⁰ Oldcastle's prophecy that he would rise from the dead is recorded in Elmham, 'Liber Metricus', lines 1270–71, and in Walsingham, *St Albans Chronicle*, p. 117.

puts it⁵¹ Hoccleve here precisely echoes Arundel's depiction of Oldcastle's spiritually binding legal status in an abjuration prepared for Oldcastle during his forty-day reprieve in the Tower after his condemnation in 1413.⁵² Rather than have the penitent forswear specific errors as we see in other abjurations, this abjuration scripts for Oldcastle a public, detailed confession of the spiritual authority of the ecclesiastical hierarchy that would counteract his public denunciation of that hierarchy as in league with the Antichrist.⁵³ In this abjuration, Oldcastle was to have confessed that 'quodque [the pope] ratione sui status, etsi peccator fuerit et praescitus, habet licentiam, potestatem regendi, gubernandi, ligandi, atque solvendi omnes alios christianos'.⁵⁴ By virtue of his rightly held status alone, without respect to his virtue of life or his eternal state, the pope has the power to make laws and absolve all Christian people. Such a confession would have reversed what the *Processus* reports Oldcastle asserted during his trial, namely that obedience was only owed to virtuous prelates, a claim that voiced a lollard scepticism about legal fictions loosely adapted from Wycliffite ecclesiology and theology of dominion.⁵⁵ The abjuration prepared for Oldcastle while he stewed in the Tower—distantly echoing Wyclif's ecclesiology in its use of *praescitus* to identify the damned—counters scepticism about ecclesiastical

⁵¹ Hoccleve, 'To Sir John Oldcastle', lines 109–11.

⁵² The abjuration is found only in *Fasciculi zizaniorum*, pp. 414–16. Although John Foxe believed the abjuration to have been counterfeited in order to undermine Oldcastle's credibility (*Actes and Monuments*, 2 vols (London: John Day, 1583), 1, 564), *Gesta Henrici Quinti* claimed that Oldcastle had been released from his chains when he promised (prior to his escape) to recant. I agree with W. T. Waugh that, although never signed by Oldcastle, the abjuration was not a forgery but a draft prepared for his recantation ('Sir John Oldcastle', *English Historical Review*, 20 (1905), 434–56 (pp. 455–56).

⁵³ For abjurations that enumerate heretical beliefs to foreswear, see *Heresy Trials in the Diocese of Norwich, 1428–31*, ed. by Norman P. Tanner, Camden Society Fourth Series 20 (London: Royal Historical Society, 1977).

⁵⁴ *Fasciculi zizaniorum*, p. 415. 'Praescitus' here has the force of 'foreknown to damnation', not 'predestined to damnation'. See Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (Oxford: Clarendon Press, 1988), pp. 314–15, as well as more recent explanation in articles by Takahashi Shogimen ('Wyclif's Ecclesiology and Political Thought') and Ian Christopher Levy ('Wyclif and the Christian Life') in *A Companion to John Wyclif*, ed. by Ian Christopher Levy (Leiden: Brill, 2006), pp. 215–25 and 355–59 respectively.

⁵⁵ The extent of the lollard rejection of legal fictions varied, and while lollards do owe a debt to Wycliffite thought on this point, they do not precisely echo Wyclif's views. Wyclif himself made sharp distinctions between divine and human law as well as secular and canon law, prompted by his theory that true human justice is grounded first in the justice of God. Acknowledging both secular and canon law as man-made, Wyclif left room for a binding force given to secular judgements with regard to property, but regarded canon law as 'ultimately superfluous', according to Stephen Lahey, *Philosophy and Politics in the Thought of John Wyclif* (Cambridge: Cambridge University Press, 2003), p. 111; see also pp. 66, 126–27, 158–60. Wyclif's sceptical stance towards canon law flows from his convictions that it over-reached its jurisdiction by ruling over material concerns and that it often masqueraded as having more binding force than it actually did. As Lahey puts it, 'Our invented laws regulating the life of church members tend to emulate civil, not evangelical law, yet perniciously assume the dressing of the latter' (p. 158). Furthermore, canon law relied on the (to Wyclif, spurious) idea that priests had powers to enforce laws that secular powers did not. For lollard adoption and transformation of these threads of Wycliffite thought, see also David Lyle Jeffrey, 'Victimization and Legal Abuse: The Wycliffite Retelling of the Story of Susannah', in *Retelling Tales: Essays in Honour of Russell Peck*, ed. by Thomas Hahn and Alan Lupack (Cambridge: Brewer, 1997), pp. 161–78.

legal fictions by insisting that even if the pope were foreknown by God to be damned because of his freely chosen sins, nevertheless he would have binding authority over all Christians. Human sin would not abrogate the necessity of obedience to the legal fictions generated by the ecclesiastical courts. According to Arundel and his *confrères*, then, the problem of heresy's legibility was erased by the conclusion of a legal process that took place within a theological framework that required obedience to Christ's legitimately appointed earthly representatives, even if they were damned.

Readings of inquisitorial questions like Hoccleve's and the chronicles' took seriously the legal fictions and resulting social realities that the questions created. Legal status impinged upon spiritual reality. But it was not that the convicted heretic was certain to be damned and his judge was infallible, but, rather, that the convict's orthodoxy could only be reconstituted with a performance of inquisitorial question and answer in which he asked absolution from the potent legal fiction that purported to define his social identity. On the other hand, for those lollards who insisted that only the virtuous man predestined to bliss could make binding judgements of spiritual truth, one's legal status was irrelevant to spiritual reality. When faced with inquisitorial questions, these men and women made a show of going along with the process, often choosing to make false abjurations and to take the risk of being detected again and convicted as relapsed heretics. They lied without compunction because the question that mattered most to them was not whether the process was lawful, but whether the judge was a true imitator of Christ (and therefore authoritative insofar as he articulated judgements in line with those of Christ) or a member of the Antichrist to whom one owed neither the truth of one's soul nor one's obedience. This question, like the question of Oldcastle's heresy, was also answered by the performance of inquisitorial question and answer, but from some lollards' perspective, it was answered by the performance of the judge.

However free he might have been to publicly identify Arundel's convocation as members of the Antichrist, unlike some lollards Oldcastle chose steadfast testimony over a false show of compliance to an ecclesiastical legal process and its fictions, and as a result this visible and influential man sparked a public exchange not only about his own beliefs and character, but about those of his accusers and judges. There is little to indicate that the disputed readings that such bills offered were effective in overturning or evading convictions. With respect to outcomes and verdicts, the bills must be accounted failures. But that was only one kind of work that they set out to do. Just as conviction for heresy was not the only goal of bishops, escape was not the only goal that the accused and the watching public could have in mind. How the public ought to imagine the inquisitional processes to which they had only partial access was far more important than convicting a single heretic and promulgating that verdict. The actual questions and answers given mattered, for the contest was about more than convictions; the contest over the trials of these men in this early period of widespread inquisition into heresy in England was also about how the activity of inquisition into heresy, shared by churchmen and laity alike, was to be understood, regarded and implemented.

Chapter 5

'Vttirli Onknowe'? Modes of Inquiry and the Dynamics of Interiority in Vernacular Literature

MARY C. FLANNERY AND KATIE L. WALTER

In the prologue to his tale, Chaucer's Pardoner gleefully outlines his methods of conning money out of gullible, God-fearing churchgoers with his preaching. From his public stage in the pulpit, the Pardoner employs various methods to persuade his audience to repent—and to part with their money; as he confesses to his fellow pilgrims, 'myn entente is nat but for to wynne, / And nothyng for correccioun of synne' (VI.403–04).¹ Here and elsewhere in the Pardoner's prologue, Chaucer places great emphasis on this concept of 'entente'; indeed, intention seems to be the criterion by which Chaucer asks that we judge the Pardoner.² Yet the Pardoner's ability to gull his audience points precisely to the difficulty of discerning intent and of knowing certainly the interior state of an individual, a difficulty addressed at least in part by the sacrament of confession. According to the now-standard narrative, confession after the Fourth Lateran Council (1215) becomes a tool for fostering technologies for 'making truth inside oneself' and for generating interiorised subjectivity.³ In scholarship on medieval heresy, inquisition is likewise understood to have 'the discovery of truth' about

¹ Geoffrey Chaucer, *The Riverside Chaucer*, ed. by Larry D. Benson, 3rd edn (Oxford: Oxford University Press, 1987). All references to Chaucer's works will be taken from this edition, and cited above by line number.

² This argument has been advanced by Elizabeth Fowler, *Literary Character: The Human Figure in Early English Writing* (Ithaca, NY: Cornell University Press, 2003) (see, for example, pp. 18–19). On the Pardoner, see also Alastair Minnis, *Fallible Authors: Chaucer's Pardoner and Wife of Bath* (Philadelphia: University of Pennsylvania Press, 2008) (especially chapter 2).

³ Chloë Taylor, *The Culture of Confession from Augustine to Foucault: A Genealogy of the 'Confessing Animal'* (New York: Routledge, 2009), p. 9. Here, Michel Foucault is, of course, a key figure; see for example, *The History of Sexuality: Vol. 1: An Introduction*, trans. by Robert Hurley (London: Penguin, 1978), pp. 58–63. For an overview of the history of confession and the importance of Foucault in interpretations of it, see Taylor, *Culture of Confession*. For studies of confession in medieval English literature, see Mary Flowers Braswell, *The Medieval Sinner: Characterization and Confession in the Literature of the English Middle Ages* (London: Associated University Press, 1983); Jeremy Tambling, *Confession: Sexuality, Sin, the Subject* (Manchester: Manchester University Press, 1990); Jerry Root, *'Space to Speke': The Confessional Subject in Medieval Literature* (New York: Peter Lang, 1997).

an individual as its goal and the hidden interior as its terrain.⁴ However, for the most part, studies of medieval interiority and subjectivity have made reference to developments in confessional practice while largely overlooking other modes of inquiry in canon law, such as inquisition and examination in the ecclesiastical courts.⁵ Yet confession and inquisition were to some extent counterparts: the ways of imagining and knowing the self generated in confession were informed and shaped by those generated in the church courts; that is, more precisely, by the interplay of private and public forms of knowledge.

This essay argues that we must admit the concerns of the external forum to our understanding of the role played by the internal forum in the late-medieval engagement with notions of interiority and of the production of knowledge, especially about the self. In order to do so, we must view medieval *inquisitio* in its broader context as a form of inquiry available to the ecclesiastical courts and implicated in and enmeshed with other processes and mechanisms such as confession, *publica fama* and excommunication. In the pastoral tradition, where the goal of establishing factual truth is subordinate to the demands of casuistry and practical wisdom, texts like *Dives and Pauper* (c. 1405) and *Jacob's Well* (c. 1450) exemplify the ways in which the interior or hidden 'knowledge' and 'truth' about an individual were necessarily negotiated in social and information networks and between public and private spheres.⁶ They also demonstrate the ways in which imagined inquisition provides an alternative model for the self-scrutiny and subject-formation traditionally understood to have been produced and fostered in medieval confessional practices. At the same time, a contemporaneous example from the poetic tradition, John Lydgate's *Fall of Princes* (c. 1431–1438/9), uses the judicial scene of inquisition to model the very workings of the inner processes of judgement and ethical reasoning, thereby helping readers both to know themselves better and to make better judgements.⁷ As these vernacular texts demonstrate, both inquisition and confession contend with forms of knowledge that are highly contingent and often unreliable, and which do not always resemble what we might label as 'truth'. As a result, interiority in Middle English contexts is shaped not only in private dialogues such as those between priest and confessant, but also in highly public networks of knowledge and information like those drawn on by ecclesiastical courts.

⁴ James B. Given, *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc* (Ithaca, NY: Cornell University Press, 1997), p. 213. See also John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001), for example, p. 95.

⁵ Arnold's work, e.g. *Inquisition and Power*, is an obvious exception, but in non-heresy scholarship, though references to inquisition are sometimes made (see for example, Tambling, *Confession*, p. 39), the relationship between confession and inquisition is rarely given sustained attention, particularly in discussions of medieval English literature.

⁶ *Dives and Pauper*, ed. by Priscilla Heath Barnum, 2 vols in 3 parts, EETS os 275, 280, 323 (London: Oxford University Press, 1976–2004). All citations from this text are taken from this edition and cited above by volume, part, and page number. *Jacob's Well: An English Treatise on the Cleansing of Man's Conscience*, ed. by Arthur Brandeis, EETS os 115 (London: Kegan Paul, Trench, Trübner, 1900).

⁷ John Lydgate, *Lydgate's Fall of Princes*, ed. by Henry Bergen, 4 vols, EETS es 121–24 (London: Oxford University Press, 1924–1927). All citations from this text are taken from this edition and cited above by line number.

In its foregrounding of the notion of 'entente', the Pardoner's Prologue points to key epistemological problems to which canon law was highly attuned: the difficulty of knowing that which lies within a person, and the tension between public and private knowledge, and between *publica fama* and private interiority. Aware of the potentially far-reaching consequences of its verdicts for an individual's sense of self and status in a community, canon law was thus 'predicated upon indeterminacy and careful interpretation'.⁸ Changes in canon law in the twelfth and thirteenth centuries can be seen in part as responses to the indeterminacy of interior knowledge, with the concept of intention and the practice of casuistry becoming increasingly important.⁹ Perhaps the most significant twelfth-century change was the separation of canon law into two spheres: the external or judicial forum and the internal or penitential forum, both of which develop specialised techniques for tackling the problem of uncertainty and for utilising the differing kinds of knowledge or truth produced in their systems.¹⁰

The judicial forum, localised in the ecclesiastical courts, was concerned with 'public and manifest transgressions' of church law.¹¹ The relative openness of the sin or crime makes possible the *accusatio*, *denunciatio*, or (most likely) *inquisitio*—whether general (through episcopal visitation) or specific—required to initiate procedures in the external forum. The offender was thus made to appear in court and undergo purgation or examination, and if found guilty, make the appropriate restitution imposed by the ecclesiastical judge. The penitential forum, localised internally in the court of conscience, dealt instead with secret crimes or sins and was judged principally by a priest (or confessor), who would impose the penance he deemed fit for the severity and the circumstances of the person's transgression.¹² A crucial distinction between the external and internal fora therefore ostensibly rests on the role played by the community in producing and corroborating knowledge. Confession does not admit external evidence and seeks to elicit that which is not common knowledge but known only to the individual concerned.¹³ In contrast, whereas *accusatio* and *denunciatio* require the sin to be manifest in

⁸ Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Oxford University Press, 2005), p. 15.

⁹ On intention, see for example, Forrest, *Detection of Heresy*, p. 16; Arnold, *Inquisition and Power*, p. 95; Fowler, *Literary Character*, pp. 48–51. On casuistry, see Marjorie Curry Woods and Rita Copeland, 'Classroom and Confession', in *The Cambridge History of Medieval English Literature*, ed. by David Wallace (Cambridge: Cambridge University Press, 1999), pp. 376–406, and J. Allan Mitchell, *Ethics and Exemplary Narrative in Chaucer and Gower* (Cambridge: Brewer, 2004), pp. 22–35.

¹⁰ On this split, see Joseph Goering, 'The Internal Forum and the Literature of Penance and Confession', in *The History of Medieval Canon Law in the Classical Period, 1140–1234*, ed. by Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University of America Press, 2008), pp. 379–428 (p. 385). Goering notes the medieval terms for internal forum are 'forum poenitentiae', 'poenitentiale' or 'forum conscientiae' (p. 379). See also Winfried Trusen, 'Zur Bedeutung des geistlichen Forum internum und externum für die spätmittelalterliche Gesellschaft', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, 76 (1990), 254–85.

¹¹ Goering, 'Internal Forum', p. 380.

¹² *Ibid.* Of the jurisdiction of the internal forum, Goering adds to secret sin 'manifest sins against God, neighbour, and self'.

¹³ *Ibid.*, pp. 394–95.

more limited ways (the crime is known by the victim or has been witnessed), *inquisitio* relies heavily on a community's shared knowledge of an individual's transgression. Thus, as with heresy inquisition—which was collaborative, acted out by ecclesiastical and secular authorities, parish priests, laymen and women— inquiry in the external forum relied on communal knowledge and operated through networks of information.¹⁴ As Henry Ansgar Kelly's essay (Chapter 1) points out, the *publica fama* of an individual, that is, the common belief that a specific person has committed a certain crime, is crucial in this context, being both necessary to initiate inquisition and what is at stake in the judgements of the ecclesiastical court (i.e. the loss of good fame or its restoration).

In contrast with the judicial forum, the role of the priest in the internal forum is not to make accusations or to gather evidence from witnesses, but rather to guide the penitent through self-examination using questions designed to draw out what is only known to the individual, to bring about a full and thorough confession of sin, in order that he or she may be absolved, reconciled to God and made fit to receive the sacrament of the eucharist.¹⁵ The knowledge that is generated in this context is 'privy', known by the priest not as a man but as God's representative, and regulated by the seal placed on confession. Yet, as this essay will show, confessional knowledge, like that of inquisition, was not always kept isolated from common knowledge, nor was it immune from the concerns of *publica fama*: the priest must seek to protect the good name of the penitent, even when under pressure to disclose the knowledge gained in confession, and must ensure that the penances he imposes do not expose the penitent's sins. Many stories concerning confession in the pastoral tradition exemplify the exigency of preserving a contrite penitent's good fame by staging miraculous interventions when private knowledge threatens to become public: the parchment list of sins is found erased; accusers are struck dumb or are no longer able to recognise or identify those they seek to accuse.¹⁶ The external forum, moreover, comes to provide a model for the court of conscience, in which 'making truth inside oneself' is imagined in communal, collaborative terms in both *pastoralia* and secular works.

The case for viewing the internal and external fora as closely intertwined is further borne out in their shared goals of correction, reconciliation and restitu-

¹⁴ An understanding of this collaborative process in an English context has been thoroughly advanced by Forrest, *Detection of Heresy* (see, for example, p. 6).

¹⁵ For example, one confessional manual, John Myrc's (Mirk), *Instructions for Parish Priests*, ed. by Edward Peacock, EETS os 31 (London: Kegan Paul, Trench, Trübner, 1868; rev. 1902), begins the 'inquisicio in confessione' (p. 25) with testing on the Pater noster, the ave and the creed. Examination in the Ten Commandments follows, with questions such as 'Hast þou worschypet any þynge / More þen god, oure heuene kynge?' (p. 27). A similar questioning style is employed for the 'modo inquirendi de .vij. peccatis mortalibus', and the 'modo inquirendi de peccatis venialibus' (pp. 30, 40).

¹⁶ See, for example, Mirk, *Instructions*, p. 47. For the parchment list miraculously erased, see Jenny Lee's contribution in this volume (Chapter 6), p. 94; the accusers of a Christian clerk, caught in the act of lechery with a Jew's daughter, are struck dumb after he promises to confess and do penance in a prayer 'in his herte' to God in an exemplum in *Jacob's Well*, ed. by Brandeis, pp. 177–78. The final example, also from *Jacob's Well*, is discussed below.

tion; so too might the crimes which fall under their jurisdiction be shared, or, through changing circumstances, move from the private into the public forum or vice versa.¹⁷ The knowledge that canon law seeks to discover about an individual is therefore contingent, transformed or newly inflected by its situation in or movement through these public and private spheres. This traversal of knowledge between the internal and external fora is vividly figured in the fifteenth-century *Dives and Pauper*, a prose exposition of the Ten Commandments thought to have been written by a ‘university-trained Franciscan’ between 1405 and 1410.¹⁸ Whilst vernacular treatments of the Ten Commandments—notably a common organisational scheme for the priest’s guidance of the penitent through his or her ‘interior’ in confession—ordinarily entail some exposition of canon law, the extent to which *Dives and Pauper* does so is by no means typical, thus it provides particularly rich ground for exploring the forms of inquiry which operate in both the internal and external realms.¹⁹

Structured as a dialogue between Dives, a literate layman (he cites the Bible and canon law, as well as Aristotle and Augustine), and Pauper, a mendicant friar (learned in theology but also canon and civil law), *Dives and Pauper* deploys modes common to both academic texts and canon legal inquiry, such as disputation and the question-and-answer form of both confession and inquisition.²⁰ The Fourth and Eighth Commandments (or ‘precepts’, to use *Dives and Pauper*’s term), to honour one’s parents and not to bear false witness respectively, raise questions that have particular relevance for understanding the interrelation of confession and inquisition. The dialogue on the Fourth Commandment, ‘worchepe þu þin fadir & þin moodir’ (I, 1.304), gives rise to a consideration of excommunication, a sanction that precipitates examination and inquisition in both the internal and external courts and relies, to a certain extent, on public knowledge to enforce the exclusion from society (in the case of major excommunication) that excommunicate status requires.²¹ Excommunication could take one of two forms: in the case of excommunication *ferendae sententia* [‘of the sentence to be passed’], excommunication is the outcome of a legal trial,

¹⁷ Goering, ‘Internal Forum’, pp. 386–87.

¹⁸ Kelly in this collection (Chapter 1) advocates a date near 1405, see p. 18, n. 44. The orthodoxy of *Dives and Pauper* was viewed as suspect in the fifteenth century, for an assessment of its orthodoxy, see Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (Oxford: Clarendon Press, 1988), pp. 418–19.

¹⁹ Francis Joseph Sheeran, ‘An Edition of Wynkyn de Worde’s *Dives and Pauper*, collated with Pynson’s Edition, MSS Yale, Eng. Th.D.36 and Lichfield #5’ (unpublished doctoral thesis, University of Nebraska, 1970), notes that canon legal knowledge is the basis for the content of around one half of the text (p. xxi). For a list of sources used by the *Dives*-author, including Raymond of Pennafort’s *Summa de poenitentia* and John of Freiburg’s (Johann von Freiburg) *Summa confessorum*, and a list of the citations from canon law, see *Dives and Pauper*, II, 3.404–06, 407–09.

²⁰ *Dives and Pauper*, II, 3, pp. xxxvi–xxxvii.

²¹ For an overview of medieval excommunication, see Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley: University of California Press, 1986), and F. Donald Logan, *Excommunication and the Secular Arm in Medieval England: A Study in Legal Procedure from the Thirteenth to the Sixteenth Century*, Studies and Texts 15 (Toronto: Pontifical Institute of Mediaeval Studies, 1968).

pronounced by the judge. More interesting for our purposes is excommunication *latae sententiae* (meaning the sentence had already been passed), sometimes called *ipso facto* excommunication, whereby certain acts (including heresy and defamation) incurred excommunication automatically;²² such acts may well be hidden (and so ordinarily subject to the internal forum), but for excommunication *latae sententiae* to become effective they needed to be made public and the person ‘specifically denounced as excommunicate’.²³ Excommunication could then be used to trigger judicial processes: suspicion in a local community that someone had incurred excommunication could become the *fama* required to initiate *inquisitio*,²⁴ and, by the late-medieval period, one of the main functions of excommunication was to make someone appear in court.²⁵

Addressing the complexity of this legal mechanism, Dives asks Pauper what should be done when a ‘buschop bydde a preste cursyn [excommunicate] a man, whiche man þe preste lathyth [grants, allows to be] vngylty, & þe multitude of þe peple / lathyth þe same’ (I, 1.342). In this scenario, the bishop, the priest and the community at large each lay claim to possessing authoritative knowledge about a man; what, then, should be done when the knowledge held by these parties comes into conflict, when a judgement of guilt made by a bishop goes against the opinion of the priest and the public? If Dives’s question gestures towards the ways in which knowledge of a person’s guilt or innocence is communally negotiated, Pauper’s bifurcate answer further exposes the contingency of that knowledge, as well as the networks of information and misinformation in which it is constructed. When instructed to denounce a man excommunicate whom he believes to be ‘vngylty’, the priest, Pauper explains, is obliged to obey the bishop’s order but must ‘excusyn þe buschop, seyng þat he is mysenformyd & 3if he hadde knowyn þe trewþe he wolde nout a cursyd hym’ (I, 1.342, our emphasis).²⁶ The priest

²² Our thanks to H. A. Kelly for his clarifications concerning the forms of excommunication. See also Vodola, *Excommunication*, pp. 28–31, and Ian Forrest, ‘William Swinderby and the Wycliffite Attitude to Excommunication’, *Journal of Ecclesiastical History*, 60 (2009), 246–69. Acts subject to *ipso facto* excommunication were regularly promulgated in the parish, see Mirk, *Instructions*, pp. 60–67 (for heresy and defamation see p. 65); *Jacob’s Well*, ed. by Brandeis also provides an extensive version of the general sentence, pp. 13–21, 24–30, 32–35. On the versions of the sentence associated with Mirk’s *Instructions* and *Jacob’s Well*, as well as extant versions more generally, see O. S. Pickering, ‘Notes on the Sentence of Cursing in Middle English’, *Leeds Studies in English*, ns 12 (1981), 229–44 (for *Instructions* and *Jacob’s Well* respectively, see pp. 229, 234) and Forrest, ‘William Swinderby’, p. 263.

²³ R. H. Helmholz, ‘Excommunication and the Angevin Leap Forward’, *Haskins Society Journal*, 7 (1995), 133–50 (p. 147). Helmholz provides a particularly useful description of the processes surrounding excommunication *latae sententiae*, pp. 147–48.

²⁴ Vodola, *Excommunication*, p. 34.

²⁵ *Ibid.*, p. 137; see also Logan, *Excommunication*, pp. 72–79; Forrest, ‘William Swinderby’, pp. 247–48. In this way, excommunication becomes a specific tool against heresy in the fourteenth and fifteenth centuries—those who proved contumacious, and refused to appear in court, were considered only to have provided further proof of their heresy. In turn, it becomes one of the abuses of the church to be railed against by Wycliffites and lollards, for whom excommunication very often was followed by imprisonment. For the relationship of excommunication to heresy inquisition, see Vodola, *Excommunication*, pp. 32–35; Forrest, ‘William Swinderby’, pp. 256–69.

²⁶ The *MED* gives a number of senses which may be meant here, but s.v. ‘excusen (v.)’, def. 3 ‘to extenuate (a fault), extenuate the guilt or blame of (a person or offense)’ seems to fit best.

should then act to remedy the injustice and ‘enformyn þe buschop as sone as he may of þat manys vngyltynesse’. This makes clear that whilst ‘trewþ’ is at stake in canon legal processes, the relationship of ‘truth’ to ‘fact’ and ‘knowledge’ is not straightforward. On the one hand, Pauper acknowledges that human (even episcopal) knowledge is fallible; on the other, he demonstrates the efforts made by canon law to counteract that fallibility.

Alternatively, when the priest is ordered not to denounce as excommunicate but to pronounce the sentence of excommunication on someone, he must first consider whether the man’s ‘vngilthed be oppynly knowyn; or it is in dohute or it is certeyn but nout opynly knowyn’ (I, 1.342). The interplay of that which is ‘oppynly knowyn’ with the murky distinction between the external and internal fora of canon law here becomes clear. If the man’s innocence is openly known then the priest should initiate a new legal inquiry in which he ‘schal alechyn [i.e. initiate the process of appeal] to þe buschop þat he is vngilty & prouyn it be witnessys’. If this fails, the priest must nonetheless excommunicate the man; but if he proves the man ‘vngilty’, he has cause to disobey the bishop’s orders. It is also possible, in turn, that the priest knows the man to be innocent but the local community does not, or, again, that the priest suspects the man to be guilty, but he remains of good repute in the local community.

Drawing as it does on contemporary canon law (specifically here the ‘Summa confessorum, lib. iii, ti. xxxiii, q. vi’ by John of Freiburg (I, 1.342)), this passage is unsurprisingly dense in vernacular legal terminology; but it also provides a set of interconnected terms—‘mysenformen’, ‘enformyn’, ‘oppynly knowyn’, ‘nout opynly knowyn’—which point to the uncertainty and contingency of the knowledge upon which spiritual law operates. Dives’s use of the terms ‘enformyn’ and ‘mysenformen’ points to the necessarily communal activity in which knowledge about an individual is constructed; so too does it point to the often complex networks through which that information—false or accurate—moves. In turn, Pauper’s counsel shows knowledge to be a variable on a spectrum between certainty and doubt. How that knowledge circulates and how it can be used depend on whether or not it is deemed ‘public’: an open crime witnessed by ‘trewe witnessis’ should be ‘punchyd be londys lawe and be holy chirche lawe’, but a secret crime can only be punished in the internal forum, ‘pry/uely be lawe of conscience in þe doom of hys confessour, whyche is boundyn to coynceyl and to sauyn his name and his fame’ (I, 2.131).

The knowledge gained in sacramental confession, therefore, cannot be transferred in any straightforward way to the external forum. Though there were problematic or serious cases in which the priest was supposed to refer a penitent to his superiors, to reveal the sins learned in confession was itself a crime, punishable by life imprisonment.²⁷ At one point, Dives asks, ‘May a confessour swere lefulliche þat he woth nout ne knowyth nout þe synne þat man or woman

²⁷ For instances when a confessor should refer cases to the bishop, see Mirk, *Instructions*, p. 51. See also Goering, ‘Internal Forum’, pp. 385–86. The priest could only tell the penitent that a certain sin was reserved to the bishop (or the pope) and that he or she should go and see him; he could not himself tell the bishop.

is schrifn of to hym?' Pauper responds in the affirmative, if 'he knowith it only be schrifte & be non oþir waye', since the priest 'knowith it nout as man but as God' (I, 1.250–51).²⁸ Likewise Robert Mannyng of Brunne's *Handlyng Synne* (1303), a treatise on confession, urges that even if 'men aforcedde hym [the priest] for drede / To seye þat þat man dede þat dede' the priest should keep his 'cunseyl'.²⁹ In such circumstances a priest may deny knowledge of a person's guilt of a crime, even if he knows him or her in fact to be guilty, on the grounds that the knowledge obtained in confession is 'goddys pryuyte' (3661).

As we discuss below, the contingency of knowledge about an individual revealed by the judicial forum also inheres in models for discovering or creating the interior in late-medieval confessional culture: the *publica fama* which drives inquisition in the external forum is equally at stake in the internal forum, since the confessor, as Pauper explains, is 'boundyn' to secrecy, not in order to save the penitent's soul, but to save his 'name and his fame'. Canon law was acutely aware of the damage uncorrected sin could do to a community, but so too was it aware of the damage done to an individual's identity in a community if his or her sinful thoughts, words and deeds were, without due cause, made known publicly.³⁰

Another fifteenth-century Middle English work of religious instruction, *Jacob's Well* (which in its treatment of canon law is to some extent comparable with *Dives and Pauper*), provides a particularly vivid example both of what is at stake in denouncing someone 'acursyd' and of the kind of pressure that *publica fama* and the threat of judicial inquisition place on sacramental confession, in ways which also develop a more tangible sense of the subject's interior self than the hypotheticising of *Dives and Pauper*. In this exemplum, a gentlewoman has committed an offence that incurs excommunication *latae sententiae*: having conceived a child with her own son, the woman gives birth to their child in secret and then slays it in order to save her good name.³¹ This crime remains secret and, accordingly, the fact of her excommunication is never pronounced, until one day the devil, in the 'wede of a clerk, seyde opynly to þe emperour & to þe peple: "3e holdyn þat womman holy; sche is cursyd". Hearing the crime of which the woman is accused, 'þe emperour & þe peple woldyn no3t beleuyn it, but praysed here'. Like the scenario imagined in *Dives and Pauper*, what seems to be at stake in this imagined excommunication is less the woman's salvation than her public reputation: the exemplum puts to the test the efficacy of the internal forum, and of confession in particular, not so much in absolving sin but in keeping 'privy' knowledge private. Having publicly denounced the woman, the devil urges the due legal process be carried out—thus although the ecclesiastical court is here replaced with a secular court, the way in which excommunication could be used to trigger judicial inquisition is made startlingly clear:

²⁸ This passage is commented on by Kelly in this volume (Chapter 1) on p. 18, n. 45.

²⁹ Robert Mannyng of Brunne, *Handlyng Synne*, ed. by Idelle Sullens (Binghamton, NY: Medieval and Renaissance Texts and Studies, 1983), p. 93, lines 3665–66.

³⁰ For the social consequences of excommunication, see Vodola, *Excommunication*, p. 154.

³¹ *Jacob's Well*, ed. by Brandeis, pp. 66–67.

“do here ben examyned; & 3yf sche mowe no3t excusyn here, late here by brent qwyk”. Appearing before the court, the emperor cites the accusations against the woman, telling her: “knowe þi synne to vs, 3if þou be gylty, or ellys pouge þe þere-of lawfully”. The woman, however, long sorry of her crime, asks the emperor for some days’ ‘avysement’ before making her answer. She then confesses the crime to a priest who assigns her penance. On completion of the penance, she returns to the emperor to make her answer: however, the judicial process at this point is miraculously interrupted: since the woman has been absolved from her sin in the penitential forum, the devil no longer has grounds for his accusation (in fact, he no longer recognises her) and the case does not continue. Although the devil possesses knowledge that is (from one perspective) true—the woman has indeed committed both incest and murder—the efficacy of the internal forum both in dealing with sin and in upholding the woman’s good standing in the local community is shown to trump the devil’s manipulative use of ‘privy’ knowledge.

St Gregory’s Trental, preserved in two copies in the Vernon Manuscript as well as a number of fifteenth-century manuscripts, tells a similar story, this time involving the mother of Pope Gregory who illicitly conceives a child and subsequently murders it to protect her *fama* (‘ffor heo wolde holy I-holde be, / [. . .] / Al folk fayn was of hir fame, / So holy as heo was holden of name’).³² Unlike *Jacob’s Well*, however, this exemplum plays out a *failure* of the internal forum in protecting good fame: paradoxically, Gregory’s mother is too ashamed to confess her sin ‘Leste by schrif hire cas weor knowe’, but it is this very failure to confess that, after her death, causes the exposure of her sin and the loss of her good name to her son (to whom she appears in a foul state) and to the audience of the text ever after.³³ Exposing the potential conflict between the need to save one’s good name with the need to save one’s soul, both these exempla demonstrate the ways in which confession and the interior truth it purports to access are far from immune to the concerns of public reputation and common knowledge.

It is the very complexity of the relationship between truth and fact, exposed by the *Jacob’s Well* and the St Gregory’s Trental exemplum, which necessitates the communal construction of knowledge within canon law, even the knowledge produced in the private examination associated with the internal forum: coming to know the self in medieval contexts sometimes required imagining inquisition and adopting its procedures of inquiry. Thus in *Dives and Pauper*, Pauper imagines the process of constructing the truth about the self, privately and interiorly, not in terms of the dialogue between priest and penitent, but in terms of the legal production of knowledge in the ecclesiastical courts—that is, through the public inquisition made by a judge or bishop founded on *publica fama* and aided by the external evidence of witnesses: as the tables of contents

³² Edited as ‘Pe Pope trental’, in *The Minor Poems of the Vernon Manuscript, Part I*, ed. by Carl Horstmann, EETS os 98 (London: Kegan Paul, Trench, Trübner, 1892), pp. 260–67. For background, see *Dives and Pauper*, ed. by Barnum, II, 3.258–59.

³³ ‘Pe Pope trental’, p. 261. For *Dives and Pauper’s* criticism of the Trental, and Pauper’s defence of Gregory’s mother’s good *Fama*, see *Dives and Pauper*, ed. by Barnum, I, 2.186–88.

in six of the extant manuscripts emphasise, ‘us must demyn ourself be proces’ (I, 1.21, Table A), that is, by due legal process, and ‘we schulde deme oureself in þe court of conscience’ (I, 1.47, Table B).³⁴ In interrogating the self, a person, like a judge or a priest, has to negotiate between good information and misinformation, relying on networks of witnesses which are called upon to construct the ‘truth’ communally. As Pauper says,

þu schal ben þin owyn domysman, þin sete schal ben þin herte, and set þinself gilty afor þinself domysman. Þin þout & þin conscience schul ben þin two witnessis for to acusyn þe. Þin tormentouris schul ben dred and sorwe þat in maner schul schadyn þin blood be wepyng of salte terys whan be witnesse of þin owyn conscience & of þin þout þu hast demyd þiself gylty. (I, 2.239)

Self-examination here is entirely internalised as an inquisition in the court of conscience: as faculties of the self take up the roles of the accused, the judge, the two witnesses (Thought and Conscience) who bring accusations of guilt, as well as of the ‘tormentouris’ (torturers).³⁵ Despite the accusations of Thought and Conscience and the torture performed by Dread and Sorrow, it is still possible that knowledge of the extent of one’s guilt may be partial, since ‘euery man is faorable to hymself & to his owyn cause’. Consequently, further help in judging is required:

þerfor þu schal han with þe two assessouris be wose conceyl þu schal demyn þiself. And þo schul ben treupe & resoun. Tac with þe trowþe þat þu make no fals excusacion of þin synne ne lye þu nout for to excusyn þinself ne to accusyn þiself falslyche ne to greuouslyche but as þin oþir assessour, resoun, wil acordyn. And 3if þo two witnessis, þat is to seye þin þout & þin conscience, suffysyn nout to beryn witnesse ne to ful enformyn þe of þin synful lyf, tac to þe þe þredde witnesse þat is þin feith and so let þin dom stondyn in witnesse of two or þre. (I, 2.239)

Two ‘assessouris’, Truth and Reason, are to provide advice in legal matters (an assessor was a consultant that an inquisitor was supposed to confer with in a case), and if Thought and Conscience do not sufficiently ‘beryn witnesse’ or ‘enformyn’ the person of their sinful life, Faith should also be called in.³⁶ The fifteenth-century Middle English translation of *De doctrina cordis*, *The Doctrine of the Hert*, similarly deploys canon legal processes to imagine interiority. In a chapter explaining ‘How and in what wise a mynche [nun] schulde make redy

³⁴ There are two distinct versions of the table of contents, neither of which is authorial (see *Dives and Pauper*, II, 3, pp. lxxvi–lxxvii).

³⁵ Torture, though allowable in canon law, is not a usual part of English practice. See R. H. Helmholz, *The Oxford History of the Laws of England, Vol. I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), p. 617.

³⁶ Whilst references to the court of conscience are common in English vernacular theology, the splitting of the self into the different actors in the courtroom scene is particularly developed in *Dives and Pauper*. *Jacob’s Well* imagines virtues as courts (of mercy, penance, contrition, confession and satisfaction), and recommends the penitent, in the court of mercy, to ‘appele þiself & þi felawys, þe feend, þe world, & þi flesh, of all þe felonye þat þou, bi þi felawys, hast don azens god’, though these are not explicitly internalised, p. 256.

here herte to God be the yifte of drede', the heart becomes the ecclesiastical chapter ('chapitre'), where the self must prepare for visitation, which was the general (rather than specific) form of inquisition:

Sister, kepe such trewe dome and diew satisfaccioun, and punshe þiself in the chapitre of thin hert every day, that þi soule mow be made hole fro the woundis of synne [. . .] Lo, sister, upon that stole of dome in þin conscience must oure lord sitte, and þefor [fol. 12v] make the redy, for thow must stonde afore him as afore thin visitoure to be punshid for thi defautes.³⁷

The 'chapitre' was the weekly, internal session in a monastery in which nuns (or monks) admitted their faults; this self-examination, however, was supplemented by general inquisition by a bishop in visitation.³⁸ Here, however, it is not a bishop that will sit on the 'stole of dome', but Christ himself. Like the process of self-judgement imagined by *Dives and Pauper*, this passage mingles external and internal fora in its negotiation of the court of conscience. Modes of accessing the interior of an individual in the public forum are here absorbed into the private forum of the conscience.

The concepts and applications of communally constructed knowledge were thus not only integrated into literary depictions of the internal or private production of knowledge about the self, but also became ways and means of explaining the workings of conscience itself. In an episode from John Lydgate's *Fall of Princes*, the inner workings of judgement, reason and moral prudence are modelled on judicial inquiry in ways remarkably similar to these fifteenth-century pastoral texts. A Benedictine monk at Bury St Edmunds, Lydgate would have been very familiar with confessional procedure and with the various canon legal dilemmas addressed by *Dives and Pauper*, *Jacob's Well* and St Gregory's Trental, and it is perhaps his understanding of the traditions represented by these texts which in part shapes his reworking of his source material on the subject of good judgement. The *Fall* is an English adaptation of Laurent de Premierfait's second version of *Des cas des nobles hommes et femmes*, a French translation of *De casibus virorum illustrium*, Giovanni Boccaccio's fourteenth-century collection of narratives concerning the falls of great men and women from prosperity. Commissioned by Humphrey, Duke of Gloucester, the *Fall* adapts and expands upon Premierfait's text considerably, and includes numerous original envoys to the reader offering moralising advice related to particular narratives. Among Lydgate's more subtle adjustments to the poem is his adaptation of Premierfait's admonition to princes concerning hasty judgement in Book I, Chapter XI of his text, which 'reprend et blasme les princes et tous aultres qui croient trop et tost a ce que on leur rapporte' ['reproves and blames those

³⁷ *The Doctrine of the Hert: A Critical Edition with Introduction and Commentary*, ed. by Christiana Whitehead, Denis Renevey and Anne Mouron (Exeter: University of Exeter Press, 2010), p. 14. See also the commentary on this passage, p. 109.

³⁸ Helmholz, *Oxford History of the Laws of England*, p. 219. See also Forrest, *Detection of Heresy*, for the importance of visitation in heresy inquisition in England (see, for example, p. 207).

princes and all others who believe too much and too hastily that which the people report to them’].³⁹ In addition to advising princes on how to pass judgement, Lydgate’s adaptation of Premierfait’s text illustrates both the contingent nature of knowledge and the ways in which the internal processes of knowledge production (about others as well as about oneself) could be imagined in terms of communal, inquisitorial processes.

This digression appears in Book I of the *Fall of Princes*, just after Lydgate has recounted the story of Theseus’s hasty belief of his wife Phaedra when she falsely accused his son of trying to rape her, as a consequence of which his son died while trying to flee. After concluding the story, Lydgate observes that princes like Theseus

may nat be to hasti nor sodeyne,
But doon all thyng bi good auysement,
Keepe hem from tunges that parted been on tweyne,
Nat be to rakill to yiue no iugement,
And off no folkis, whan thei been absent,
Leue no talis nor yiue no credence,
Till that the parti may come to audience. (I, 4579–85)

These reflections expand upon remarks made later by Premierfait concerning ‘ceulx qui ont deux langues’ [‘those who have two tongues’].⁴⁰ By placing the above observations just before his discussion of princely judgement, Lydgate stresses the necessity of reaching a verdict only when all the parties concerned are present. The word of an accuser is not enough; it is essential that ‘the parti may come to audience’. Lydgate’s use of the word ‘audience’ adds a communal dimension to the process of judgement that is absent from Premierfait’s text. The *MED* variously defines ‘audience’ as ‘an assembly gathered for a formal hearing or inquiry’, ‘a hearing in a court of law’, and ‘[a]n opportunity to be heard, a hearing’.⁴¹ The implication in Lydgate’s text is that judgement can only be reached in conjunction with both the ‘talis’ being told and the presence of the person about whom they are told. At the same time, it is clear that this ‘audience’ is intended as a countermeasure to potentially unreliable *fama* (rumour); as Lydgate later says, ‘Folkis be dyuers, summe fals and summe trewe’ (I, 4600), which means that not every tale can be trusted. Just as for confessors and inquisitors, the information network with which princes and judges must work is far from perfect, a problem to which both canon and secular law were also attuned.

One of the key instances in which medieval canon law acknowledged the potential corruption of common knowledge while simultaneously employing it was in its laws concerning defamation. Returning to our opening example, the

³⁹ Laurent de Premierfait, *Laurent de Premierfait’s ‘Des cas des nobles hommes et femmes’ Book I, Translated from Boccaccio: A Critical Edition Based on Six Manuscripts*, ed. and trans. by Patricia M. Gathercole, *Studies in the Romance Languages and Literatures* 74 (Chapel Hill: University of North Carolina Press, 1968), p. 155. This and all other translations from this text are our own.

⁴⁰ See Premierfait, ‘*Des cas*’, p. 157.

⁴¹ *MED*, s.v. ‘audience (n.)’.

Pardoner's elaboration of his extortion techniques sheds further light on the problems which might inhere in common knowledge. As the Pardoner explains:

For whan I dar noon oother weyes debate,
 Thanne wol I styngge hym with my tonge smerte
 In prechyng, so that he shal nat asterte
 To been defamed falsly, if that he
 Hath trespased to my bretheren or to me.
 For though I telle noght his propre name,
 Men shal wel knowe that it is the same,
 By signes, and by othere circumstances. (VI.412–22)

The Pardoner is careful, in his use of 'signes' and 'othere circumstances', to publicise knowledge (whether invented or not) about individuals and their offences in indirect ways in order to avoid being vulnerable to the charge of 'defaming falsely'.⁴² While the threat of his being summoned before the church courts accused of defaming someone's good name shapes the Pardoner's preaching, he himself deploys this threat to coerce his audience, playing on their fears that their secret crimes may become public knowledge in order to gain material profit.

Medieval English defamation law was rooted in the 1222 Constitution of the Council of Oxford (usually referred to as *Auctoritate dei patris* in legal practice), which was convoked by Archbishop Stephen Langton 'to promulgate the decrees of the Fourth Lateran Council (1215) and to establish supplementary local rules'.⁴³ *Auctoritate dei patris* 'declared *ipso facto* excommunicate any person who maliciously imputed a crime'⁴⁴ to someone who 'infamatus non sit apud bonos et graves' ['is not of ill fame among good and substantial persons'].⁴⁵ In other words, defamation law depended on particular members of a community using their judgement and their knowledge of their neighbours to determine whether they had committed—and intended to commit—a crime. In order for defamation to have taken place, the insulting words must have been uttered

⁴² Margery Kempe is the victim of similarly insinuating preaching, see for example, *The Book of Margery Kempe*, ed. by Lynn Staley (Kalamazoo, MI: Medieval Institute Publications, 1996), chapter 62, p. 148: 'as this day he [a friar] prechyd meche ageyn the seyd creatur, not expressyng hir name, but so he expletyd hys conseytys that men undirstod wel that he ment hir. Than was ther mech remowr among the pepil.' For more on defamation in medieval England, see Helmholz, *Oxford History of the Laws of England*, pp. 565–98; *Select Cases on Defamation to 1600*, ed. by R. H. Helmholz, Publications of the Selden Society 101 (London: Selden Society, 1985); Michael Hanrahan, 'Defamation as Political Contest During the Reign of Richard II', *Medium Aevum*, 72 (2003), 259–76; Edwin D. Craun, *Lies, Slander, and Obscenity in Medieval English Literature: Pastoral Rhetoric and the Deviant Speaker* (Cambridge: Cambridge University Press, 1997); and Ian Forrest, 'Defamation, Heresy and Late Medieval Social Life', in *Image, Text and Church, 1380–1600: Essays for Margaret Aston*, ed. by Linda Clark, Maureen Jurkowski and Colin Richmond (Toronto: Pontifical Institute of Mediaeval Studies, 2009), pp. 142–61.

⁴³ *Select Cases*, ed. by Helmholz, p. xiv.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. xiv, from *Councils and Synods with other Documents Relating to the English Church, II: A.D. 1205–1313*, ed. by F. M. Powicke and C. R. Cheney, 2 vols (Oxford: Oxford University Press, 1964), 1, 107 (amended trans. based on *Select Cases*, ed. by Helmholz, p. xiv).

maliciose ['maliciously'];⁴⁶ second, defamation could only be argued if the insulting words had affected the opinion of *boni et graves* ['good and substantial persons'].⁴⁷ Only those who were widely held to be good and substantial persons could allege defamation or productively defame others of having committed crimes; at the same time, however, status as *bonos et graves* depended on the opinions of other good and substantial people, and even these trustworthy people were required to assess the intentions of others (assessments which, as the Pardoner demonstrates, could easily be faulty).⁴⁸

Expanding upon Premierfait's remarks concerning the diversity of men and their motives, Lydgate similarly points to the difficulty of knowing people's 'entente' by arguing that everybody has different reasons for speaking, and is therefore likely to tell a different tale:

Men to suppose it were a gret foli,
That folkis sholde in ther oppynyoun
Speke or pronounce alle on o parti,
Or holde o weie in ther entencioun;
For semblabli as there is dyuysioun
Off corages, off hih or low degre,
So is ther treuli a gret dyuersite

In rehersaile or report off a thyng,
For to his parti ech man is fauourable:
Sum man can sey weel in his rehersyng,
Sum man is double, & sum man deceyuable,
Sum men sey trouthe, and summe be variable;
Wherefore a prynce off riht, as it doth seeme,
Sholde weel examyne afforn or that he deeme. (I, 4607–20)

This passage highlights the difficulty of assessing information that is likely to be affected by any number of factors, including man's inclination to be 'to his parti [...] fauourable'—a warning that recalls *Dives and Pauper's* awareness that 'euery man is fauourable to hymself & to his owyn cause'. Whether because of differences in 'corages' or 'degre', motives or even ability ('Sum man can sey weel in his rehersyng'), those in positions of judgement must 'weel examyne' the accounts

⁴⁶ This was often a crucial point of contention in defamation cases, and 'was in large part decided by public fame, within the community, and not by a judge', Forrest, 'Defamation, Heresy', p. 153. These members of the community would be called upon to assess the motives of the defendant, to judge whether his or her words had been spoken '*gracia odii, lucri, vel favoris*'.

⁴⁷ Thus the plaintiff in a defamation case must be of good reputation among the upstanding members of society before the insulting words had been spoken, and must have lost their good regard as a result of the insult or allegation. Indeed, pre-existing *mala fama* was frequently used as a defence in medieval English defamation cases, at least until the late fifteenth century (although, as Helmholz has noted, in most cases the defence of 'prior bad fame' was not successful (*Select Cases*, ed. by Helmholz, pp. lxxxiv–lxxxv)). Conversely, of course, plaintiffs always claimed that they had possessed *bona fama* before they had been defamed.

⁴⁸ Forrest has also noted the somewhat circular nature of the role played by *fama* in medieval English law: 'One needed to be of good fame in order to testify in court, in order to act as a compurgator, in order to be a visitation juror—but taking part in these legal activities was also a constituent of one's good fame: being known as someone who was law-worthy gave one the *fama* that contributed to one's worthiness' ('Defamation, Heresy', p. 150).

of those before them. The picture painted by Lydgate of the information network upon which judges must draw is of a messy, unpredictable, multivalent source of information, and there are few ways in which the movement or quality of information can be regulated. Like the priest forced to negotiate between conflicting accounts of a person's guilt or innocence in order to determine whether or not excommunication has taken place *latae sententiae*, a judging prince must proceed in a careful, orderly fashion in order to avoid committing an injustice.

As both Premierfait and Lydgate note, however, the problem is compounded 'wher a thyng is vttrilri onknowe' (I, 4635) (in Premierfait, 'choses incongneuses').⁴⁹ In such cases, Premierfait recommends that a man 'doit assembler en soy le sentiment corporel et la raison de l'ame' ['must assemble within himself the feelings of the body and the reason of the soul'], but Lydgate expands upon this image, and adapts it into an almost allegorical discussion that is evocative of pastoral treatments of the court of conscience:

A prynce sholde assemble thyngis tweyne
 Withynne hymselff: [afforn] ful prudently
 Shet up his doomys betwixe lokkis tweyne,
 On off the soule, resoun for that party,
 Prudence chose out, and riht for the body;
 And atween bothe, or he yiue a sentence,
 To conseil calle trouthe and good conscience. (I, 4642–48)

Like Premierfait, Lydgate recommends that a prince 'assemble' the feelings of his body and the reason of his soul in order to pass judgement, but he then evokes the vocabulary and imagery of the court of conscience that also appear in *Dives and Pauper* by advising princes to call 'trouthe' and 'good conscience' to counsel 'or he yiue sentence'. Lydgate's instructions concerning judgement here are consonant with pastoral treatments of confession and self-assessment in terms of their attempt to bridge the gap between the external information networks of the community and the internal workings of the judging prince's body and soul, from which his 'doomys' must proceed. At the same time, like the 'assessouris' in *Dives and Pauper* and the 'chapitre' and 'visitoure' of *The Doctrine of the Hert*, the quasi-allegorical entities called 'to conseil' signal an inherent awareness of the possibility for error even in the interior spaces of the judge's conscience. This potential for error must in turn be countered by the communally figured processes imagined by Lydgate.

Lydgate's image of an internal audience in which reason, prudence, right, truth and conscience facilitate a prince's judgement may be partly a product of his adaptation from Premierfait's detailed instructions concerning how a man must assess an accusation against a third party in the case of 'choses incongneuses':

il doit resgarder par vray jugement de pensee qui et quell est cellui qui
 parle, pour quele besoingne il parle, qui est cellui contre qui il parle, en
 quell lieu, en quell temps, se il soit courroucié ou appaisié en courage, se
 il est ennemi ou ami, s'il est home defame ou honneste.

⁴⁹ Premierfait, '*Des cas*', p. 155.

[he must weigh by true judgement of thought who and what he is who speaks, for what purpose he speaks, who it is against whom he speaks, in what place, at what time, whether he is angered or calm in heart, whether he is an enemy or ally [of the accused], whether he is a man of ill repute or honest.]⁵⁰

Premierfait's instructions here echo the character assessment required for accepting testimony in legal cases, but also call to mind those given to confessors. Thus Mirk's instructions for assigning penance begin—in a section headed 'Quis, quid, vbi, per quos, quociens, quomodo, quando'—with the advice 'Fyrst þow moste þys mynne, / What he ys þat doth þe synne', followed by a consideration of 'What synne hyt ys, and how I-wro3t' and so on.⁵¹ In the same way that a confessor must assess the motives of a confessant, a judging prince must weigh and assess the evidence, testimony and motives before him (although here the judge, unlike the confessor, can admit external evidence into his considerations: the common knowledge of someone's social standing). Whilst he deviates from the original wording, Lydgate follows the content of Premierfait's instructions fairly closely, echoing the French writer's admonitions to 'weie out who is thaccusour, / And whethir that he for falsnesse or fauour / In his processe list for to procede', as well as his instructions to

considre bi and bi,
 What that he is, which is to hym accusid,
 And whethir thaccusour be freend or enmy,
 Or whethir he shal been accepte or refusid
 In his accus—this muste affor be musid—
 And whethir he be, bi report off his name,
 A man weel noised or sclaudrid bi diffame. (l, 4656–62)

Lydgate's slight deviations from Premierfait in these passages suggest that Premierfait's advice (which itself shares much with confessional guidelines) resonated with the English monk, prompting his expansion of Premierfait's recommendation that men should employ 'le sentement corporel et la raison de l'ame' into an image in which commonplace members of the court of conscience (truth, reason) assemble to construct knowledge communally, both as a means for the prince to understand the interior workings of his own reason and to enable him to pass judgement on others.

The advice offered by Premierfait and by Lydgate functions as a warning concerning the fundamentally contingent nature of communally constructed knowledge. But whereas Premierfait briefly glosses over the mechanisms with which a man must consider the context of an accusation, Lydgate lingers over his depiction of the prince's court of conscience. His adaptation of Premierfait's

⁵⁰ Premierfait, *'Des cas'*, p. 155.

⁵¹ Mirk, *Instructions*, p. 44. This form of circumstantial questioning is connected with the rhetorical tradition; see Woods and Copeland, 'Classroom and Confession', p. 368. Rhetoric deals with seven classifications of particular circumstances: 'who', 'what', 'why', 'where', 'when', 'how' and 'by what means', which together also form the basis of confessional inquiry into circumstances.

advice is therefore suggestive of the extent to which the concept of communally constructed, contingent knowledge was imagined to function both in the external forum of the court and in the internal forum of the conscience.

If knowledge of the interior of an individual is potentially (in Lydgate's words) 'vttirli onknowe', these vernacular texts demonstrate an acute awareness that such knowledge is itself imbricated in the technologies not only of the internal forum but also the external forum of canon law. Sacramental confession and the interior it accesses, far from being immune to the pressures of public knowledge, might have far-reaching consequences for the *fama* of an individual. But more significantly, the mechanisms by which the ecclesiastical courts sought to access, construct and verify otherwise inaccessible knowledge, are internalised in texts like *Dives and Pauper* and the *Fall of Princes*. As Lydgate shows, the knowledge by which judgements about an individual can be made must be judged, in turn, by an assessment of its source—in other words, by knowledge of the equally hidden interiors and intentions of others. These texts respond to the uncertainty of knowledge of what lies within a person by imagining its production, not in closed, private terms, but as a fundamentally communal process, one in which even the individual's conscience is figured as an assembly of near-allegorical virtues and entities modelled on procedures in the ecclesiastical courts. Confession's domination of scholarly explanations of the creation of the medieval self has perhaps obscured the ways in which the lexis and processes of inquisition might also have created and accessed this inner self, but pastoral texts like *Dives and Pauper*, *Jacob's Well* and *The Doctrine of the Hert*, and poetic texts like Chaucer's Pardoner's Prologue and Lydgate's *Fall of Princes*, show that *inquisitio* also played a key role, even in the interior space to which confession gave privileged access. Only by recognising the way inquisition and confession functioned and were imagined in tandem can we have a more complete picture of how knowledge—especially knowledge about the self—developed in the Middle Ages through historical practice and the imaginative terrains of exemplary literature and poetry.

Chapter 6

From Defacement to Restoration: Inquisition, Confession and Thomas Usk's *Appeal and Testament of Love*

JENNY LEE

Dealing with stories and silence—words recovered and words lost to death.
John H. Arnold, *Inquisition and Power*¹

At the heart of confession lies the promise of effacement: through the processes of contrition, confession, absolution and penance, an individual's sins are purged for eternity. This tenet was illustrated in a popular exemplum that circulated in penitential manuals and *florilegia* across Europe during the thirteenth and fourteenth centuries.² In this exemplum, a scholar pays a visit to his local abbot to make his confession. Overcome with contrition and shame, the scholar is unable to speak a single word, so the abbot enjoins him to write down his sins instead. Horrified upon reading the unspeakable deeds in print, however, the abbot summons the prior for support. But when the prior arrives, everyone discovers that the scholar's sins have been miraculously erased from the page. Technically, the story is incomplete: formal absolution, one of the elements of a full confession, never takes place. But by omitting the priest's intermediary role, the narrative presents an argument for the sacramental validity of the scholar's written performance of confession, the contents of which only God (and not even the reader) knows. Somewhere in the humiliating wait before the prior's arrival, the scholar's sins are, it is implied, forgiven. The technology of writing is thus presented as a legitimate proxy for standard oral confessional practice, where the desired end—paradoxically—is its own erasure.

Unlike God's infinitely forgiving memory, however, collective human memory was dangerously fickle. Because writing left behind material traces that could acquire a life and identity of their own, a written confession could never guarantee its subject the cathartic erasure of sins. All too often, the promise of purgation was distorted into the effacement of the subjects themselves, with the

¹ John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001), p. 2.

² Frederic C. Tubach, *Index Exemplorum: A Handbook of Medieval Religious Tales*, FF Communications 86 (Helsinki: Academia Scientiarum Fennica, 1981), p. 97.

sins long outliving the sinners. This, of course, was the logic behind inquisitorial confession, which mimicked the processes of sacramental confession but carefully recorded admissions of guilt for the purposes of meting out justice, often in the form of corporal punishment or death. Broadly speaking, whereas sacramental confession led to the effacement of sins, inquisitorial confession led to the defacement of subjects, their names, their bodies, their lives.³ Peter Brooks astutely describes the seeming parallel between sacramental and legal models of confession as an oppositional one, particularly with respect to the relation between speaker and interlocutor: "To the extent that the law relies upon the model [of confession] [. . .] it, too, relies upon a bond between confessor and confessant that, in the situation of the criminal suspect before the law, leads to a somewhat perverse result: conviction rather than absolution."⁴ But while Brooks focuses here on oral confessions, the Roman-based processes of inquisition in the Middle Ages in fact constituted a major shift away from oral accusations and public ordeals toward private investigations that were deeply entrenched in textual culture.⁵ Part of the general proliferation of bureaucratic documents in the Middle Ages, the legal processes of *inquisitio* were recorded in such forms as papal bulls and letters, local conciliar statutes and bishops' registers, and programmatic instructions and adaptable formulas of trial transcripts for inquisitors were compiled in painstakingly detailed manuals. Inquisition in the Middle Ages, in other words, was a relentlessly textualised phenomenon.

One of the most important advances in recent scholarship on *inquisitio* in the medieval church has been the recognition that 'inquisition' was not a single, monolithic entity but rather multiple institutions and functions operating under both episcopal and papal jurisdictions (despite the latter's best efforts to retain exclusive control).⁶ As Henry Ansgar Kelly has reminded us, the inquisition was directed neither originally nor exclusively towards problems of heresy, but was employed at all levels of the ecclesiastical courts, 'from the courts of archdeacons and rural archpriests or deans charging rustics with fornication or adultery to

³ In my use of 'effacement' and 'defacement' throughout this essay, I rely on the subtle distinction in meaning between 'effacement' as complete obliteration or erasure, and 'defacement' as disfigurement, with even more negative connotations.

⁴ Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago, IL: University of Chicago Press, 2000), p. 96.

⁵ For an extensive examination of the issues of inquisitorial textuality and its built-in imbalance of power, see Arnold, *Inquisition and Power*, esp. chapters 2 and 3.

⁶ Henry Charles Lea, *A History of the Inquisition of the Middle Ages*, 3 vols (London: Sampson Low, Marston, Searle & Rivington, 1888) is still relevant, but significant revisions have been made—see especially Edward Peters, *Inquisition* (New York: Macmillan, 1988); Richard Kieckhefer, 'The Office of Inquisition and Medieval Heresy: The Transition from Personal to Institutional Jurisdiction', *Journal of Ecclesiastical History*, 46 (1995), 36–61; Dyan Elliott, *Proving Woman: Female Spirituality and Inquisitorial Culture in the Later Middle Ages* (Princeton, NJ: Princeton University Press, 2004); and Kathryn Kerby-Fulton, *Books under Suspicion: Censorship and Tolerance of Revelatory Writing in Late Medieval England* (Notre Dame, IN: University of Notre Dame Press, 2006). For the widespread prevalence of heresy inquisitions in England, despite the fact that there was no official papally overseen institution as such, see John H. Arnold, 'Lollard Trials and Inquisitorial Discourse', in *Fourteenth Century England II*, ed. by Chris Given-Wilson (Woodbridge: Boydell, 2002), pp. 81–94, and Kerby-Fulton, *Books under Suspicion*, pp. 33–37.

papally commissioned trials presided over by cardinals on charges brought against kings and queens'.⁷

John H. Arnold's proposition that we consider inquisition broadly as a discursive 'set of language and practices that claims to produce and police a field of knowledge' is extremely useful here.⁸ In medieval England, the language and discourse of inquisition pervaded its secular legal processes—even if the process of *inquisitio* did not develop in secular contexts in England in the way it did on the continent.⁹ For instance, the King's Council continued to use the inquisitorial procedure and the inquisitorial oath *de veritate dicenda*, borrowed from the ecclesiastical courts, despite parliament's outlawing the oath from use in ecclesiastical courts during the reign of Edward II.¹⁰ In the fourteenth century, legislation gave Justices of the Peace some inquisitorial powers alongside administrative ones.¹¹ Inquests, or formal inquiries into matters of public or state interest—often referred to by the general term *inquisitio*—were rooted not only in the Roman *inquisitio* but also in Scandinavian and Carolingian administrative practices of collecting data.¹² In the English secular courts, the inquest evolved into an extremely supple instrument dealing with the questioning not only of the accused but also of accusers, witnesses and jury members for the purpose of gathering information throughout the criminal process.¹³ Similarly versatile was the Middle English word 'inquisicioun', which could refer to any number of different points in the legal process, from the initial questioning or investigation conducted by a judge, royal officers, a court or a specifically appointed commission, to the written jury presentment of such proceedings.¹⁴

⁷ H. A. Kelly, 'Inquisition and the Prosecution of Heresy: Misconceptions and Abuses', *Church History*, 58 (1989), 439–51 (p. 441).

⁸ Arnold, 'Lollard Trials', p. 87.

⁹ Brooks, *Troubling Confessions*, p. 185, n. 8.

¹⁰ Leonard Levy, *Origins of the Fifth Amendment: The Right against Self-Incrimination* (Oxford: Oxford University Press, 1968), pp. 48–53.

¹¹ John H. Langbein describes a statute of 1383 against vagabonds that empowers Justices of the Peace and their counterparts to examine vagabonds and compel them to find surety or face imprisonment; this examination did not merely supplement jury presentment or indictment but rather displaced them, in the manner of inquisitorial methods that did not require an independent accuser to begin legal proceedings (*Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, MA: Harvard University Press, 1974), p. 68).

¹² J. H. Baker, *An Introduction to English Legal History*, 3rd edn (London: Butterworths, 1990), p. 86. In 1170, for instance, in an undertaking 'as massive [. . .] as the Domesday Survey of 1086' (itself a Norman form of the inquest), Henry II ordered an Inquest of Sheriffs requiring every responsible person—including not only sheriffs, but archbishops, earls, vavasours, knights, citizens, burgesses, stewards and ministers—to record their financial earnings in written form (M. T. Clanchy, *From Memory to Written Record: England, 1066–1307* (Oxford: Blackwell, 1993), p. 64).

¹³ See for instance John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London: Routledge & Kegan Paul, 1973).

¹⁴ *MED*, s.v. 'inquisicioun (n.)'. While it is important to note that the Middle English word 'inquisition' did not tend to refer to inquisitorial procedure until the sixteenth century, as Kelly points out in this volume (Chapter 1), my interest lies in the word's widespread applicability and varied uses in Middle English discourse rather than its specific correlation with a specific legal process. For instance, Thomas Usk himself refers to undergoing 'many inquisicio[ns]' prior to writing the *Appeal*, despite the fact that he was not actually being questioned under formal inquisitorial procedure, 'The Appeal of Thomas Usk against John Northampton (1384)', Appendix 2 in

In this essay, I examine the case of Thomas Usk, which dramatises the complex range of 'inquisitious' practised in the English secular courts and the resistance of one man against the sheer weight of documents produced by this system. While his case was not technically 'inquisitorial' in the sense of being played out in an inquisitorial legal procedure, key discourses of inquisition—namely, the legal model of coercive confession, the nature of *fama* and the reliance on written record—shaped his textual imagination and self-fashioning in his written compositions both within the legal system (his *Appeal*) and outside of it (his literary *Testament of Love*). Usk, therefore, vividly illustrates the broader implications of 'inquisition' as a discourse, rather than legal procedure, outside the context of heresy and as it influences textual and literary production in medieval England.

Usk was a scrivener by trade who was caught up in the dangerous factional politics of London in the 1380s, where the larger drama between Richard II and his rivals was being played out in the battle for the mayoral seat between Nicholas Brembre and John Northampton. Nicholas Brembre, the wealthy mayor of London in 1377 and again from 1383 to 1385, was a strong ally of Richard, who propped up the interests of the merchant capitalist class. Backed by disgruntled supporters of the Peasants' Revolt, John Northampton became mayor in 1381 and used his power to break up the merchant oligarchy, but his overreaching led to Brembre's re-election in 1383. Usk was initially hired by Mayor Northampton in 1383 to draft bills and rally support for his election that year. After Northampton's arrest in 1384, however, Usk was taken into custody by Mayor Brembre, and in the summer of 1384 Usk agreed to testify against his employer and draft a legal appeal accusing Northampton and three other principals of conspiracy.

This *Appeal*, which described the period before the October 1383 mayoral election when Northampton was consolidating power through various means (including parliamentary reforms and concerted coercion of the guilds, the commoners and John of Gaunt), formed the basis for Brembre's petition to the king to hold a trial against Northampton and his allies. Usk's decision to compose a first-person written appeal against Northampton rather than make an oral deposition to the city coroner was atypical, suggesting his strong desire to assert a degree of authority and control over the narration of these highly fraught events. Although a legal appeal (or an official accusation of another party) was technically distinct from an inquisition of the accused, Usk combined the forms in his first-person document by confessing himself as an accomplice, however unwitting or unwilling, in Northampton's crimes.¹⁵ His *Appeal*, there-

Thomas Usk, *The Testament of Love*, ed. by R. A. Shoaf (Kalamazoo, MI: Medieval Institute Publications, 1998), pp. 423–29 (line 93). All further references to the *Appeal* will be to this edition and cited above by line number.

¹⁵ The category of the approver's appeal originated in England in the twelfth century, established as a process by which a felon was afforded the opportunity to escape or mitigate punishment by turning 'approver', i.e. by confessing crimes, making an appeal and implicating others (Paul Strohm, 'The Textual Vicissitudes of Usk's "Appeal"', in Paul Strohm, *Hochon's Arrow: The Social Imagination of Fourteenth-Century Texts* (Princeton, NJ: Princeton University Press, 1992), pp. 145–60 (p. 149)). However, this form was still distinct in origin from the inquest of the accused, since the purpose of the appeal was to accuse and ultimately prosecute another party.

fore, was a striking synthesis of 'a simple confession of an apprehended felon, a piece of testimony taken from an informed witness as a preliminary to a process of jury inquisition, and an appeal—or accusation—of treason by a concerned citizen', that is, a written document that carefully utilised various legal forms of truth production.¹⁶

However, despite his initial political gains following the *Appeal*, Usk's concerted attempt at 'textual self-assertion', to use Paul Strohm's phrase, would ultimately fail:¹⁷ the *Appeal* would eventually be subsumed into the official jury inquisition of Northampton's trial (the 'Inquisicio capta apud London in parochia ecclesie sancte marie Bothawe coram Nicholo Brembre maiore'), and the paper trail created by this and other documents based on the *Appeal* would culminate in Usk's execution on 4 March 1388, when the political winds shifted back towards Northampton and the rivals of Richard II. Usk's story thus seems to end with the tragic but all-too-common effacement of a typical subject of *inquisitio*—a subject, ironically, who believed that his written confession would efface his political sins and restore his dignity as a citizen in the fractious world of late fourteenth-century London. Accordingly, until quite recently, critics characterised Usk's shift from Northampton to Brembre and his subsequent *Appeal* as politically naïve.¹⁸ If, as Brooks describes, the difference between legal and sacramental confession is that the former leads perversely to conviction rather than absolution, Usk's failure to recognise this difference while writing the *Appeal* proved to be his undoing.

But to perpetuate the view that Usk was a hapless 'loser' in history, one who fundamentally misunderstood inquisitorial discourse, is to overlook his compelling, self-reflective treatment of the themes of defacement and restoration in his literary work the *Testament of Love*, written a few years after the *Appeal*.¹⁹ Like Boethius's *Consolatio philosophiae*, Usk's *Testament of Love* takes place with the subject in prison responding to the charges of his detractors. Critics have noted the ways in which the *Testament* echoes Usk's *Appeal*: in both his essays on Usk, Strohm highlights the parallel between the two texts' aim to produce immediate effects in Usk's personal and political circumstances; focusing more narrowly on form, Stephen Medcalf observes how Book II.4 of the

¹⁶ Strohm, 'Textual Vicissitudes', p. 148. This essay is, to date, the most comprehensive treatment of Usk's *Appeal*.

¹⁷ *Ibid.*, p. 145.

¹⁸ This view was put forth in detail by Ruth Bird, who portrayed Brembre as a representative of the oligarchy of merchant-capitalists and Northampton as a representative of smaller craft groups or trades (*The Turbulent London of Richard II* (London: Longmans, Green, 1949)). Bird's argument, however, was refuted by Pamela Nightingale, who characterised Northampton as a charismatic opportunist who used his populist appeal to consolidate power ('Capitalists, Crafts and Constitutional Change in Late Fourteenth-Century London', *Past and Present*, 124 (1989), 3–35).

¹⁹ For instance, Andrew Galloway notes 'all the errors of political judgement Usk made on his own behalf' ('The Literature of 1388 and the Politics of Pity in Gower's *Confessio amantis*', in *The Letter of the Law: Legal Practice and Literary Production in Medieval England*, ed. by Emily Steiner and Candace Barrington (Ithaca, NY: Cornell University Press, 2002), pp. 67–104 (p. 75)), and in his recent and more sympathetic reading of Usk, Strohm suggests that 'poor Usk' deserves, at the very least, our 'decent and epistemologically humble stab at comprehension' (Strohm, 'Textual Vicissitudes', p. 160).

Testament, which combines allegory and autobiography in Love's castigation of Usk for his early political missteps, incorporates elements of the appeal form.²⁰ However, there has not yet been a close study of how the *Testament* pits itself in *opposition* to the *Appeal* and, more broadly, to the destructive effects of inquisitorial language, discourse and texts. Furthermore, while Strohm carefully traces the journey of Usk's protracted erasure from actual inquisitorial and other legal records, no one has pointed out the urgently repeated motif of 'defacement' in the *Testament* as a symbolic and, at times, explicit representation of Usk's perception of his diminished legal and political agency in the aftermath of the *Appeal*.

I argue that Usk adopts the generic form of the testament to craft an authorised, binding document that supersedes his confession in the *Appeal*. As a scrivener and sometime attorney, Usk would have been very familiar with the testament, a longstanding legal and textual form that incorporated several different confessional modes, including the autobiographical, the penitential and the juridical.²¹ True to its form, the *Testament of Love* embraces all of these confessional modes and insists on their truth-value in Usk's defence, directly in contrast with the distorted confessions required within legal contexts. Whereas the structures of legal confession within the *Appeal* severely limited Usk's authorial agency and led (in his view) to the defacement of his political reputation, I read the *Testament* as the redemptive mirror image of the *Appeal*, framed as a divinely sanctioned written confession that aimed to trump the destructive force of Usk's earlier legal confession and restore his voice and good name.

Autobiographical Defacement and Usk's *Appeal*

In his 1979 essay 'Autobiography as De-Facement', Paul de Man proposed a theory of language as fundamentally privative. To the extent that it is a representation of the object it refers to, language appropriates and steals away the 'voice' of the object itself. Pursuing this logic, de Man argued that autobiography—with its claims to revivify the voice of its author, whether living or dead—is an inherently 'epitaphic' medium, effacing the subject it is meant to represent while perpetuating the myth of embodiment through the distancing, silencing structures of language: 'the restoration of mortality by autobiography (the *prosopopoeia* of the voice and the name) deprives and disfigures to the precise extent that it restores. Autobiography veils a defacement of the mind of which it is itself the cause'.²² Despite its polemical cast, de Man's purpose was not to proclaim that the autobiographical text causes the 'death' of the author, à la Barthes, but rather to render visible the mechanics behind the illusion that the

²⁰ Stephen Medcalf, 'The World and Heart of Thomas Usk', in *Essays on Ricardian Literature: In Honour of J. A. Burrow*, ed. by A. J. Minnis, with Charlotte C. Morse and Thorlac Turville-Petre (Oxford: Clarendon Press, 1997), pp. 222–51 (p. 232).

²¹ Strohm notes a 1376 case in which Usk is recorded as the attorney of one John Bere ('Textual Vicissitudes', p. 147, n. 5).

²² Paul de Man, 'Autobiography as De-Facement', *MLN*, 94 (1979), 919–30 (pp. 927, 930).

first-person utterance ‘restores’ the voice of the absent author, an illusion on which autobiographical writing depends for its very authority and meaning.²³

In his study of the prison writings of Charles d’Orléans, A. C. Spearing recalls the medieval idea that texts in the first-person exist ‘precisely because [their] originator *cannot be present*’: ‘Medieval awareness of this connection between writing and absence is indicated by statements such as John of Salisbury’s that “*Littere...absentium dicta sine voce loquuntur*” [letters speak without voice the sayings of those absent].’²⁴ In de Man’s slightly more radical view, autobiographical writing does not simply reflect but crucially sustains the author’s absence. De Man’s pessimistic reading of the first-person utterance thus strikingly resonates with critical understandings of the language and structures of medieval inquisition, in which the agency of the ‘real’ subject is paradoxically diminished at the very moment his or her voice is recorded for posterity.²⁵ Also useful for our understanding of the ways in which legally prescribed confessions ‘deface’ the subject is de Man’s argument that the reader of another’s autobiography is elevated to the position of ‘judge, the policing power in charge of verifying the *authenticity* of the signature and the consistency of the signer’s behavior, the extent to which he respects or fails to honor the contractual agreement he has signed.’²⁶ As many scholars of heresy inquisition have pointed out, the first-person utterance within the context of inquisition necessarily acquiesces to the judgement of a higher authority. Arnold, for instance, emphasises the power of heresy inquisition to coerce deponents into speaking ‘within a particular language and context of power’;²⁷ because it is the inquisitorial framework that prompts the self-referential speech, the speaking subject must be said to be produced during—and not prior to—his or her confession, and is thus wholly delimited by it.

While falling outside of the domain of heresy inquisition, Usk’s *Appeal* keenly illustrates the central paradox of de Man’s notion of autobiographical defacement and resonates with Arnold’s analysis of the inquisitorial utterance: namely, in composing the *Appeal* in the first person and tying his name and person to his claims, Usk signed himself over completely to the judgement of those reading the *Appeal*, to handle it—and him—as they pleased. It is impor-

²³ I refer here to Roland Barthes’s famous and profoundly influential essay ‘The Death of the Author’, in Roland Barthes, *Image-Music-Text*, trans. by Stephen Heath (New York: Hill and Wang, 1977), pp. 142–48.

²⁴ A. C. Spearing, ‘Prison, Writing, Absence: Representing the Subject in the English Poems of Charles d’Orléans’, *Modern Language Quarterly*, 53 (1992), 83–99 (p. 91). The English translation is my own.

²⁵ Commenting on the literate fourteenth-century French deponent Pierre de Luzenac who wrote his own testimony/confession, Arnold notes: ‘Although Pierre’s written confession addresses us in the first person, represents *himself*, and might therefore appear as an example of a “fully-fledged” confessing subject, this occurs through the discursive constructions of inquisition [. . .] Accounts of actions figure prominently, and the confession operates in the services of the Inquisition, giving details that will lead to the conviction of others. Pierre is given a subject-position that has agency but is not unfettered’ (*Inquisition and Power*, p. 106).

²⁶ De Man, ‘Autobiography’, p. 923.

²⁷ Arnold, *Inquisition and Power*, p. 110.

tant to remember that Usk's primary aims were optimistic: as Strohm has shown, Usk admitted to his political 'crimes' in his *Appeal* to achieve clear objectives: to convict Northampton and his associates and to save his own neck by convincing Brembre's faction that he was willing to cooperate fully with them.²⁸ Strohm notes that Usk's seemingly shrewd decision to perform the approver's role by writing his appeal and 'constituting himself as Northampton's principal accuser' allowed him to assert his own voice in the legal proceedings and to convert his admitted complicity 'into a source of authority if not a virtue in its own right', at least for the time being.²⁹ The very form of the *Appeal* ritually demanded self-identification and authentication: Usk declares in the opening that he delivers the written statement 'with myn owne [hondel]' (3), states his full name in nearly every article and concludes each item with the phrase 'I apele'.³⁰

Penitence, along with its hoped-for erasure of his 'crimes', was a key part of Usk's strategy. Although at least one critic has argued that the language of the *Appeal* is notably lacking in expressions of contrition, Usk in fact makes several statements of remorse.³¹ Regarding the civic strife caused by Northampton and his followers, Usk writes: 'To which euel menyng I was a ful helpere & promotour in al that euer I myght & koude, wher-for I aske *grace & mercy* of my lorde the kyng, & afterward of the mair, & of al the worthy aldermen, & of al the gode comunes of the town, as he that wol neuer more trespace a-yeins the town in no degre' (165–69). He concludes the *Appeal* 'repentant' (194) with an outright confession and plea for forgiveness and mercy from various personages, once again ranging from the king to the people of London. Initially, at least, Usk's strategies appeared to pay off: by turning against Northampton, he was released from prison and received temporary lodging in the house of Mayor Brembre, and after a brief period of turmoil in exile and in the courts, Usk began to receive royal commissions from Richard II and was elevated to the position of under-sheriff of Middlesex in 1387.

But Usk's hopeful vision of confession leading to the permanent erasure of his 'sin' was, from its inception, marred by the contingencies of his confession's legal context, within which *all* confessions constitute admissions of statutory

²⁸ See Paul Strohm, 'Politics and Poetics: Usk and Chaucer in the 1380s', in *Literary Practice and Social Change in Britain, 1380–1530*, ed. by Lee Patterson (Berkeley: University of California Press, 1990), pp. 83–112 (esp. pp. 98–99).

²⁹ Strohm, 'Textual Vicissitudes', pp. 153, 148.

³⁰ A typical article reads, for example: 'Also, ofte to-for that Sir Nichol Brembre was chose mair, the mair, John Norhampton, John More, & Richard Norbury, senten William Essex & me, Thomas Vsk, to the goldsmithes halle to speke with men of the comun conseyll for chesyng of the mair, & also ther-for weren al [that weren] of the comun conseyll take me be John Norhampton, that I, Thomas Vsk, sholde speke to hem that I knewe. [. . .] &, if he had ben mair, I wot wel he wolde haue meigtened al hys ordinances, or elles haue sette al the town in a rore; & her-of I appele John Norhampton, John More, Richard Norbury, & William Essex' (Usk, *Appeal*, lines 98–102, 109–12).

³¹ Andrew Galloway argues that Usk 'nowhere [. . .] presents a defensive and submissive posture in his *Testament* or his "Appeal," even when he is acknowledging his youthful errors' ('Private Selves and the Intellectual Marketplace in Late Fourteenth-Century England: The Case of the Two Usks', *New Literary History*, 28 (1997), 291–318 (p. 302)).

guilt, no matter how potentially reconciliatory the ends. The language of Usk's *Appeal* thus falls under the 'perverse' rhetoric that Brooks, Arnold and others have described in their descriptions of heresy inquisition: the more Usk admitted, the more he incriminated himself. As Strohm observes, 'Although a textually created identity can (and in this case did) propel its subject to prominence on a real stage, it remains vulnerable to the vicissitudes of textuality itself—to revision, resistant reading, capricious treatment by those upon whose encouragement it depends.'³² Unlike the scholar's erased confession in the opening exemplum, Usk's confession of his crimes in the *Appeal* would become a permanent part of the public record, at risk of appropriation by court authorities for their own purposes—a tragic paradox of autobiographical inscription and defacement.

While the *Appeal* initially set into motion a desirable form of erasure—Usk disappeared from official records for three years following his pardon—ultimately, Usk's good name and, indeed, Usk himself would be wiped out for good. His attempts to restore and preserve his reputation in the annals of English law would lead instead to the effacement of his name from his own testimony, as his statements would be excised and circumscribed, ever more thickly, by the third-person Latin jury presentment of 1384 and the *coram rege* rolls of 1388 dealing with the mayoral unrest, in which the individual identities of those who gave testimony were stricken from the record. On 3 February 1388, Richard's advisers were appealed of treason before the Merciless Parliament; one of the charges was their hiring of Usk as under-sheriff to oversee the executions of Lords Appellant and their followers, who were arrested, according to the charge, under false circumstances. After two main supporters of the king—Nicholas Brembre and Robert Tresilian, chief justice of the bench—were put to death, Usk's fate was sealed. On 4 March 1388, Usk was hanged and beheaded with thirty strokes of the axe. In the account of Usk's grisly execution given in the *Westminster Chronicle*, Usk's insistent declaration that all the articles of the *Appeal* were true demonstrates how he believed, to the very end, that it was the *Appeal* that led ultimately to his death.³³ In a final ironic act of history, the physical text of the *Appeal* itself would become 'hopelessly' damaged, particularly after line 172, which—poignantly—included Usk's final confessional plea.³⁴

The Rhetoric of Defacement and Restoration in the *Testament of Love*

If the *Appeal* represented the legal constraints upon the confessing subject, leading to the 'defacement' of his name and *fama*, Usk's ambitious *Testament of Love*, one of the 'most explicit and extensive examples of personal *apologiae* we have from late fourteenth- and early fifteenth-century England', represents the confessing subject's attempt to take control of legal discourse and reclaim his

³² Strohm, 'Textual Vicissitudes', p. 146.

³³ *The Westminster Chronicle, 1381–1394*, ed. by L. C. Hector and Barbara Harvey (Oxford: Clarendon Press, 1966), IX.169.

³⁴ Thomas Usk, 'The Appeal of Thomas Usk against John Northampton', in *A Book of London English, 1384–1425*, ed. by R. W. Chambers and Marjorie Daunt (Oxford: Oxford University Press, 1967), pp. 22–31 (p. 30, n. 3).

authority to tell his own story.³⁵ In particular, the *Testament* consciously emphasises its status as a *written* document that aims to replace the written record of the *Appeal*.

Given Usk's exhaustive struggles with the *Appeal* and its ultimate failure to restore his reputation, however, it is no surprise that the language of defacement and the concomitant anxiety over 'enfame'—or public reproach, shame or ill repute³⁶—permeate the *Testament*, especially in the earlier chapters.³⁷ While the Middle English word 'defacen' connoted disfigurement in a broad array of senses, both literal and figurative, the word and its forms often appeared closely connected with the materiality of writing, signifying such physical acts as blotting and striking out, erasing and rubbing off inscriptions.³⁸ Usk employs the word 'defacen' and its forms in various contexts that range across the legal, moral and erotic to the literary, but the *Testament's* uses of the word 'defacement' most often draw attention to the paradox of writing—that is, its potential permanence versus its infinite subjection to erasure, damage, loss, interpretation—and its particular link with *fama*.³⁹ In a lengthy discussion on fame, Love comments on its tenuous dependence on the written word: 'Howe many great named and many great in worthynesse losed [praised] han be tofore this tyme that nowe out of memorie are slydden and clenely forgeten for defaute of writynges? And yet scriptures for great elde so ben defased that no perpetuallé maye in hem ben juged' (I.8.822–25). Usk's concern (voiced here by Love) for the survival of one's name through writing, which is precariously prone to 'defaute' or 'defacement', participates in a well-worn tradition stretching back to the classical period and most notably dramatised in Middle English in Chaucer's *House of Fame*, which comically highlights the subjective link between writing and *fama* in its squabbling statues of *auctores*, the lament of Dido on the frieze of the Trojan War, the arbitrary judgement of the goddess Fame and the swirling, anarchic house of rumours.

Like his literary predecessors, Usk demonstrates acute concern over his *fama*—how he will be remembered in history, and whether he will be remembered at all. Of course, however, Usk's concern is compounded by his political woes and his knowledge of the fraught afterlife of his *Appeal*. Throughout the

³⁵ Galloway, 'Private Selves', p. 294.

³⁶ *MED*, s.v. 'infame (n.)', def. 1a.

³⁷ See I.6.511-13: "Ye, forsothe", quod I, " [. . .] so comenly the people wol lye and bringe aboute suche enfamé." "Nowe," quod she, "if men with leasynges put on thee enfamé, wenest thyselfe therby ben enpeyred? That wenyng is wronge". All references will be to Thomas Usk, *The Testament of Love*, ed. by R. A. Shoaf (Kalamazoo, MI: Medieval Institute Publications, 1998) and will be cited above by line number.

³⁸ *MED*, s. v. 'defacen (v.)', def. 2a.

³⁹ In one instance, Usk bemoans how his burning grief has 'defased' him of his cunning and wit (I.1.49) and renders him woefully unworthy of the attention of his absent beloved Margarite, to whom 'the defasyng [. . .] is verily unymagynable' (I.1.55–56). Later, Love compares Usk, in his fatal attraction to 'fayned love', to an ox drawn inexorably to the fire whose 'sote of the smoke hath thee al defased' (II.14.1390, 1392). (Shoaf translates *sote* as 'sweet', but it seems more likely to refer to 'soot', both grammatically and logically in this context of physical defacement or disfigurement.)

autobiographical Book I.6, where he describes the events leading up to the *Appeal* and his confession in court, Usk expresses pessimism about his damaged reputation. While Love tries to convince Usk that his undeserved fortunes in the court system and the court of public opinion will only increase his merit in the eyes of those who learn the truth, Usk doubts that his reputation will be so accurately evaluated. At one point, his pen quakes as he is overcome with anxiety over the book's future reception; even if the *Testament* physically stands the test of time, he laments, there is no guarantee that it will withstand the 'wicked wordes' and 'badde speche' (II.1.49, 50) of hostile readers.

However, if Usk considers his *fama* to be imperilled by the threat of defacement by false words, the *Testament* attempts to combat fire with fire. According to Love, truthful writing is Usk's best defence: 'whan lyght of truthe in these maters is forthe sprongen and openly publysshed among commens, than shal nat suche derke enfamé dare appere' (I.7.697–98). Throughout the work, Usk distinguishes what he considers to be the plain-speaking, truth-telling poetics and rhetoric of the *Testament* from the 'paynted and coloured' (I.6.547) language that he associates with his enemies. In the Prologue, Usk promises that his own rude words, born of suffering and a dulled wit, will be in 'boystous' (plain; Prolog. 5) English in order not to obscure their moral sentence: 'And although this boke be lytel thankeworthy for the leudnesse in travaile, yet suche writynges exciten men to thilke thynges that ben necessarie' (Prolog. 28–29). From the very start of his work, Usk makes it clear that the language of the *Testament* will be in service to the truth and clarity of its meaning, so that readers may best interpret the fraught events and philosophical ideas expounded within.⁴⁰

Likewise, Love's final speech to Usk firmly reinforces Usk's project of truth-telling. Speaking under the allegorical guise of courtly love, though with clear political implications, Love commands Usk:

Thy wordes may nat be queynt ne of subtile maner understandinge. Freewitted people supposen in suche poesies to be begyled. In open understandinge must every worde be used. 'Voice without clere understandynge of sentence,' saith Aristotel, 'right nought printeth in hert.' Thy wordes than to abide in hert and clene in ful sentence of trewe menyng platly must thow shewe [. . .] [but] he that lyst nat to speke but styilly his disease suffre, what wonder is it tho he come never to his blysse? (III.7.840–44, 846–47)

Love's words are as lucid as her message: speak clearly and truthfully, but *speak* (or in Usk's case, *write*). This mandate becomes the driving force behind the *Testament*, with Usk explicitly pitting what he believes to be the truth of his written testimony in the *Testament* against the 'lesynges' and slander of his detractors who have wilfully misinterpreted his renunciation of Northampton

⁴⁰ Critics have interpreted the irony between Usk's description of his language as plain and unvarnished and its actual ornate, high style as a form of duplicity, deeming the *Testament's* narrative voice 'not just as unreliable but as fundamentally dishonest and as evidence for its author's notorious perfidy', as Isabel Davis has noted (*Writing Masculinity in the Middle Ages* (Cambridge: Cambridge University Press, 2007), p. 39). However, this self-abasing description is an extremely common humility topos; considering Usk's intended audience, this rhetorical gesture serves an even more urgent purpose—it is a matter, literally, of life and death.

and his confession in the *Appeal*. Fighting 'false fame' with the 'fame of trouthe' (I.6.652, 653), Usk aims to counter the defacement of his reputation with the revised truths of the *Testament*: 'And for comers hereafter shullen fully [. . .] al the sothe knowe of these thinges in acte, but as they werne I have put it in scripture, in perpetuel remembraunce of true meanyng' (I.6.648–50). While the relationship between writing and truth is always susceptible to manipulation, Usk's faith in the written word as the only way to get the truth out anchors his conviction in this passage. Portraying himself as a *persona non grata* unfairly stripped of his freedom and good name, Usk strives through the *Testament* to write himself back into being.

Fighting Writing with Writing: Usk's Employment of the Testament Form

In this section, I turn to the written form that Usk appropriates in order to combat the effects of his defacement resulting from the *Appeal*. The model of the testament is critical to understanding how Usk structures his work as an enduring counter-response not only to the 'lesynges' of his enemies, but—even more ambitiously—to the documentary culture of the English courts. Already well established in the classical and biblical traditions, the legal genres of the last will and testament gave rise to a rich tradition of testamentary literature.⁴¹ While the testament as a legal instrument was technically defined as the expression of the final disposition of the testator's goods, it was also, in its fullest form, a tripartite confessional performance.⁴² A typical testament contained an autobiographical confession of one's actions and experiences, a penitential confession of sins, and a legal confession in which the subject declared his or her own name, identity and possessions to be deeded.

In the tradition of both Latin and continental literary testaments such as Jean de Meun's *Testament* (late thirteenth to early fourteenth century) and Christ's testament in Guillaume de Deguileville's *Pèlerinage de la vie humaine* (1330–1334, translated by Lydgate in 1426), the form took strong hold in England. Emily Steiner observes in particular an unusual burst of fictive wills and testaments around 1350, including the popular poems the *Long* and *Short Charters* commonly known as the 'Charters of Christ', in which Christ reads aloud a 'charter of heavenly bliss'—a testament inscribed into his bloody flesh, bequeathing heaven to his followers in return for absolute penance. Noting that contemporary scholarship of the late fourteenth century in England has long focused on legal documents' association with Latinate bureaucratic corruption and repression, Steiner invites us to see the flowering of vernacular charters and testaments as evidence of a thriving Middle English culture that appropriated

⁴¹ For a comprehensive overview, see Eber Carle Perrow, 'The Last Will and Testament as a Form of Literature', *Transactions of the Wisconsin Academy of Sciences, Arts, and Letters*, 17 (1913), 682–753.

⁴² As Julia Boffey has pointed out, the testament dealt with goods and the will with lands and property; the will appointed executors while the testament did not. In practice, however, the two terms came to be used interchangeably and almost tautologically, most obviously in the phrase 'the last will and testament' (Lydgate, Henryson, and the Literary Testament', *Modern Language Quarterly*, 53 (1992), 41–56 (p. 42)).

Latinate legal instruments and transformed them into vigorous sites of literary innovation and religious and political debates.⁴³ In a similar vein, Bruce Holsinger has coined the phrase ‘vernacular legality’ to refer to ‘the self-conscious use of a medieval vernacular in order to explore a specialised realm of authoritative legal knowledge and practice whose documentary and discursive apparatus is confined primarily to Latin’, infusing the vernacular texts with ‘a juridical and forensic authority that would otherwise be restricted to the agents of official legal culture’.⁴⁴

Steiner’s and Holsinger’s re-examinations of vernacular legal literature suggest extremely useful ways of thinking about the *Testament*’s negotiations of legal and literary authority. In its incorporation of the structures of the last will and testament to organise and authorise its meaning, the *Testament* is an important example of vernacular legality’s ‘writing against’ the repressive foreclosure of legal textual culture. Thematically, the work repeatedly voices the question of what constitutes true law, just as it concerns itself with true language. Love explicitly pits her ‘lawe of kynde’—the natural law governing and governed by righteous love and reason—above fallible human law.⁴⁵ Formally, Usk fully exploits the tripartite confessional form of the testament—the autobiographical, the penitential and the juridical—to exonerate himself from what he perceives to be wrongful imprisonment under fallible human law.

In the autobiographical passage I.6, Usk gives a new account of his dealings with Northampton that heavily redacts his legal confession in the *Appeal*. Within the *Appeal*, Usk was required to play the specific role of appellant, which restricted his agency: since the purpose was to incriminate Northampton, Usk marginalises himself even in his own account, a device that is most evident in his admission that he was not privy to Northampton’s innermost circle.⁴⁶ However, in I.6 of the *Testament*, Usk presents himself as the protagonist, claiming ownership of his deeds and misdeeds alike and embedding his revised account in a richly allusive narrative that imbues his role with multiple layers of meaning, from the mythological to the theological. In bringing his agency to the fore, Usk not only emphasises his own free will as the ‘master of the decision-making process’ to prove the sincerity of his political conversion to his new associates, but he also literally rewrites the *Appeal* to recuperate what he believes to be the true account of events and of his motives throughout his political career.⁴⁷ According to Usk, it was only upon his arrest by Brembre that he

⁴³ Emily Steiner, ‘Inventing Legality: Documentary Culture and Lollard Preaching’, in *Letter of the Law*, ed. by Steiner and Barrington, pp. 185–201.

⁴⁴ Bruce Holsinger, ‘Vernacular Legality: The English Jurisdictions of *The Owl and the Nightingale*’, in *Letter of the Law*, ed. by Steiner and Barrington, pp. 154–84 (p. 157).

⁴⁵ His divine visitor and counsellor Lady Love explains that her law is the ‘lawe of kynde [. . .] by God ordayned and stablISHED to dure by kynde reasoun’ (I.5.453–54), which, compared with the fallible law of man’s wit, is far more resistant to the defacement of time.

⁴⁶ ‘[B]ut the mair wolde otherwhile do be hys own avys, and also on Willyngham, a scryuen, & on.....Marchaund, clerk, writen many thynges in myn absence, & atte some tymes wer ther mo[r]e pryuer than I’ (Usk, *Appeal*, 37–38).

⁴⁷ Strohm, ‘Politics and Poetics’, p. 102.

realised the error of his ways, and his consequent change of sides is presented as less an act of self-preservation (despite his admission that confessing was his only way to avoid death) than a moral awakening. Unlike the undeserved slandering of his own reputation, Usk's impeachment of Northampton in the court of law is presented as justified because Northampton and his 'blynde' (I.6.575) supporters were causing strife and destruction in the city, violently disrupting the fundamental desire of both God and man to 'comen to the perfyte peace everlasting' (I.6.583). This abrupt shift towards a theological perspective gives Usk the opportunity to subtly imbue his own literary project with divine meaning: he describes God's peaceful covenant with humankind as 'His Testament' (I.6.585), and continues to evoke this parallel until the very end of the work—a point to which I will return.⁴⁸

The *Testament's* dramatic rewriting of the *Appeal* necessarily places Usk—even with his admitted wrongdoings—in a mostly flattering and self-justifying light. While the *Testament of Love* includes a traditional penitential confession characteristic of the testament form, the confession ultimately serves to underscore the authority of the *Testament's* declarations of truth. In Book II, Love (in the priest's role)⁴⁹ admonishes Usk for pursuing worldly riches, dignity, renown and power in his youth, and suggests that Usk's current imprisonment is penance for his 'wronge' living (II.4.366). Comparing him allegorically to the lover who is led astray by false desire in Proverbs 7:7–22, Love tells Usk, 'Remembre in thyne herte howe horribly somtyme to thyne Margaryte thou trespapest, and in a great wyse ayenst her thou forfeytest. Clepe ayen thy mynde, and knowe thyne owne gyltes' (II.14.1401–04). Love consoles him, however, with the promise that after Usk's 'amendmente in the laste ende', Margarite will be 'to foryevenesse enclyned' (II.14.1399, 1405–06). Advancing him through the stages of confession, Love assures the humbled Usk the true reconciliation that the *Appeal* denied him.

However, Usk's penitential performance in the *Testament* does not guarantee him forgiveness and freedom in his lifetime. In fact, Love offers a cryptic and—in retrospect—chilling prediction of his future demise even as she urges him to continue the moral path he has chosen:

'Contynueth wel [. . .] to the ende, and thou might not fayle than, for though thou spede not here, yet shal the passyon of thy martred lyfe ben written and radde toforne the great Jupyter, that god is of routh, an hygh in the holownesse of heven, there he sytte in his trone: and ever thou shalt forwarde ben holden amonge al these hevyns for a knyght that mightest with no penaunce ben discomfyted.' (II.9.887–92)

⁴⁸ See Shoaf's note to I.6.585 on p. 332. According to Perrow, the New Testament was literally interpreted in the Middle Ages as God's last will and testament ('Last Will and Testament', p. 707). Medcalf describes the *Testament's* conscious synthesis of the two meanings (as covenant and last will) as 'thoroughly Uskian' ('World and Heart', p. 251).

⁴⁹ The allegorical figure of Love in the roles of confessor, counsellor and physician is of course drawn from the Boethian tradition; in the vernacular, close analogues include Dante's Cupid in the *Vita nuova*, Chaucer's Alceste in the *Legend of Good Women* and Gower's Genius in the *Confessio amantis*.

While the idea of martyrdom is quickly revealed to be understood symbolically (since Love defines a martyr as one who, like Usk in his present state, 'lyvyngly goyne [still alive] is gnawen to the bones' (II.9.892–93)), the ultimate outcome of his disfiguring 'penaunce' is prophesied to be reliant upon the future success of a written text—the passion of thy martred lyfe ben written—with Jupiter representing both divine judgement and the judgement of future readers. Despite their bleak tone, these allegorical scenes of penance accomplish several important goals. Love's comparison of Usk to the Proverbs' lover led astray by a 'strumpet' (II.14.1354) shrewdly evokes Book I.6, with Usk's 'sin' referring to his imprudent alliance with Northampton, portrayed there as the proverbial false seducer. If Usk's targeted audience is Brembre and his allies, this metaphorical narrative further cements their perception of his loyalty. Beyond their immediate political correspondences, however, the elements in this love allegory open up into an almost infinite world of meanings when the many senses of Margarite are taken into account. While the text generally figures her as Usk's ideal reader, her actual identity is never fixed: as if to acknowledge his own inability to pin down her meaning, Usk defines her variously as 'a woman, betokeneth grace, lerning, or wisdom of god, or els holy church' (III.9.1123–24), a figure both erotic and divine akin to the transfigured Beatrice of Dante's imagination. Consequently, Usk's trespasses against Margarite are overlaid with cosmic, philosophical and theological meanings that correspond with the many complex levels at which the *Testament* operates. If, as Love promises, Margarite will indeed forgive Usk's sins, Usk will be absolved and vindicated at all of these levels, and his good name will endure.

Authenticating the *Testament*

In order to invest the *Testament* with the proper, binding authority that transcends worldly legal forms, Usk employs a number of strategies to ensure that the work functions as his final will and testament. In perhaps the most legally authenticating gesture (the final part of the tripartite confessional structure of the testament), Usk inscribes his own name into the *Testament* itself. Together, the first letters of each chapter of the entire work spell out the words 'MARGARETE OF VIRTW HAVE MARCI ON THIN USK'. The acrostic functions crucially in two ways: through its invocation of Margarite's mercy, it reinforces the petitionary and penitential themes threaded through the work. Second, it binds Usk's name to his work legally, by authenticating his authorship, and physically, by linking the survival of his name with the physical integrity of the work and its copies. Ironically, the history of Usk's acrostic—or more accurately, its centuries-long disappearance—is itself fraught with the tragic twists that marked Usk's diminishing agency in the legacy of his *Appeal*. No manuscripts of the *Testament* have survived, the only version existing in William Thynne's 1532 printed folio edition. Until Sir Walter Skeat's 1893 announcement of his fortuitous discovery of the acrostic, the *Testament* was long believed to have been written by Chaucer, an example of his laureate

style.⁵⁰ The disorganisation of the final chapters and the resulting confusion of the acrostic have struck at least one critic as yet another example of Usk's defacement: R. A. Shoaf argues that 'the part of the manuscript containing Book III was deliberately mutilated in order to erase the name of Usk and any possible allusion to Richard II [. . .] and its motive was the new [Lancastrian] regime's systematic desire to legitimate itself'.⁵¹ Taking into consideration its complicated history, the restoration of the acrostic, and of Usk's name, is especially poignant. The modern discovery of the acrostic uniquely and unequivocally provides, in a way so rarely possible with medieval works, 'clear internal proof' of the identity of the author.⁵² After centuries of obscurity, the historical Usk can be reconstructed and restored through the textual evidence embedded in the *Testament* itself—just as Love had predicted.

Historical ironies aside, Usk is careful not to imbue the *Testament* with his authority alone. While the book's implicit goals may be political in nature, its stated purpose and audience are far more universal, as Usk stresses repeatedly in his invocations to Love. According to Usk, Love is the true source of authority for the work, evidenced most clearly by the presence of her name in the work's very title:

Wherefore this worke have I writte, and to thee, tytled of loves name, I have it avowed in a maner of sacrificyse, that whereever it be radde it mowe in meryte by the excellence of thilke name the more wexe in autorité and worschyppe of takynge in hede, and to what entent it was ordayned the inseeres mowen ben moved. (II.1.74–78)⁵³

That the book's authority is inextricably tied to Love is made clear from its outset, when Love commissions Usk to write the *Testament* immediately after she appears. Usk's positioning of Love as stern patron and 'auctorite of wittnesse' (I.3.2) is a shrewd symbolic move, allowing him to reframe his worldly self-defence as an edifying moral treatise on love, composed at the behest of the divinity herself and increasing in authority the more 'inseeres [. . .] ben moved'. Framing the *Testament* as an ethical model of love, Usk strives to create a work that moves beyond the reach of slander and preserves the writer's true 'entente' for future readers.

In the *Testament*'s final, extraordinary authenticating gesture, the words, identity and authority of Love are sealed into the very heart of Usk himself, when the

⁵⁰ See Anne Middleton, 'Thomas Usk's "Perdurable Letters": *The Testament of Love* from Script to Print', *Studies in Bibliography*, 51 (1998), 63–116 (p. 64). Equal credit for the recovery of Usk's identity must also be given to Henry Bradley, who, around the same time as Skeat's discovery of the acrostic, reordered parts of Book III and thus identified Usk's name in the final part of the acrostic. Bradley's proposed changes in the ordering of the chapters were then quickly incorporated into the revised 1897 edition by Skeat.

⁵¹ Usk, *Testament of Love*, p. 22.

⁵² Thomas Usk, *Thomas Usk: Testament of Love*, ed. by Gary W. Shawver (Toronto: University of Toronto Press, 2002), p. 7.

⁵³ Of course, the ultimate authority—beyond Love herself—is God, the 'Maister of grace, whiche that of that good and al other is authour and principal doer' (III.1.125–26).

metaphor of Love's words held in the 'inrest secre chambre' of Usk's heart (I.7.718) is expressly realised at the end of Book III. With a closing blessing and absolution ('in thy good deservynge thy dette thou aquitest' (III.7.904)), Love leaps into Usk's heart. Usk discovers that all her teachings on true love and good civic and self-governance—that is, the whole of the *Testament* itself—are written 'parfytely' (III.8.919) in his heart, as 'perdurable letters wonderly there graven' (III.8.923). With the divinity's words and authority engraved in his very self, Usk comes to embody the prototype of his work, with all distinctions between physical and literary *corpus* miraculously collapsed. Mindful of the frailty of physical bodies and texts, Usk is careful to characterise the writing engraved in his heart as an idealised textual *corpus*, one in which '*none age ne other thyng in erthe maye the leest syllable of this is no poynt deface*' (III.8.924–25, emphasis mine). Against the defacement of false language, misinterpretation and time, the *Testament* is thus crafted to stand as an inviolable monument to the truth. Fittingly, the *Testament* concludes by narrating its transformation into a sacred scripture, replete with arcane meanings to be unravelled by readers inspired by the Holy Spirit: 'In this boke be many privy thinges wimpled and folde. Unneth shul leude men the plites unwind, wherfore I pray to the Holygost He lene of His oyntmentes mens wittes to clere' (III.9.1105–07). After a closing penitential prayer for God's mercy to wipe away his 'trespas and tenes' (III.9.1102), Usk at last bequeaths the book to his readers in the *Testament's* final act.

From the *Appeal* to the *Testament of Love* Thomas Usk attempted to clarify his singular perspective of volatile political realities and his own deeply entangled role within them. As Strohm has sympathetically observed, these repeated attempts on Usk's part demonstrated his 'remarkable and touching faith in the power of the written word to reorganise social reality'.⁵⁴ But the inquisitorial discourses that circumscribed the *Appeal* severely limited Usk's agency in his own confessional narrative, as his name and reputation were diminished by legal textual culture and in the public eye. The *Testament of Love* was Usk's ambitious response to this defacement, an attempt to produce a new, authorised and indelible written confession that superseded all others and bequeathed his view of the truth to future readers. Symbolising the move from defacement to restoration, the *Testament* opens with Usk's abject heart disfigured by 'perdurable letters [. . .] of lamentacion' (I.1.3) and comes to a close with his heart inscribed with the 'perdurable letters' of the *Testament* itself, a sacred legal document that 'ne other thyng in erthe maye [. . .] deface'. In his final sign-off, Usk invokes 2 Corinthians 3:6: 'The letter sleeth, the spirit yeveth lyfelych understanding'. The quotation is meaningfully apt: just as the textual binaries emphasised in 2 Corinthians—spirit versus letter and ink, tablets of human hearts versus tablets of stone—highlight the precedence of the New Covenant over the Old, Usk's *Testament* presents itself as a divinely authorised text that breathes new life into Usk's name, which was 'slayed' by the letter of inquisitorial law. Usk would go on to suffer death at the hands of the courts, and his name would

⁵⁴ Strohm, 'Textual Vicissitudes', p. 145.

be effaced from his own work until its rediscovery five hundred years later. However, strange echoes of the language of the *Testament* would resurface in religious inquisitorial contexts throughout the fifteenth and sixteenth centuries. The 1407 *Testimony* of William Thorpe, presumably the lollard preacher's handwritten transcript of his own trial in the palace of Archbishop Arundel, vividly exploited the legal form in order to reframe Thorpe's personal convictions and beliefs—to turn the tables, as it were, and indict the moral and doctrinal inadequacies of Arundel and his clerks instead. Like Usk, Thorpe emphasised the pre-eminence of God's law over human law and carefully crafted his testimony, as Steiner has observed, as 'an alternative document: a self-made testament to his life and beliefs, but also as a public sermon informing and instructing his present and future audiences'.⁵⁵ The testamentary form was taken up by ordinary lollard believers as well. In the 1429 trial of Margery Baxter, her onetime associate Joan Clyffland stated in a deposition that Baxter had declared that she should not be burned because she 'had and has a charter of salvation in her womb'.⁵⁶ Like Usk's 'perdurable letters' in the heart, Baxter's charter—a creative synthesis of lollard rhetoric and the Charter of Christ—charged that language divinely inscribed in one's being would always trump language written by fallen hands, even if coerced and mandated by human law.⁵⁷ While Thorpe would disappear from official records after the trial and Baxter would ultimately abjure her heresy, these ways of appropriating and subverting inquisitorial language and producing new, authorised written confessional forms would survive long afterwards into the Reformation, culminating in the popular trial narratives by religious prisoners written in their 'owne honde' and featuring their defiant confessions of faith.

⁵⁵ Steiner, 'Inventing Legality', p. 197.

⁵⁶ '[H]abuit et habet unam cartam salvacionis in utero suo' (*Heresy Trials in the Diocese of Norwich, 1428–31*, ed. by Norman P. Tanner, Camden Society Fourth Series 20 (London: Royal Historical Society, 1977), p. 49).

⁵⁷ Steiner, 'Inventing Legality', pp. 195–96. See also Rebecca Krug, *Reading Families: Women's Literate Practice in Late Medieval England* (Ithaca, NY: Cornell University Press, 2002), pp. 151–52.

Chapter 7

Confession, Inquisition and Exemplarity in *The Erle of Tolous* and Other Middle English Romances

JAMES WADE

Taak fyr and ber it in the derkeste hous
Bitwix this and the mount of Kaukasous,
And lat men shette the dores and go thenne;
Yet wole the fyr as faire lye and brenne
As twenty thousand men myghte it biholde.

Geoffrey Chaucer, 'The Wife of Bath's Tale' (III.1139–43)¹

The 'self' as we now know it is often said to have emerged in the Renaissance (Foucault, in fact, tended to focus on the eighteenth century), but there is a serious claim for marking this emergence at the moment when confession has exceeded its religious brief and is no longer illustrated by, but fully absorbed to, the process of narrative.

Christopher Cannon, *Middle English Literature*²

To say that an ethos of inquisition gained deep cultural saturation in late-medieval England is to beg the question of where, and in what form, we find engagements with this phenomenon in the artefacts of medieval cultural production. This essay takes romance, the dominant form of popular fiction in the period, as one of the more prevalent of such cultural artefacts, and it interrogates these texts as witnesses to, and manifestations of, the cultural embeddedness of *inquisitio* in the period. While the following discussion looks broadly at generic trends, the principal focus here is an English tail-rhyme romance of the late fourteenth century, *The Erle of Tolous*.³ Its usefulness in this context lies in its exemplary—but by no

¹ Geoffrey Chaucer, *The Riverside Chaucer*, ed. by Larry D. Benson, 3rd edn (Oxford: Oxford University Press, 1987). All references to Chaucer's works will be taken from this edition and cited above by line number.

² Christopher Cannon, *Middle English Literature: A Cultural History* (Cambridge: Polity Press, 2008), p. 32.

³ The romance survives in four manuscripts from the fifteenth and early sixteenth centuries. Mortimer Donovan places it 'around 1400', though a composition date any time between 1350 and 1400 is plausible, as other scholars have argued. See *A Manual of the Writings in Middle English, 1050–1500: I. Romances*, ed. by J. Burke Severs (New Haven, CT: Connecticut Academy of Arts and Sciences, 1967), p. 143. The manuscripts are: Lincoln, Lincoln Cathedral, MS 91 (the

means unique—concern with the inner workings of the psyche. As Dieter Mehl notes: ‘There are not many poems outside the Chaucer canon in which we find such perfect equilibrium between stylized poetry and psychological realism.’⁴ The poem’s ‘considerable merit’, Mehl goes on to say, owes much to its ‘subtle psychology’.⁵ The ubiquitous ‘psychology’ that Mehl identifies might, for our purposes, be reframed as an attention to the interior self, and it is this interiority that constitutes one of the principal points of contact between the concerns of inquisition and the concerns of late-medieval secular fiction. But by looking to moments of confession in *The Erle of Tolous* and in romance more broadly, this essay also aims to expose how popular literature absorbed notions of *inquisitio*’s intimate association with questions of public *fama*, as well as its most common function (as Henry Ansgar Kelly’s essay reminds us (Chapter 1)) of regulating sexual relations. These concerns of interiority, *fama* and sexual regulation, interpenetrate in *The Erle of Tolous* and in romance generally, just as they do in discourses of *inquisitio*. Thus, one of the overarching aims of this essay is to think about how we might access a culture of inquisition in medieval England by reading romance, and at the same time how we might better understand romance by thinking about inquisition.

During the pillow-talk episode in ‘The Wife of Bath’s Tale’, throughout which the concerns of reputation and the regulation of sexuality ripple, the old lady uses fire as a metaphor to instruct her wayward knight on the significance of internal qualities. Fire, she says, will always look and act according to its nature, regardless of who, or how many, are watching; a fire in the most remote or ‘derkeste’ house will burn just the same as a fire burning in the presence of twenty thousand. People, on the other hand, will not always behave consistently or as they should, and it often makes a good deal of difference who is watching. Who we are on the inside, in other words, is not always externally manifest. A ‘lordes sone’ may do ‘shame and vileynye’ (III.1151), the old lady says, because character is not in arrayment, and because it is not predetermined by lineage. Instead, character is complex, multiple and messy, unlike the dependability of fire, and it is located in hearts and minds, in those inner places where selfhood is constructed. The argument of this essay is that the concerns of interiority that occupied Chaucer in this passage are the same concerns that interested many authors of medieval romance, from *The Erle of Tolous* to romances as diverse as *Sir Gawain and the Green Knight*, *Guy of Warwick* and *Sir Gowther*, all considered below. Indeed, the claim I would like to test is this: that *The Erle of Tolous* is

Lincoln Thornton), Cambridge, Cambridge University Library, MS Ff.2.38 and Oxford, Bodleian Library, MS Ashmole 45 and MS Ashmole 61. For a parallel edition of the texts from MS Ff.2.38 and the Lincoln Thornton (with variants provided from MSS Ashmole 45 and 61), see *The Erle of Tolous: Eine Paralleledition mit Einleitung und Glossar*, ed. by Friedrich Hülsmann (Essen: Die Blaue Eule, 1987). For a facsimile of the Lincoln Thornton, see *The Thornton Manuscript (Lincoln Cathedral MS 91)*, intro. by D. S. Brewer and A. E. B. Owen (London: Scholar Press, 1977); for MS Ff.2.38 see *Cambridge University Library, MS Ff.2.38*, intro. by P. R. Robinson (London: Scholar Press, 1979). Unless otherwise indicated, I will quote from Hülsmann’s edition of MS Ff.2.38 by line numbers in the text.

⁴ Dieter Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries* (London: Routledge, 1968), p. 90.

⁵ Mehl, *Middle English Romances*, p. 87.

remarkable in its persistent attentiveness to the inner self of its heroine, Beulybon, and that it orchestrates this attentiveness by staging a series of confessional moments. As this volume elsewhere demonstrates, confession is both a counterpart to inquisition and a central part of it; both have human interiority as their principal terrain. The poet's strategy for accessing interiority is thus to pursue an inquisition of sorts—a sequence of confessional inquiries that form the etiological bedrock of the story. This is narrative as inquisition, in which the confessions are not merely devices for generating character. Some of the romance's confessions are secular, some sacramentally orthodox, and one decidedly heterodox, but in all cases, I will argue, they work to generate a virtuous exemplarity which in turn drives narrative. This essay, then, will (1) concern itself with the mechanics of confession as a generative structure, with how confession is both described by and fundamentally absorbed into the romance's narrative, to use Christopher Cannon's formulation; and (2) consider how these mechanics foster the creation of exemplary selves, with particular emphasis on showcasing the creation of the heroine's model character through the inquisitional logic of confession. Put another way, the essay will show how *The Erle of Tolous* uses this inquisitional logic as a way of theorising a gender-specific exemplarity, in that it interprets female virtue as it performs it. This is the logic of inquiry this essay seeks to trace: inquiry in the confessional mode as a technology that builds sophisticated and individualised selves, and through them a complex and novel narrative that could be read by late-medieval audiences as an example of what exceptional virtue makes possible.⁶ But first, a disclaimer: to say that romances such as *The Erle of Tolous* script exemplary women, or even employ the rhetoric of exemplarity, is not to suggest that they would have been read as exempla. As Melissa Furrow argues, exemplarity in the Middle Ages was more a reading strategy than a generic category, as audiences reared on sermon exempla (and Chaucer) 'expected what they read to be exemplary in some way'.⁷ Thus a growing reading public in the fifteenth century was conditioned to 'read for the moral', as J. Allen Mitchell aptly puts it, and they must have been skilled interpreters of the many different ways an assortment of narrative modes could express such morals.⁸

⁶ On confession as a technology of the self, see Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. by Robert Hurley (London: Penguin, 1978), esp. pp. 18–23, 58–63, 115–16; and Michel Foucault, *Technologies of the Self: Seminar with Michel Foucault*, ed. by Luther H. Martin, Huck Gutman and Patrick H. Hutton (London: Tavistock, 1988). For a summary and guide to more recent work, see Katherine C. Little, *Confession and Resistance: Defining the Self in Late Medieval England* (Notre Dame, IN: University of Notre Dame Press, 2006), esp. pp. 3–12.

⁷ See Melissa Furrow, *Expectations of Romance: The Reception of a Genre in Medieval England* (Cambridge: Brewer, 2009), p. 11; J. Allan Mitchell, *Ethics and Exemplary Narrative in Chaucer and Gower* (Cambridge: Brewer, 2004), esp. pp. 8–21. For work on the rhetoric of exempla, see Alastair Minnis, 'Medieval Imagination and Memory', in *The Cambridge History of Literary Criticism, Vol. 2: The Middle Ages*, ed. by Alastair Minnis and Ian Johnson (Cambridge: Cambridge University Press, 2005), pp. 239–74; Nicolette Zeeman, 'Piers Plowman' and the Medieval Discourse of Desire (Cambridge: Cambridge University Press, 2006), esp. pp. 170–87; Ann Dobyns, 'Exemplars of Chivalry: Rhetoric and Ethics in Middle English Romance', in *Romance and Rhetoric: Essays in Honour of Dhira B. Mahoney*, ed. by Georgiana Donavin and Anita Obermeier (Turnhout: Brepols, 2010), pp. 17–32.

⁸ Mitchell, *Ethics and Exemplary Narrative*, pp. 14–15.

Model Characters

The Erle of Tolous announces the matter of its narrative early on in what is perhaps the Middle Ages' most crystalline expression of the standard romance plot cycle of loss and restoration: 'How a lady had grete myschefe / And how sche couyrd of hur grefe' (10–11).⁹ Urs Dürmüller, in the only book-length study of the romance to date, divides the narrative into a Prelude and three Movements.¹⁰ In the Prelude, the Emperor of Germany unjustly takes control of Sir Barnard's lands, despite the intercession of the Emperor's wife, Beulybon, who urges him to 'Delyuyr the Erle hys ryght' (48). In a remarkably graphic battle scene, which describes rivers of blood and headless corpses, and what scraps remained for the widows, Barnard successfully drives the Emperor's battalions from his property. Thus, by the end of the first fourteen stanzas Barnard is established as being both a valiant knight and on the side of 'ryght', and Beulybon—crucially—as 'gode in alle thyng' (40). Then, in the First Movement, Trylabas, one of Barnard's many prisoners, speaks of Beulybon's extraordinary beauty. Barnard becomes enamoured and the two knights devise a plan whereby Barnard disguises himself as a hermit to catch a glimpse of her in chapel. When he presents himself to her, she 'schewed opynly hur face / ffor loue of that knyght' (338–39), and then:

Twyes sche turnyd hur abowte
 Betwene the Erls that were stowte,
 For the Erle schulde hur see. (349–51)¹¹

This presentation, followed by a rhetorical *effictio* describing her beauty, concludes with Beulybon giving Barnard a ring, which he considers, significantly, to be a token of her love: 'That any loue betwene vs bene / Thys may be oure tokenyng' (407–08). But what complicates this morally dicey encounter is that Beulybon, as her name suggests, is both beautiful and good (*belle et bon*), her moral virtues as a charitable and faithful 'wyfe' of 'gode berynge' being constantly reaffirmed in the romance through narratorial comment. Here is perhaps the most overt character-establishing passage, in which she shares company with none other than the Virgin Mary:

Thys Emperour had a wyfe,
 The fayrest oon that euyr bare lyfe
 Saue Mary mekyll of myght,

⁹ In the final stanza the poet announces it as a 'lay of Bretayne' (1220), though this assignation might not be of much critical use. It also claims to be a 'geste' chronicled in Rome (1219), and Mehl, *Middle English Romances*, notes that line 1220 'need not be taken very literally' (p. 86). It has also been called an historical lay, and though no French original survives, there are analogues in many European languages, along with a closely related historical incident. See Masaji Tajiri, *Studies in the Middle English Didactic Tail-Rhyme Romances* (Tokyo: Eih sha, 2002), p. viii.

¹⁰ Urs Dürmüller, *Narrative Possibilities of the Tail-Rime Romance* (Bern: Francke Verlag, 1975), pp. 13–18.

¹¹ In MS Ff.2.38 and MS Ashmole 45 she turns twice; in MS Ashmole 61 and the Lincoln Thornton she turns 'Thryse'.

And ther-to gode in all thyng,
 Of almesdede and gode berynge,
 Be day and eke be nyght.
 Of hyr body sche was trewe,
 As eyr was lady that men kewe,
 And ther-to moost bryght. (37–45)

Descriptions of her virtuous womanhood, and the fact that she was always ‘trewe’, are scattered throughout the romance, even if in one instance such comments seem at odds with her behaviour.¹²

Following Barnard and Beulybon’s first meeting, though, Beulybon again demonstrates how good she really is. Trylabas plans to betray and murder the Earl, and when he seeks to enlist Beulybon’s help she reminds him that he ought to keep his ‘trowthe’:

Y rede the, holde thy trowthe.
 Certys, yf thou hym be-gyle,
 Thy soule ys in grete paryle,
 Syn thou haste made hym othe.
 Certys, hyt were traytory
 Ffor-to wayte hym velany,
 Me thynkyth, hyt were rowthe. (294–300)

Here Beulybon speaks the language of chivalry, a language Trylabas should understand. ‘Trowthe’, that inner knightly virtue of loyalty and integrity, from which honour stems, is at the centre of a medieval chivalric ethos, and to keep one’s ‘othe’ is of course paramount in maintaining that ‘trowthe’. The structure of the tail-rhyme affirms this, with the adverb ‘Certys’ in lines 295 and 298 signalling the overt repetition of the same crystal-clear sentiment: that oath-breaking is traitorous and anathema to chivalry. Trylabas takes no heed, though, and is swiftly killed when he and two thugs ambush Barnard. For Dürmüller this signals the end of the First Movement, its main function being to establish Beulybon’s virtues and Barnard’s mettle in battle, and also to introduce the morally complicated possibility of a love interest between them. In the Second Movement the romance’s main plot begins. The Emperor has left court and has placed his wife in the care of two trusted chamberlains who make separate attempts to seduce her. Unsuccessful, and fearing that she will expose their shameful behaviour, they murder a boy in her bedroom (who had been duped into hiding there in his underpants), as a way to frame Beulybon for adultery.

In the Third Movement, then, the Emperor returns and assents to Beulybon’s death sentence for treasonous adultery, unless she can find a champion to undertake a judicial combat on her behalf.¹³ When Barnard hears of this he sets off to

¹² Mehl, *Middle English Romances*, notes that ‘the narrator repeatedly interrupts the narrative with his own comments’ (e.g. lines 414, 527, 597, 691–93, 705 and 757), and that throughout these intrusions ‘he clearly stands on the side of his two protagonists’, p. 92.

¹³ On trial by combat see Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999); Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986).

rescue her, disguised again as a hermit. Along the way he happens to meet an abbot, who also happens to be Beulybon's uncle and confessor. This abbot assures Barnard that Beulybon has always been virtuous, and that in confession he had absolved her of all guilt. Barnard then reveals himself to the abbot, saying that he has come to take up the battle against Beulybon's accusers. But in an odd twist, he insists that he 'schryve' Beulybon himself, just to assure himself of her innocence, and to do this he disguises himself again, though this time as a monk.

Confessional Romance

We will consider the implications of this pseudo-confession in detail below, but first it is worth noting that, as far as Middle English romance goes, *The Erle of Tolous* is unusual in the specificity of its reference to confession. Romances are nearly always about failed knights (and very often failed ladies), but despite this, ordinary sacramental confession does not maintain a very solid place in the history of the genre. Given romance's attention to the individual (as compared with related forms such as history or epic), the type of intimate interiority that confession exposes is nothing less than one of the central distinguishing features of the genre. Another distinguishing feature, however, is grandiosity, and only rarely will a romance pause to give attention to the workaday mechanics of penance. Even the so-called penitential romances opt for more dramatic flourishes.¹⁴ The astoundingly ill-behaved Sir Gowther, for instance, of another tail-rhyme Breton Lay, will confess his nun-raping and abbey-burning only to the pope himself, and his journey to redemption becomes bound up in his journey to Rome. This is confession as quest, or confession reshaped by a romance ethos and for an audience anticipating larger-than-life romance adventures. Indeed, readers familiar with instructional treatises such as *Prick of Conscience* or *Handlyng Synne* would have readily recognised the romancing of ordinary church procedures in the secular texts they read.¹⁵ So far as the surviving evidence indicates, too, fifteenth-century readers would have had ample opportunity to compare romances with texts of penitential instruction; all three of the miscellany manuscripts containing *The Erle of Tolous*, for instance, also hold excerpts of *Prick of Conscience*, *Handlyng Synne* or other penitential romances.¹⁶ Although all late-medieval readers would have learnt that contrite confession to one's parish priest and the appropriate performance of penance

¹⁴ On the penitential romances, see Andrea Hopkins, *The Sinful Knights: A Study of Middle English Penitential Romance* (Oxford: Clarendon Press, 1990). Hopkins focuses on four romances, *Guy of Warwick*, *Sir Isumbras*, *Sir Gowther* and *Robert of Cisyle*, though Appendix A contains a brief discussion of other English romances containing penitential episodes.

¹⁵ Hopkins, *Sinful Knights*, makes this point, pp. 196–97.

¹⁶ The *Stimulus Consciencie Minor*, an abridged version of *Prick of Conscience*, appears in MS Ashmole 61, as does *Maidstone's Seven Penitential Psalms* and *Sir Isumbras*. MS Ashmole 61 also contains an exemplum excerpted from Robert Mannyng's *Handlyng Synne*: 'The Knight Who Forgave His Father's Slayer', which immediately precedes *The Erle of Tolous* in the manuscript. MS Ff.2.38 contains *Guy of Warwick* and *Robert of Cisyle*. The Lincoln Thornton also contains an extract of the *Prick of Conscience* and *Sir Isumbras*, which immediately precedes *The Erle of Tolous*.

is essential for the forgiveness of sin, in *Sir Isumbras*, for example, the hero is alone in a forest when he is given his Job-like penance by a spiritual messenger in the form of a bird—hardly an ordinary or orthodox confessional encounter. Likewise, penitents would work hard to rigorously remember all the details of their sins so as to make them available for examination in the confessional, but in *Guy of Warwick* the hero does not even attend confession with a priest before he imposes his own penance. Guy's new bride, reasonably, suggests that the foundation of a religious house would be penance enough, but such lacklustre solutions have little place in romance. As Gowther and Roberd of *Roberd of Cisyle* literally eat with dogs to pay for their sins, Guy takes flamboyant penance a step further. He gives up his newly won life (and wife) in favour of a lifetime of extraordinary hardship in the service of God. If *Sir Gowther* scripts confession as quest, *Guy of Warwick* turns pilgrimage into quest and thus quest into penance, without bothering with the details of confession first.

Undoubtedly the most famous instance of confession in Middle English romance occurs in *Sir Gawain and the Green Knight*. In fact, the romance scripts two confessions, and it is especially telling which of these receives greater narrative emphasis. The first occurs on Gawain's third and final morning at Hautdesert. On the previous two mornings he had simply gone to mass in the chapel, but on the third:

Syþen cheuely to þe chapel chos he þe waye,
 Preuély aproched to a prest and prayed hym þere
 Þat he wolde lyste his lyf and lern hym better
 How his sawle schulde be saued when he schuld seye heþen.
 Þere he schrof hym schyrly and schewed his mysdedez,
 Of þe more and þe mynne, and merci besechez,
 And of absolucioun he on þe segge calles;
 And he asoyled hym surely and sette hym so clene
 As domezday schulde haf ben diȝt on þe morn. (1876–84)¹⁷

W. R. J. Barron calls this an 'impenetrably candid' description of Gawain's confession, candid because it accurately and bluntly describes the whole sacramental procedure most romances forego, and impenetrable because its very thoroughness exposes the central problem: Gawain did not confess his concealment of the green girdle that was promised to save him from certain death at the Green Chapel.¹⁸ For John Burrow, this is evidence enough of Gawain's 'fault', in that he commits a mortal sin by deliberately making a false confession, but the *Gawain*-Poet never makes things so simple.¹⁹

When Gawain undergoes his second confession with the Green Knight, his confessor calls him 'þe fautlest freke þat euer on fote ȝede' (2363), even though

¹⁷ *The Poems of the Pearl Manuscript*, ed. by Malcolm Andrew and Ronald Waldron (London: Edward Arnold, 1978), pp. 275–76.

¹⁸ W. R. J. Barron, 'Trawþe' and Treason: *The Sin of Gawain Reconsidered: A Thematic Study of 'Sir Gawain and the Green Knight'* (Manchester: Manchester University Press, 1980), pp. 94–95.

¹⁹ John Burrow, *A Reading of 'Sir Gawain and the Green Knight'* (London: Routledge and Kegan Paul, 1965), pp. 104–12, 127–59.

he breaks his 'trawþe' by accepting and keeping the girdle. Though of course this is not a confession performed by an actual priest, the episode contains all the elements of the sacramental rite. As Andrea Hopkins notes, the pattern follows Gawain's ignorance of his fault, his being made aware of this fault, this revelation leading to grief and shame on Gawain's part, his acknowledgement of being at fault and his voluntary undertaking of the penitential exercise of public confession.²⁰ In the end, too, the Green Knight's absolution is couched in confessional terms:

þou art confessed so clene, beknowen of þy mysses,
 And hatz þe penaunce apert of þe poynt of myn egge,
 I halde þe polysed of þat plyzt and pured as clene
 As þou hadez neuer forfeled syþen þou watz fyrst borne. (2391–94)

Gawain, confessed in full knowledge of his 'mysses', has been so polished and purified that he is now as clean as if he had never sinned in his life. Despite these conventional sentiments, however, it is a wholly otherworldly and wholly secular absolution, the penance made at the point of the Green Knight's axe, and complicated by Gawain's immediate rejection of it. Indeed, by the time Gawain reaches this point, any debate over his false confession at Hautdesert has become, for Gawain, purely academic. His fault is that he lacked 'lewte', and his 'trecherye and vntrawþe' (2383) is against the Green Knight himself. What is at stake—for Gawain at least—is not the cleanness of his soul, but the hygiene of his chivalry. The games Gawain and the Green Knight play are serious, to be sure, but they are games of the romance world, games that could only be understood by audiences steeped in the conventions of the genre.

Conventions of chivalry, and the particular games the Green Knight uses to challenge this chivalry, are also part and parcel of romance's attention to the inner self. The testing of Gawain's 'trawþe' is not in any way related to the martial aspects of knighthood; what matters is not Gawain's strength of arms, but rather his strength of character. His fault was that he did not behave more like fire, to use the Wife of Bath's example. That is, he behaved differently because he thought no one else was watching. At his moment of crisis, what was really inside showed itself outwardly: namely, his potential to forsake his own 'kynde' (2380) and behave in an unknighly fashion. But if narrative of this sort can become a technology for generating interior selves, that very possibility comes first from technologies of confession and inquisition. A telling exemplum from Robert Mannyng of Brunne's *Handlyng Synne* deals with the problem of hypocrisy, which may be just another way of saying one has forsaken one's own 'kynde'. The story focuses on a monk who confesses to being an 'ypocryte' on his deathbed:

Y am nat, breþren, as 3e wene,
 Of holy lyf as haþ be sene.
 Þat y fastede whan 3e lete,
 For twyys pryuyly y ete. (3179–82)²¹

²⁰ Hopkins, *Sinful Knights*, pp. 204–18 (p. 205).

²¹ Robert Mannyng of Brunne, *Handlyng Synne*, ed. by Idelle Sullens (Binghamton, NY: Medieval and Renaissance Texts and Studies, 1983), p. 81.

That he sneaks food while pretending to be fasting beyond the allotted period only twice points to the harsh logic of this exemplum, for the story ends with the devil binding the monk's legs with his tail and shoving his head in the monk's mouth. Such graphic flair is intended to stick in the audience's imagination, but it is also instructive in the unforeseen dangers of hiding one's 'falsnes', like Gawain hiding the girdle (which he calls a 'falssyng' (2378)). Indeed, Mannyng sums up this sin in a couplet that stresses the problem of façades: 'Ypocrysy, þys ys þe synne, / Feyr wyþ oute & wykked wyþ ynne' (3197–98). Like a 'lordes sone', a monk may do 'shame and vileynye', because virtue does not lie in appearances. What is the solution, then, to hiding falseness in 'feyr shewyng'? Simple: 'telle hyt to þy prest' (3206). Confession, here, is a generative technology, constructing subjects by dismantling falseness and aligning showings with true selves, with what is located 'wyþ ynne'.²²

Here is another exemplum from *Handlyng Synne*, in which the process of confession again exposes that inner space of the self:

Of a womman y herde ones spelle
 Þat alle here synnes wld e nat telle.
 Þys womman had do a synful dede:
 Here shamede to telle hyt for drede.
 On o day grace was here 3yue
 Þat she þoghte she wld e be shryue.
 Þys womman com vnto a frere
 And preyd hym here lyffe to here.
 As she sat here shryfte ynne,
 She þoghte vpon þys yche synne.
 Þe frere cumforted here weyl,
 Boldely to seye eurydeyl.
 Hys cumfort made here ryght bolde,
 So þat she furþ þat synne tolde
 Þat she had longe forhole
 Þurgh cunseyl of þe deuel stole.
 But at þat yche breyde
 Þat she furþ þat synne seyde,
 Com fleyng out of here mouþe a blak,
 Ryght as she þe wrd spak.
 Þe frere sagh hyt apertly
 And þanked god of hys mercy. (11,853–74)

In Mannyng's source, the Anglo-French *Manuel des Pechiez*, the woman is said to have a 'deble' inside her, and what comes flying out of her mouth is this very devil.²³ In Mannyng, though, what comes out of the woman's mouth is simply,

²² Mark Miller gives a different reading of this exemplum, focusing on the monk's pride at only having to confess two measly sins. But such pride only leads back to hypocrisy, since the very act of the monk's confession becomes just another 'feyr shewyng'. See 'Displaced Souls, Idle Talk, Spectacular Scenes: *Handlyng Synne* and the Perspective of Agency', *Speculum*, 71 (1996), 606–32 (pp. 614–16).

²³ Furnivall prints the *Manuel des Pechiez* as a parallel text in his edition of *Handlyng Synne*. See *Robert of Brunne's 'Handlyng Synne'*, ed. by Frederick J. Furnivall, 2 vols, EETS os 119, 123 (London: Kegan Paul, Trench, Trübner, 1901–1903).

and mysteriously, 'a blak': some sort of object or substance that flies out in simultaneity with the words themselves. Here the speech-act of confession takes on literal form, with the sin emptying out from within the woman at each confessional utterance of a sin ('at þat yche breyde / Þat she furþ þat synne seyde, / Com fle yng [...] a blak'). Thus, in the thought-experiment of this exemplum, sin becomes a physical object rather than a mere concept, and like all objects this sin exists in space and occupies space—and that space is within the body. In altering his source, what Mannyng achieves in this example is a literal representation of the metaphor of interiority.²⁴ He achieves two other things as well. First, he strongly suggests the process of purification that confession performs, with more and more of the black substance flying from the woman's insides with each sin confessed. And second, as in the example of the hypocrite monk, confession is shown to be a transformative technology, with the woman's shame and dread turning to boldness through the encouragement of the friar, and then through the 'grace' and 'mercy' of God, the reanimation of the soul: 'A soule þat ys ded þurgh synne, / Þurgh shryfte cumþ grace þer ynne' (11,901–02).

Exemplary Romance

Exempla of this sort reaffirm the sturdy truths of doctrine, and as these lines show the form's concluding switch to the interpretive mode confirms the edificatory virtues of the narrative. Such interplay between narration and interpretation, a staple of the exemplum, is a rhetorical manoeuvre that romance writers used as well, though the dominant doctrine in these secular texts was that of chivalry. Indeed, it has long been recognised that *The Erle of Tolous* is a romance preoccupied with matters of 'trowthe' and 'ryght', and Beulybon emerges as the chief vehicle for this concern early in the narrative, in Barnard's initial conflict with the Emperor.²⁵ The narrator tells us that the Emperor is a tyrant; he has disinherited 'many a man' and taken their lands 'falsely' (19–20), but this is countered by Beulybon's intercession in the case of the Earl's lands:

To the emperour sche can say:
 'My dere lorde, y you pray,
 Delyuyr the Erle hys ryght'. (46–48)

This direct speech comes immediately after the description of her as an exemplary wife (37–45, quoted previously), a sequence which couples the narrator's interjection with a narrative action that exhibits the qualities expressed in that

²⁴ Images of sin taking on material form are very common in the pastoral tradition, as in *Jacob's Well* and *Ayenbite of Inwit*, where it is described as congealed dirt that must be chiselled out and swept away in confession. Sin can also become a material stain, such as Haukyn's coat spotted with sin in *Piers Plowman*.

²⁵ On the concern with 'trowthe' and 'ryght', see Dürmüller, *Narrative Possibilities*, pp. 143–61; Robert Reilly, 'The Earl of Toulouse: A Structure of Honor', *Mediaeval Studies*, 37 (1975), 515–23; Arlyn Diamond, 'The Erle of Tolous: The Price of Virtue', in *Medieval Insular Romance: Translation and Innovation*, ed. by Judith Weiss, Jennifer Fellows and Morgan Dickson (Cambridge: Brewer, 2000), pp. 83–92.

very interjection. Such a combination of comment and action follows the rhetoric of the exemplum. By scripting exemplary subjects, in other words, and by pointedly reflecting on and interpreting their exemplary characteristics, exempla in this mode convey a knowledge of right living more important than the subject matter of the narratives that express it. This interaction between the two discursive genres of the narrative and the interpretive comes straight from the penitential literature of the period, as Rita Copeland points out.²⁶ As Larry Scanlon notes, though, narrative should not be relegated to some ancillary role of merely supporting interpretation. The narrative of the exemplum, Scanlon argues, re-enacts the historical embodiment of a communal value—in this case, ‘trowthe’ and ‘ryght’—and then through its moral it creates the re-emergence of that value with the force of moral law.²⁷ The power of exemplary narrative, in this model, is the power to determine contingencies, to make the moral fit. Read this way, *The Erle of Tolous* becomes a fantasy of what exceptional virtue makes possible.

In romance, however, these possibilities are always delayed till the end. Beulybon, though to no avail, continues her efforts as a petitionary wife:

The Emperes seyde, ‘gode lorde,
 Hyt ys better ye be acorde,
 Be oght that y can see.
 Hyt ys grete parell, sothe to telle,
 To be agayne þe ryght quarell.
 Be god, thus thynketh me’. (139–44)

Again the narrative enacts the values of the interpretive; immediately preceding this speech on the perils of being on the wrong side of ‘ryght’, the narrator levels this assurance:

False quarell comeþ to euell ende,
 Ffor oght that may be-tyde. (131–32)

And again, for a third time, Beulybon advises her husband, with the narrator once again confirming and approving her position:

Then seyde dame Beulybon,
 ‘Syr, y rede, be seynt John,
 Of warre that ye hoo.
 Ye haue the wronge and he þe ryzt’. (151–54)

The emperour was euyll payde,
 Hyt was sothe the lady sayde. (157–58)

This petitionary or advisory role was well-established for virtuous women of

²⁶ Marjorie Curry Woods and Rita Copeland, ‘Classroom and Confession’, in *The Cambridge History of Medieval English Literature*, ed. by David Wallace (Cambridge: Cambridge University Press, 1999), pp. 376–406 (p. 399).

²⁷ Larry Scanlon, *Narrative, Authority, and Power: The Medieval Exemplum and the Chaucerian Tradition* (Cambridge: Cambridge University Press, 1994), p. 34.

the period, not just for women of the court—the petition was extremely important in medieval government—but for all wives.²⁸ Thomas of Chobham, in his thirteenth-century *Summa confessorum*, suggests just how far women should go to be good wives to their wayward husbands:

Debet enim in cubiculo et inter medios amplexus virum suum blande alloqui, et si durus est et immisericors et oppressor pauperum, debet eum invitare ad misericordiam; si raptor est, debet detestari rapinam; si avarus est, suscitet in eo largitatem.

[Even in the bedroom, in the midst of their embraces, a wife should speak alluringly to her husband, and if he is hard and unmerciful, and an oppressor of the poor, she should invite him to be merciful; if he is a plunderer, she should denounce plundering; if he is avaricious, she should arouse generosity in him.]²⁹

The similarities between Thomas's ideal wife and Beulybon are clear, with her attempts at giving sound advice ('rede') and at convincing her husband to 'acorde' with Barnard and end the dispute. Many critics have noted the remarkably active role Beulybon plays in the romance, with Masaji Tajiri, for instance, calling her a 'great arbitrator', and suggesting that heroines in the tail-rhyme lays are a '*sine qua non* for the restoration of order in the romance'.³⁰ But agency of this sort is not merely the preserve of the romance world. As Thomas of Chobham's description of ideal wifely characteristics suggest, Beulybon's activities in close-quarter arbitration would have been considered usual, and desirable, for ordinary medieval women.

One of the major upshots of Beulybon's active petitioning is that it sets the moral standard the romance will maintain throughout, but this rhetoric is only the poet's initial gambit in establishing Beulybon as the romance's barometer of chivalric virtue, since throughout the romance Beulybon's goodness is consistently recreated through confessional moments. Indeed, this romance demonstrates how, as Cannon puts it, once confession has exceeded its religious brief and has become absorbed into the process of narrative, it can both expose interiority and also generate narrative through that exposure. This is precisely what we find in the first three confessional episodes. The first occurs when Trylabas returns to Germany with Barnard, who has just freed him from prison. Trylabas determines to betray the Earl, and he first approaches Beulybon to reveal his plan. With resemblances to the physical postures of confession, he goes 'To

²⁸ On the role of the petition in medieval government, see J. A. Tuck, 'Richard II's System of Patronage', in *The Reign of Richard II: Essays in Honour of May McKisack*, ed. by F. R. H. Du Boulay and Caroline M. Barron (London: Athlone Press, 1971), pp. 1–20. For a more recent discussion of petitions in and for literature, see John Burrow, 'Chaucer as Petitioner: Three Poems', *Chaucer Review*, 45 (2011), 349–56.

²⁹ Thomas of Chobham, *Summa confessorum*, ed. by F. Broomfield (Louvain: Éditions Nauwelaerts, 1968), p. 375 (7.2.15). I borrow the translation from Sharon Farmer, who also provides a good discussion of petitionary wives. See 'Persuasive Voices: Clerical Images of Medieval Wives', *Speculum*, 61 (1986), 517–43.

³⁰ Tajiri, *Middle English Didactic Tail-Rhyme Romances*, pp. 79–95 (pp. 80, 86).

chaumbur to the Emperes / And sett hym on hys knee' (254–55).³¹ There he divulges his desire to be revenged on 'Oure moost enemye', but when Beulybon learns, through a series of questions, that Barnard had ransomed Trylabas, and that Trylabas had pledged an oath to Barnard, she advises him to keep his 'trowthe':

The lady seyde, 'so mut y goo,
Thy soule ys loste yf thou do so,
Thy trowthe þou schalt fulfyllen,
Sythe he forgaf the thy raunson
And lowsydd the owt of preson.
Do a-way thy wyckyd wylle.' (280–85)

The following two confessionals are similarly staged, with each of the two chamberlains going one after the other to Beulybon's chamber and confessing their love for her. Her response to both follows a similarly hard line: she is not a 'hore' nor a 'scolde' (656), and both men are traitors and worthy to be hanged (574–75, 658–60). Indeed, they would be punished for sure if Beulybon had not promised to keep their confessions secret. Beulybon's 'trowthe' in pledging to 'holde counsayle', however, is the very virtue that lands her into trouble.³² The chamberlains think she is as false as they are, and they frame her as an adulterer so as to invalidate any testimony she might bring against them. It is a case, then, of these secular confessionals generating Beulybon's exemplarity through her rejection of infidelity and her keeping 'counsaille' (and with it her 'trowthe'). This exemplarity in turn generates the 'myschefe' on which the central crisis of the romance hinges. Thus, just as confession provides a space to question 'ryght' behaviour while it creates the conditions for testing its outcomes, so too does it become a way of theorising gendered virtue. That is, both encounters with the chamberlains begin with claims that they will probe Beulybon's 'wylle' (531, 617–18), and since this inner inclination is interpreted to be 'courteous' in the chivalric sense (625), the romance simultaneously interprets and performs female 'trowthe'.

As witnessed in *Sir Gawain and the Green Knight*, however, and indeed in the other romances noted previously, romance is the perfect form for such theorising; of all literature in late-medieval England, romance is the form that most readily flaunts its refusal to traffic in absolutes.³³ Beulybon is certainly not a 'hore' nor a 'scolde', but by this point in the romance she has already had a morally complicated encounter with the Earl that ended with her giving him a ring—a gift that

³¹ On the penitent kneeling before the priest, see John Myrc's (Mirk) *Instructions for Parish Priests*, ed. by Edward Peacock, EETS os 31 (London: Kegan Paul, Trench, Trübner, 1868; rev. 1902), p. 24: 'Teche hym to knele downe on hys kne / Pore oþer ryche wheþer he be, / Þen ouer þyn yen pulle þyn hod, / And here hys schryfte wyþ mylde mod' (769–72). See also Woods and Copeland, 'Classroom and Confession', pp. 400–02.

³² The ethical imperative to keep 'privy cunseyll' is prescribed in manuals such as *Handlyng Synne*.

³³ Worth noting is that canon law and the pastoral tradition are also acutely aware of the problem of absolutes (hence the need for prudential wisdom and casuistry) and of the difficulty of knowing interior truth and intention. See Flannery and Walter in this volume (Chapter 5).

Barnard thought could be a 'tokenyng' (408) of the love between them. It may be that the power of exemplary narrative is the power to determine contingencies, to make the facts fit the moral, but in romance the moral does not have the immediate force of doctrine behind it. Unlike the usual exempla of sermons and penitential manuals, romance morality is complex and multiple and messy, like the inner selves of the best characters they depict. This is secular fiction for the real world, where the fantasy of right and chaste living contends with the fantasy of a romance love-triangle. Nevertheless, *The Erle of Tolous* is still a remarkably morally minded romance, and the question of what really happened in this early encounter comes back into focus as the narrative approaches its denouement. Consider the crucial episode when Barnard meets the abbot, Beulybon's confessor, just before her planned execution for presumed adultery:

The Erle seyde, 'so have y blysse,
Of hyr, me þynkyþ, grete rewþe hyt ys
Trewē yf that sche bee'.
The abbot seyde, 'be Seynte Poule,
Ffor hur y dar ley my soule
That neuyr gylte was sche.
Soche werkys neuyr sche wroght
Neythyr in dede nor in thought
Sauē a ryngē so free.
To þe Erle of Tullous sche gafe hyt wyth wynne
Yn ese of hym and for no synne,
Jn schryfte thus tolde sche me.' (1021–32)

Barnard then admits to the Abbot that he is the Earl of Toulouse:

'Y am he þat sche gaf the ryngē
Ffor-to be oure tokenyngē,
Now heyle hyt for the rode.' (1042–44; MS Ff.2.38 and MS Ashmole 45)

Than sayd þe Erle, 'by heuen kyngē,
J ame he scho gafe þat ryngē,
Now hele it for þe rode'. (1042–44; Lincoln Thornton and MS Ashmole 61)

The significant difference here is that Lincoln Thornton and MS Ashmole 61 omit the reference to lines 407–08, in which the ring is signalled as a 'tokenyng' of their love, presumably trying to downplay the possibility that this ring-giving was in fact a 'syn', that it was given for love rather than for the 'ese' of the Earl.

In what might be considered a wholly unnecessary narratological repetition, however, Barnard does not take the abbot's word for it. He decides that he should perform her final confession himself, and undertake the judicial combat only if he is satisfied that she is indeed 'clene'. Here is that confession scene:

He examyned hur, wyttyrly,
As hyt seythe the story,
Sche was wyth-owte gylte.
Sche seyde, 'be hym þat dyed on tree,
Trespas was neuyr none in me
Wherefore y schulde be spylte,

Saue oonys, wyth-owte lesynge,
 To the Erle of Tollous y gafe a ryngge,
 Assoyle me yf thou wylte.
 But þus my destanye ys comyn to ende
 That in þys fyre y muste be brende,
 There goddys wylle be fulfyllt.' (1069–80; MS Ff.2.38, MS Ashmole 45 and
 Lincoln Thornton)

He freyned of hir full wytterly,
 Bot as it seyt in the story,
 Sche was with-outen gylte.
 Sche seyð, 'be hym þat dyzed on tre,
 Trespas was neuer in me
 Wherefor I schuld be spylte,
 Safe ons, with-outyn lesyng,
 To the Erle of Tolous j toke a ryngge.
 Asoyle if 3ow wylte'. (1069–77; MS Ashmole 61)

What this scene presents, then, might be considered as inquisition masquerading as confession, in which the judicial context necessitates a full examination to determine her innocence.³⁴ It is the only pre-combat examination of a woman by her champion in all of medieval romance, and considering that it is narratologically repetitious, that it only tells us what the audience—and Barnard—already know, one may wonder why it would be included at all. My suspicion is that this duplicated confession is intended to slow the tempo of the action at the point when Beulybon's virtue is explicitly called into question. Arlyn Diamond, one of the few critics to write on this episode, concludes by saying: 'I see something disturbing in his interrogation of the condemned empress, placing her in an abject position as it does. Her redemption at the hands of the earl seems to deprive her of will and narrative voice.'³⁵ But here I would argue the opposite case. It is, certainly, part of the logic of the 'accused wife' motif that the accused women are not allowed to speak in precisely this context. For the 'accused wife' plot to work, in other words, certain questions must not be asked after the accusation is made, and the narrative space to speak must be gender-biased. Indeed, this institutional control over the accused wife's voice is precisely what one finds in *The Erle of Tolous*, as the Earl's examination affords Beulybon her first opportunity to speak for nearly three hundred lines, from the moment she is cast into prison after being apparently caught in adultery. Put another way, once Beulybon is accused, her voice is only recovered within the structure of confession, or in the case with Sir Barnard, of confession intended as inquisition. In this most crucial event in the romance inquiry leads to a confession that exposes Beulybon's true inner self, just as it will lead to the rightful restoration of her public reputation. In the end, too, the narrator provides an interpretation that becomes the final word on the matter: 'Sche was wyth-owte gylte.' Audiences might have also detected a flash of active will associated with this

³⁴ 'Inquisition' is used here in its more general scope. For a sketch of the judicial context, see H. A. Kelly in this volume (Chapter 1).

³⁵ Diamond, 'Erle of Tolous', p. 91.

newly recovered voice in the defiant and terse tail-line 'Asoyle if 3ow wylte', which is formally emphasised in MS Ashmole 61 since that text uncharacteristically cuts off the final three lines of the typical twelve-line stanza.

What this space to speak demonstrates, too, is just how good—though not perfect—Beulybon really is, as the only thing she needs to confess is the ambiguous infelicity that audiences (and Barnard) already know about. Part of the logic of inquiry in this romance, therefore, is that it amplifies the logic of narrative action and narratorial description—in other words, the rhetoric of exempla. One must bear in mind, as well, the intertextual reverberations of the accused wife motif in the fifteenth and sixteenth centuries. Romances that were enjoying drastically increased circulation in print include a number of what one might call 'rightly' accused wives, and the two most popular, Guinevere and Isolde, always manage to scrape by judicial trials by getting off on technicalities, or by coming away from magic drinking horn tests unscathed through the sheer common sense of the barons—though everyone knows they are guilty. Worth noting, too, is that MS Ashmole 61, the Lincoln Thornton and MS Ff.2.38 also contain exempla and instructional texts on virtuous womanhood. MS Ashmole 61, for instance, includes texts such as *How the Good Wife Taught Her Daughter*, *Dame Courtesy*, and the exempla *The Jealous Wife* and *The Incestuous Daughter*, the latter of which being an exemplum on the importance of confession after committing a variety of sexual sins.³⁶ MS Ff.2.38, too, contains *The Seven Sages of Rome*, which is linked to *The Erle of Tolous* not only in that the Emperor is named Diocletian in both, but also because the Emperor's wife in *Seven Sages* is also caught in a sexual scandal, though in this text she is guilty of attempting to seduce her stepson and later of accusing this stepson of attempted rape—an inverse, in many ways, of the *Erle of Tolous* plot. In a manuscript and intergeneric context in which anxieties about female agency and female sexuality abound, it seems all the more understandable that the poet of *The Erle of Tolous* should pause in this confessional examination scene to give Beulybon the opportunity to speak for herself.

This construction of female virtue might also shed light on MS Ashmole 45. The manuscript contains a presentation copy of *The Erle of Tolous* from around 1520–1530, and this copy is distinguished in that it includes an illuminated frontispiece for the romance (figure 1). Normally, an illustration of such a presentation scene would depict the poet presenting a copy to his patron, but in MS Ashmole 45 both the man and the woman are standing, rather than seated and kneeling, and both are dressed to suggest that they share the same social standing as relatively wealthy members of the bourgeoisie. The man's injunction to the woman 'Prenes: engres', or 'receive with pleasure', suggests its status as a gift, and the device below them, which reads 'Maid Maria', may well refer to the woman receiving the book. It may be the case (though we do not know who commissioned this book or who this Maid Maria was), that this relatively

³⁶ Not to be forgotten in MS Ashmole 61 is *Sir Corneus*, an Arthurian tail-rhyme exemplum that warns of the dangers of untrustworthy wives, as well as *The Sinner's Lament* and *The Adulterous Falmouth Squire*, which show in graphic detail the eternal consequences of extra-marital affairs.



Figure 1. Frontispiece for *The Erle of Tolous*. By permission of The Bodleian Library, The University of Oxford, MS Ashmole 45, fol. 2r.

expensive copy of the romance was commissioned as a wedding gift or perhaps an engagement gift for this very Maria.³⁷

From this context Beulybon's womanly virtues, most emphatically produced through Barnard's impulse to probe and inquire in the final confession scene, take on further significance. Given the way the moments of confession staged throughout the romance generate Beulybon's moral inner self as an example of virtuous womanhood, it becomes clear why a young man in the 1520s might think it appropriate reading matter for his bride-to-be. But this sort of womanly virtue is not wholly pious in ways one might expect. Readers may well wonder about the moral ambiguity inherent in the husband-lady-knight triangle, but this romance works hard to have an actively desiring heroine who ultimately maintains her 'trowthe' to her husband (or at least who is 'trewē', as the narrator says from the beginning, 'Of hyr body' (43)). In *The Erle of Tolous* confession generates a vital space for this kind of inquisition, just as *inquisitio* itself manufactures contexts for the regulation of sexual practices, of the kind that (unjustly) landed Beulybon into trouble in the first place. To understand the motivations behind the Earl's final inquisition of Beulybon is thus to understand something of the culture of inquisition in the period, to recognise that culture's principal structures for accessing interiority when questions of public *fama* and the legal ramifications of sexual behaviour are at stake. Indeed, by the end of the romance audiences learn through these inquisitions that Beulybon is not only sexually 'trewē', but also wilful, intelligent and brave. Crucially, though, these virtues never jeopardise her responsibilities as a Christian and a wife, or ultimately challenge the chivalric standards valorised by the narrator. Like so many romance heroines, Beulybon is both desiring and desirable, and perhaps one could say that her virtues are not so strictly pious as worldly wise, an example for all those women, perhaps like Maid Maria, living in a complex and morally ambiguous world.

³⁷ In this discussion of MS Ashmole 45 I am indebted to Carol M. Meale, "'Prenes: Engre': An Early Sixteenth-Century Presentation Copy of *The Erle of Tolous*", in *Romance Reading on the Book: Essays on Medieval Narrative Presented to Maldwyn Mills*, ed. by Jennifer Fellows et al. (Cardiff: University of Wales Press, 1996), pp. 221–36.

Chapter 8

Heresy Inquisition and Authorship, 1400–1560*

GENELLE GERTZ

Any reader of heresy trials must decide how seriously to take the official version of events.¹ An extreme power differential existed between members of the ecclesiastical court, who both recorded the trial and rendered judgement, and the accused, who stood trial before them. At no point was this imbalance more apparent than at the end of a trial when, if not acquitted or convicted for relapse, the defendant formally recanted previous beliefs in an abjuration. This document that was also an oath depicted the defendant's change in belief from previously held heresies to newly adopted faith as determined by the church, and enforced by the ecclesiastical court. What is more, the abjuration required a confession of orthodox faith not unlike the creed, in which the defendant pronounced, in the first person, his or her agreement with orthodox belief. How can someone faced with the prospect of execution be sincerely convinced of his or her error, as the language of abjuration attests, and not be acting in the interest of self-preservation? The fact that the court required abjurations to be written in English, drafted in the first-person voice and signed by the accused merely reinforced the problem of their authenticity. The abjuration appeared to represent the individual voice of the person on trial, but when it actually supplied that voice one heard only ventriloquism—it was the court's confession, after all, and not the defendant's.

Yet sometimes, at great cost, defendants in heresy trials resisted the procedure of abjuration by authoring their own statements of belief. It was an authorship born of extreme circumstances wherein persons on trial for heresy decided to intervene in the legal representation of their status in order to remain true to their conscience. They knew full well that their interrogators could use their self-

* I would like to thank the members of the 2009 Inquisition and Confession Workshop at Queen Mary University of London for their comments on an earlier version of this essay. Comments by Mary Flannery and Katie Walter were of further help for later drafts. In all quotations of this essay I have silently expanded contractions present in the manuscript or printed text.

¹ John H. Arnold warns against imagining that there is a 'true' or 'false' version of events to be taken from a heresy trial record. Instead, a relationship of power exists 'between inquisitor and deponent, between discourse and subjectivity'. I agree and assume that the relationship of power, in the event of abjuration (the moment I am focusing on here), primarily involves the court's scribal and classificatory power to make defendants both sign and admit to their beliefs as heresy. See John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001), pp. 6–15, esp. 7.

authored statements of belief as evidence for conviction of heresy. Yet, especially by the 1550s, during the Marian regime, defendants in heresy trials frequently chose to state their own rival confessions of faith when the court requested them to abjure that very belief; many times defendants put this confession in writing, ensuring that it could be used as evidence in court and, when possible, passed to co-religionist sympathisers. It is this text—the confession of faith drafted in response to abjuration—that serves as the focus of this essay.

Rather than assuming that theological commitments or the desire for martyrdom were the primary factors that drove persons on trial to author their own confessions of faith, I argue that the process of standing trial and the literary form of the abjuration were equally powerful causes of a defendant's decision to author a confession of faith. I study the rhetoric of abjurations from fifteenth- and sixteenth-century heresy trials to show how the concept of confession supplied by the court, as well as the requirement to sign for one's faith at the end, were elements that encouraged a defendant's authorship. I identify several defendant-authored confessions, examining how they adopt the literary form of the abjuration and so register their own awareness of the court's rhetorical powers of definition and classification. These include John Oldcastle's 1413 trial in which he supplied his own definitions of his faith from a loose paper he carried into court; Anne Askew's 1545 trial in which she tried to rewrite the faith confession submitted for her signature; the written accounts of belief supplied by Anne Askew and her co-religionist, John Lascelles, in response to their trials in 1546; and the oral confession of faith composed by Cambridgeshire labourers Robert Pygot and William Wolsey in their trial of 1555. Though all of these faith confessions recast the defendant's belief as truth rather than error, they differ markedly in both language and tone, either rendering faith in more ambiguous and technical ways, or adopting a strident rhetoric of disagreement and denunciation. I explain how these differences can be accounted for in the various strategies that religious dissenters adopted in response to the process of religious prosecution. The form of prosecution itself did not change greatly, but numbers of heresy trials, as well as dissenters' views of their own role in heresy trial, did.

Before beginning a discussion of abjurations and faith confessions, however, it is worth noting that other legal genres also influenced the rhetoric as well as the outcome of ecclesiastical trials. Elsewhere I describe how lists of questions, articles of belief and sentences of condemnation or penance also influenced defendant-authored texts, shaping especially the content of heresy trial narratives, which were full descriptions of a defendant's experience in trial.² William Thorpe's 1407 *Testimony*, Anne Askew's 1546 and 1547 *Examinations* and John Philpot's 1556 *Examination* are all examples of heresy trial narratives that, as a genre, respond to the dynamics of language and power in trial more comprehensively than do the confessions treated in this essay. Ruth Ahnert shows in this volume (Chapter 9) that other genres—dialogues, theological treatises and letters of supplication—were also written by heresy trial defendants who had

² See Genelle Gertz, *Heresy Trials and English Women Writers, 1400–1670* (Cambridge: Cambridge University Press, 2012, pp. 19–47.

political and religious standing, often courtiers or clerics with high ecclesiastical appointments. Arguably, it was not the Reformation that produced so many texts about belief, but instead, it was the increased frequency of trials, and especially trials of former clergymen, that accounted for the rise in authorship of polemical religious texts in the early modern period. Among the many kinds of texts generated by heresy trial, defendant-authored faith confessions are important precisely because they reveal a tradition of authorship and textual form that did not have to, or could not, develop into longer pieces. Some of these authors lacked the education, status or office necessary for writing and publishing other kinds of texts. Authors of confessions either did not have the time, the means, the authority or the literary skills to write longer texts, but they responded nevertheless to the demand to adopt an orthodox faith in words that were their own, however shaped by inquisitorial form.

The fact, as well as the significance, of defendant authorship in response to heresy trial has been largely overlooked. John H. Arnold's work on the thirteenth- and fourteenth-century trials of French Cathars recognises the productive quality of inquisition by characterising heresy trial as a discourse that generated its own kinds of texts and subjects.³ I take Arnold's perspective in this essay by reading inquisitorial documents as genres that need to be understood as literary forms in addition to serving as records of belief.⁴ Yet the material I cover in this essay brings me to different conclusions. The texts Arnold analyses are all part of the scribal system of inquisition itself and lead him to the argument that the real power of the inquisition lay in the fact that inquisitors 'made people speak within a particular language and context of power'.⁵ I would not claim that defendant authors ever fully escaped this language and context of power, yet, as the confessions of faith I study here show, defendants were also able to use this language and power for their own purposes.

Early modernists have had less to say than medievalists about the productive discourses of trial. The field has been shaped according to the rationale for either persecution or toleration within Protestant, Anabaptist and Catholic communities. Historians such as Brad Gregory, John Coffey and Alexandra Walsham have concentrated on the beliefs and social networks that caused individuals of various faith confessions to prosecute for heresy and/or resist prosecution by becoming martyrs. Eamon Duffy has recently shown the reluctance of some, but not all, leaders of the Marian church to prosecute Protestants.⁶ In studies

³ Arnold, *Inquisition and Power*, esp. pp. 74–110.

⁴ See John H. Arnold, 'Lollard Trials and Inquisitorial Discourse', in *Fourteenth Century England II*, ed. by Chris Given-Wilson (Woodbridge: Boydell, 2002), pp. 81–94 (p. 87), for a description of this approach.

⁵ Arnold, *Inquisition and Power*, p. 110.

⁶ Brad Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe* (Cambridge, MA: Harvard University Press, 1999); John Coffey, *Persecution and Toleration in Protestant England, 1558–1689* (Harlow: Longman, 2000); Alexandra Walsham, *Charitable Hatred: Tolerance and Intolerance in England, 1500–1700* (Manchester: Manchester University Press, 2006). Bishop Bonner, long hailed as one of the worst persecutors of Protestants, had to be firmly instructed by his superiors to convict heresy defendants he would rather have freed. See Eamon Duffy, *Fires of Faith: Catholic England under Mary Tudor* (New Haven, CT: Yale University Press, 2009), pp. 102–70.

more relevant to the concerns of this essay, scholars have identified and analysed important texts associated with heresy prosecution. Alec Ryrie has mapped the rhetorical strategies of martyr-themed texts written by Protestants under Henry VIII, and Thomas Freeman has shown how an extensive network of writers and copyists existed among imprisoned Protestants under Mary.⁷ David Loewenstein has also examined anti-heresy writing during the English Reformation and the Interregnum, linking it in each moment with its legislative context.⁸ But analysis of the legal backdrop for martyr writing, including the study of the legal forms that influenced defendants, has yet to be undertaken. In the next section I outline the legal form of fifteenth- and sixteenth-century abjurations in order to show their relation to confessions of faith.

Abjurations

Abjurations occupy half or more of the total space allotted to trials in surviving bishops' registers.⁹ This is not surprising; registers did not include every note from the trial but instead collected the most important documents to emerge from the process. The abjuration was often the only legal document the defendant signed. It was frequently indentured (split in half) so that both the abjured heretic and the court had copies of what transpired. Abjurations were the most critical form of evidence a bishop could keep because without evidence of a prior abjuration no ecclesiastical court could impose a death sentence. A quick scan of fifteenth- and early sixteenth-century registers reveals the visual and auditory importance of abjurations as well. They were usually written and recorded in English in an effort to demonstrate the defendant's sincerity (or, at least, understanding) of the abjuration. Otherwise notaries translated and/or summarised

⁷ Thomas Freeman, 'Publish and Perish: The Scribal Culture of the Marian Martyrs', in *The Uses of Script and Print, 1300–1700*, ed. by Julia Crick and Alexandra Walsham (Cambridge: Cambridge University Press, 2004), pp. 235–54; Alec Ryrie, 'The Unsteady Beginnings of English Protestant Martyrology', in *John Foxe: An Historical Perspective*, ed. by David Loades (Aldershot: Ashgate, 1999), pp. 52–66.

⁸ David Loewenstein, 'Heresy and Treason', in *Cultural Reformations: Medieval and Renaissance in Literary History*, ed. by Brian Cummings and James Simpson (Oxford: Oxford University Press, 2010), pp. 264–86. See also David Loewenstein, 'Writing and the Persecution of Heretics in Henry VIII's England: *The Examinations of Anne Askew*', in *Heresy, Literature and Politics in Early Modern English Culture*, ed. by David Loewenstein and John Marshall (Cambridge: Cambridge University Press, 2006), pp. 11–39.

⁹ For the fullest and longest records of medieval heresy trials, see the register kept by the bishops of Coventry and Lichfield, John Hales (1459–1490) and Geoffrey Blyth (1503–1531), which has been edited, along with a court book from prosecutions of 1511–1512 (Lichfield Court Book), by Shannon McSheffrey and Norman Tanner in *Lollards of Coventry, 1486–1522*, Camden Fifth Series 23 (Cambridge: Cambridge University Press for the Royal Historical Society, 2003). Tanner has edited a court book of Bishop Alnwick that contains mostly copies of original documents from trials conducted in the diocese of Norwich from 1428 to 1431 in *Heresy Trials in the Diocese of Norwich, 1428–31*, Camden Society Fourth Series 20 (London: Royal Historical Society, 1977). See also Tanner's edition of Archbishop Warham of Canterbury's register, *Kent Heresy Proceedings 1511–12* (Maidstone: Kent Archaeological Society, 1997). Registers were the official administrative records for bishops whereas court books were collections of documents used in heresy trials and they sometimes contained original copies of abjurations. See *Lollards of Coventry*, ed. by McSheffrey and Tanner, pp. 47–51.

in Latin what the defendant said in English.¹⁰ Almost no registers containing full heresy trials remain from the Henrician and Marian periods, but at least one (containing the 1555 case of William Wolsey and Robert Pygot discussed below) shows some defendant answers in English, and some translated into Latin.¹¹

Abjurations were distinctive among inquisitorial genres because they paid lip service to the first-person voice while fixing that voice to a particular belief. In other words, they made room for an 'I' to exist in the text but then vastly restricted the meaning of who or what the 'I' could be. Despite the fact that the words of the defendant were dictated by and in the abjuration, this document declared that the individual who adhered to it was doing so 'freely'. This very fact drew attention to the idea that the person currently making an abjuration could, in other circumstances, be testifying as an individual, and with sincerity, regarding belief. Ultimately, the form of the abjuration in heresy trials gave those accused of heresy access to a first-person narrative form, which, given the ability of confession to function as both disclosure and belief, enabled them to re-appropriate the language of inquisition to make statements, not of wrongdoing, but of continued (unorthodox) belief.

Abjurations followed a formulaic pattern that, above all, emphasised the submission of the defendant to the governing ecclesiastical court. The 1431 abjuration of the glover John Reve, of Suffolk, begins with identification meant to underscore the differences in power between Reve and his judge: 'In the name of God, tofore you, the worshipfull fadir in Crist, William, be the grace of God bishop of Norwich, I, John Reve, glover of Becles in your diocese, your subject, felyng and undirstanding that Y have holde, beleevyd and affirmed errors and heresies whyche be contened in this indenture.'¹² This opening ensures that the abjuration is understood not as a declaration to any interested person, but as a legally binding oath made in the presence of the authority who has jurisdiction over the speaking 'subject's' belief.

In their textual content abjurations use confessional language that is meant to perform sincerity. The abjuration of the Kentish lollard John Grebill before Archbishop Warham took place in May 1511. After invoking God and the Archbishop, Grebill identifies himself as a former heretic:

I, John Grebill the elder of Benynden of your diocise of Caunterbury, of my pure hert and free will confesse and knowledge that I in tymes passed before this houre [. . .] have beleved, thought, said, holden, affermed and taught of the sacraments of the church and of the articles of the feith otherwise than the holy church of Rome and universall church of God techeth, holdeth and observeth.¹³

¹⁰ *Heresy Trials*, ed. by Tanner, pp. 6–7; Arnold, *Inquisition and Power*, p. 5.

¹¹ Bonner's register survives but contains only select documents from trials, such as abjurations. Cranmer's register, held at Lambeth Palace Library, contains several heresy commissions under Henry VIII and Edward VI, and includes details on the trials of Anabaptists without including a transcript. See John F. Davis, *Heresy and Reformation in the South-East of England, 1520–1559* (London: Royal Historical Society, 1983), p. 14, and *Thomas Cranmer, Churchman and Scholar*, ed. by Paul Ayris and David Selwyn (Woodbridge: Boydell, 1999), p. 306.

¹² *Heresy Trials*, ed. by Tanner, p. 111.

¹³ *Kent Heresy Proceedings*, ed. by Tanner, p. 30.

The abjuration maximises the threat of Grebill's heresy by stringing together no fewer than six verbs related to his belief and instruction. His 'confession' makes a 'free' disclosure of this reprehensible behaviour now safely consigned to 'tymes passed'.

While initially the abjuration refers to Grebill's heresy in blanket terms—all belief 'otherwise than the holy church of Rome [. . .] teacheth'—it goes on to delineate positions on transubstantiation, pilgrimage, the priesthood, marriage and images that are lollard in substance, though not explicitly called 'lollard' in the record.¹⁴ In this context confession means something other than disclosure of wrongdoing:

Wherefore I, the forsaid John, willing hereaftir to beleve in the faith of Criste and of his churche and to folowe the true doctryne of holy church, with a pure hert forsake and utterly despise my said errors, heresies and damnable opinions and confesse them to be contraryous and repugnaunt to the faith of Criste and determinacion of his church aforesaid[.]

Here Grebill is not being made to admit his heresy; that he has already done. Instead, the word 'confession' has the sense of conviction given in a pronouncement: 'I confess that my ideas are repugnant.'

The two meanings of 'confession' (disclosure and belief) are constantly repeated in abjurations and appear to be inherent to the generic form. In this discourse, admission of wrongdoing is always followed by recognition, or pronouncement, of how wrong wrongdoing can be. If one ignores the content and focuses on the function of confession in an abjuration, the basic order of disclosure and declaration suggests one reason why defendants began writing pronouncements of their beliefs outside of what the court gave them to sign.

Abjurations end with a formal renunciation of previous heresies followed by a promise to remain true, a sign of which included reporting any heresy suspects. The 1512 abjuration of Agnes Corby before Bishop Blyth of Coventry and Lichfield indicates her renunciation of heresy with the act of swearing on the Bible: 'heresies and erroneous opynyons [. . .] I uttrely forsake, renounce and abjure and swer upon this booke that aftre this hour I shall never openly ne prively holde, declare or teche heresy, erroures ne ony maner of doctrine agenst the faith or determination of all holy church'.¹⁵ Swearing upon the Bible as a sign of honesty during an oath was standard procedure and part of the normal wording of abjurations. To 'abjure' means, after all, to renounce, and swearing on scripture asserts the authenticity and seriousness of this oath. The final sign of authenticity, however, comes in the signature. Agnes wrote a cross under her name, but another defendant who signed the same abjuration seven spaces ahead of her wrote in his own hand 'per me Roger Landysdale', indicating his ability to write. The intermittent space in the court book was filled by names

¹⁴ On the categorisation of lollardy and the difficulty of determining lollard doctrine from inquisitorial record, see Fiona Somerset's 'Afterword', in *Wycliffite Controversies*, ed. by Mishtooni Bose and J. Patrick Hornbeck II (Turnhout: Brepols, 2011), pp. 325–31.

¹⁵ *Lollards of Coventry*, ed. by McSheffrey and Tanner, p. 267.

and crosses in the hands of six other abjurers. This serves as a visual reminder that the abjuration itself was a boilerplate text that the court read over again for each abjurer. As with all other parts of an abjuration, the subscription contained a rhetorical formula: 'Soo helpe me God and the holy dome. In wites wherof, I with my hand.'¹⁶ Though subscription of an abjuration is far from the act of writing out the tenets of one's faith, it calls attention to the process of writing, and therefore, of setting one's 'hand' to a belief.

Abjurations followed a similar format after Henry VIII's supremacy, even though the new head of the church changed what counted as orthodox belief. In her own account of her 1545 trial before Edmund Bonner, Bishop of London, the Lincolnshire gentlewoman Anne Askew declared the abjuration written for her 'a great cyrcumstaunce'.¹⁷ A copy of this abjuration exists in Bonner's register and was printed by John Foxe in the *Acts and Monuments*.¹⁸ The two-paragraph abjuration differs from the wording used in fifteenth- and early sixteenth-century trial records primarily in its omission of the defendant's former heresy. Whereas Reve's, Grebill's and Corby's abjurations acknowledge their having previously held belief opposed to the church of Rome, Askew's begins with current belief: 'Be it knowen to all faithful people, that as touchinge the blessed sacrament of the altare, I do firventlye and undoubtedly beleve, that after the words of consecratyon be spoken by the priest accordinge to the common usuage of this church of England there is present really the body and bloud of our saviour Jesu Christ.'¹⁹ Gone is any language of submission to the bishop, which was always a part of the beginning of fifteenth- and early sixteenth-century abjurations. The abjuration crafted by Bonner sounds more like a notice of belief than a penitential renunciation.

The language of confession used in Askew's abjuration consequently appears interchangeable with that of proclamation. The abjuration, written by Bonner, pronounces:

And this thing with al other thinges touching the sacrament and other sacramentes of the churche, and all thinges els touchinge the christen belefe. whyche are taught and declared in the kinges majesties boke lately setforth [. . .] I Anne Askew, otherwise called Anne Kyme, doo trulye and perfectly beleve, and so here presently confesse and knowledge.²⁰

'Perfect belief' here means the same thing as 'present confession'. Bonner also makes careful reference to the arbiter of orthodox belief, Henry VIII, and the *Necessary Doctrine and Erudition for any Christian Man* (1543), whose composition the king supervised. In contrast to the abjurers in lollard prosecutions, Askew is being made to recognise royal authority as the basis of her confession.

¹⁶ Ibid., p. 268.

¹⁷ *The Examinations of Anne Askew*, ed. by Elaine V. Beilin (Oxford: Oxford University Press, 1996), p. 58.

¹⁸ London, Guildhall Library, MS 9531/12, Part I, fol. 109r. Foxe's copy of this abjuration differs from Bonner's register entry only in spelling. It is included by Elaine Beilin in her edition of Askew's trial narrative, *Examinations of Anne Askew*, ed. by Beilin, pp. 176–77.

¹⁹ *Examinations of Anne Askew*, ed. by Beilin, p. 176.

²⁰ Ibid.

Like the abjurations recorded in fifteenth- and early sixteenth-century court books, Askew's abjuration in Bonner's register ends with the language of subscription. It reads, 'In witness wherof I the saide Anne have subscribed my name unto these presentes, wrytten the xx. day of March in the yeare of Lord God. 1544. By me Anne Askew, otherwise called Anne Kime.'²¹ Perhaps the most remarkable feature of Askew's abjuration in comparison with those of preceding prosecutions comes with the fact that Askew herself reported on her signing of it. In her narrative of her own heresy trials, edited by John Bale and printed as the *first* and *latter examinacions*, Askew states that she changed the wording of this subscription when she was given it to sign. She added new, seemingly innocuous, phrasing: 'I Anne Askewe do beleve all maner thynges containyd in the faythe of the Catholyck church.'²² She recalls different wording for this same subscription in the *latter examinacion*: 'I Anne Askew do beleve thys if Gods worde do agre to the same, and the true catholick church.'²³ According to Askew, Bonner took immediate offence, 'fl[inging] into hys chambre in a great furye' because Askew 'add[ed] unto it, the Catholyck church'. Askew's careful wording subsumes the foregoing statement of belief under a technically general understanding of the teaching of the universal church and, as her *latter examinacion* makes clear, scriptural authority. It undermines the abjuration's intent to show her avowal of the court's prescribed orthodoxy.

The abjuration in Bonner's register does not contain Askew's amendment, nor does it include her signature. It was not entered until June 1546, more than a year after her trial. Bonner likely kept a copy of the document and recorded it in the register at the time of Askew's second trial, in June 1546, in order to discredit her. In her *latter examinacion* Askew reports that this document had been recently printed and was being used as evidence of her earlier abjuration.²⁴ The factual disagreement between Askew's *Examinacions* and Bonner's register over the nature of her subscription offers a rare picture of contestation between court and defendant over the precise wording of abjurations. Surely this controversy was one of the factors that led to Askew's decision to write her own account of her trials.²⁵

Several abjurations are extant from the Marian period. John Foxe kept copies of many, though he never printed them. (He printed Askew's in order to contest Bonner's record.) The abjuration of the gentlewoman from Manchester, Agnes Glover, appears in his papers.²⁶ In January 1555 Agnes Glover, wife of John

²¹ *Ibid.*, pp. 176–77. This is the old dating style. It would have been 1545.

²² *Ibid.*, p. 62.

²³ *Ibid.*, p. 136.

²⁴ *Ibid.*

²⁵ On the effect of Askew's alleged abjuration, see Thomas Betteridge, 'Anne Askew, John Bale, and Protestant History', *Journal of Medieval and Early Modern Studies*, 27 (1997), 265–84; Theresa Kempe, 'Translating (Anne) Askew: The Textual Remains of a Sixteenth-Century Heretic and Saint', *Renaissance Quarterly*, 52 (1999), 1021–45; Megan Hickerson, 'Negotiating Heresy in Tudor England: Anne Askew and the Bishop of London', *Journal of British Studies*, 46 (2007), 774–95; and Gertz, *Heresy Trials and English Women Writers*, pp. 77–106.

²⁶ See London, British Library, MS Harley 421, fol. 85r.

Glover, recanted her denial of the Real Presence, her disavowal of auricular confession and her support for the martyr Joyce Lewes before her ordinary, Ralph Baynes, Bishop of Coventry and Lichfield.²⁷ Like the lollard abjurations, Glover's opens with recognition of Bishop Baynes and his chancellor, Anthony Draycott, as her superiors. A list of her specific heresies follows, after which appears language of penitential confession. She 'confesses all and singular [. . .] premysses by [her] beleued and spoken to be hereesy'.²⁸ And she also 'confesses that [she] steadfastly beleue[s] that the most holy and blessed sacrament of the aultar after the words of consecration pronounced and spoken by the preste there remaynith only the very trewe substance of the very bodie and bloude of our savyor jesus Christe'.²⁹ As in the earlier examples of abjuration, Glover's confession becomes a profession of new belief.

In addition to listing specific heresies being recanted, Glover's abjuration also ensures her retraction of support for fellow Protestants. It requires her to renounce her previous statement that the martyr 'Joyce Lewes dyed well, wishing that I might dye as she dyd, and sayeng that though her carcas suffered yet god Received her soule'.³⁰ Clearly the language of this portion was no boilerplate phrasing inserted from a formulary but rather a specific quotation of Glover's included precisely in order to deny its efficacy. Leading up to this quotation of Glover, the abjuration identifies Lewes in no uncertain terms: 'Joyce Lewes late of the parrishe of Mancester [was] condemned by the lawe and our mother holy churche for heresy and burned for the same.' Just as the renunciation of heresy was, from the court's perspective, about the classification of orthodox and heterodox belief, so too was the entire heresy trial a classification of individuals as believers or heretics. Because Agnes Glover initially perceived Lewes's execution contrary to the way that the court determined it, the abjuration written for her expressly required that she redefine martyrdom as lawful punishment.

This short survey of the parts of an abjuration reveals that, overall, the language and function of abjurations remained largely the same across time. Askew's abjuration appears to be the least standardised but it still functions in a similar fashion to the others by requiring her admission of orthodox belief. What did change, however, was the position within communities of dissent about the acceptability of abjuring. In the fifteenth and early sixteenth centuries, lollards did not find abjuration shameful. Especially because of their theological objection to the judicial procedure of oath swearing, 'many [lollards who stood trial for heresy] did not hesitate to take [an] oath when forced, but regarded it [. . .] as of no account and certainly as having no bearing upon their future

²⁷ Foxe states that Agnes was examined at Lichfield by the bishop and 'at length after much ado, was constraigned to geue place to their tyranny' but he does not include the copy he had of her recantation. Foxe, *Acts and Monuments* (1570 edition), p. 1931, from John Foxe, *The Unabridged Acts and Monuments Online* or *TAMO* (Sheffield: HRI Online Publications, 2011). Available from: <<http://www.johnfoxe.org>> [accessed 25 August 2011]. All subsequent quotations from Foxe are from this edition.

²⁸ London, British Library, MS Harley 421, fol. 85r.

²⁹ *Ibid.*

³⁰ *Ibid.*

behaviour or beliefs'.³¹ Thus, when lollards were convicted of heresy it was for relapse, not unwillingness to abjure. Several late Henrician clerics, such as Robert Barnes, Thomas Becon, William Tolwin and Edward Crome, kept up the process of abjuring without great detriment to their reputation among evangelicals. They relied on equivocation in their recantation sermons to defend reformed positions at the same time that they appeared to submit to orthodox teaching.³² Anne Askew's amendment to her abjuration for Bonner appears to participate in this same tactic of equivocation. But Marian Protestants did find abjuration (called 'Nicodemism') shameful, especially since continental reformers such as Jean Calvin and Heinrich Bullinger, in addition to others, vehemently denounced it.³³ Many under trial refused to recant and paid the ultimate price for their refusal. With greater numbers of co-religionists willing to die, the pressure not to recant only increased.

This suggests that the process of recantation was taken more seriously in the Marian Protestant community, and may also explain why greater numbers of trial narratives and confessions were composed in these years. Because denying one's faith through abjuration conveyed apostasy rather than mere conformity, there would have been greater pressure to write or speak a rival confession in resistance to the demand for abjuration. In fact, some leaders of the Marian Protestant movement coached their members on how to make confessions of Protestant faith during their trials.³⁴ In the next section I discuss several confessions of faith written by fifteenth- and sixteenth-century defendants. Differences between lollards and Marian Protestants are once again prominent on the matter of how they choose to represent their unorthodox belief.

Confessions of Faith

Not long after extensive measures for heresy detection were first organised under Archbishop Thomas Arundel, the lollard gentleman and purported leader of an armed uprising, John Oldcastle, produced a written confession of belief in his second trial for heresy. According to the description Arundel circulated of this trial, Oldcastle extracted an indentured document while standing before

³¹ Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (Oxford: Clarendon Press, 1988), p. 373. See also David Lyle Jeffrey, 'Victimization and Legal Abuse: The Wycliffite Retelling of the Story of Susannah', in *Retelling Tales: Essays in Honor of Russell Peck*, ed. by Thomas Hahn and Alan Lupack (Cambridge: Brewer, 1997), pp. 161–78.

³² Susan Wabuda, 'Equivocation and Recantation During the English Reformation: The "Subtle Shadows" of Dr Edward Crome', *Journal of Ecclesiastical History*, 44 (1993), 224–42; Alec Ryrie, *The Gospel and Henry VIII: Evangelicals in the Early English Reformation* (Cambridge: Cambridge University Press, 2003), p. 85.

³³ Andrew Pettegree, 'Nicodemism and the English Reformation', in Andrew Pettegree, *Marian Protestantism: Six Studies* (Aldershot: Scolar Press, 1996), pp. 86–117; Thomas Freeman, 'Over their Dead Bodies: Concepts of Martyrdom in Late Medieval and Early Modern England', in *Martyrs and Martyrdom in England, 1400–1700*, ed. by Thomas Freeman and Thomas Mayer (Woodbridge: Boydell, 2007), pp. 1–34 (pp. 15–16).

³⁴ John Careless wrote a several-hundred-word speech for the sawyer Harry Adlington to deliver to the court after he had been sentenced to death. See Freeman, 'Publish and Perish', p. 247.

examiners and read for them his beliefs on the Real Presence, penance, images and pilgrimage.³⁵ Arundel quoted this document within his description of the whole trial, or *Processus*. As Diane Vincent explains elsewhere in this volume (Chapter 4), versions of Oldcastle's confession of faith may have been posted throughout parts of London during and after his trial, serving as public matters for debate.³⁶ For each point of doctrine that Oldcastle stated in his confession he began with orthodox-sounding, reverential language. On the Real Presence he maintained that 'I byleve that the moost worshipful sacrament of the auter is Crystis body in fourme of bred; the same body that was born of the blyssyd virgyne oure lady seynt Mary, doon on the crosse, deed & beryed, the thrydde day roos fro deth to lyve, the whyche body is now glorefyed in hevene.'³⁷ This and his other answers made his agreement with the church on controversial elements of doctrine ambiguous. Referring to the body of the risen Christ expressly avoided the question of whether Oldcastle believed that the substance of the host, after the words of consecration, changed from material bread into Christ's body. His examiners did not accept his faith confession and wrote clarifications, noting on the Real Presence, or sacrament of the altar, that 'after the sacramental wordys ben seyde be a prest in hys masse, the materyall bred that was before is turnyd into Crystys veray body; and the materyal wyn that was byfore, is turnyd into Crystys veray blood, and so there levyth in the auter no materyal bred, ne materyal wyn, the whyche were there before the seyinge of the sacramental wordys'.³⁸ Whereas Oldcastle endeavoured to show reverence for the sacrament of the altar when it was defined as material bread, his examiners reminded him of the 'feyth, and the determinacion of holy chyrche towchyng the blysfyl sacrament of the auter'; namely that it cannot remain material bread after consecration.³⁹

There appear not to have been any other confessions of faith written by lollards, though of course our knowledge depends upon only those records that survive. Lollards lost their politically powerful adherents by the 1420s and subsequent prosecutions of lollards took place among artisan communities where the majority of those examined could not write. By the Henrician period, however, clerics and courtiers adopted evangelical beliefs that were, in some cases, authorised by the king. When they did fall foul of ecclesiastical policy promulgated by the king and his bishops, evangelicals wrote confessions of faith in protest against the decisions of the trials. In 1533 John Frith recorded from the Tower articles for which he was tried and condemned for heresy and in this description he maintained that belief in transubstantiation was not a necessary article of faith. Though Frith did not state his beliefs in the exact form of a confession, he protested the right of the church to prosecute what he considered

³⁵ *Fasciculi zizaniorum magistri Johannis Wyclif cum tritico*, ed. by Walter Waddington Shirley, RS 5 (London: Longman, Brown, Green, Longmans and Roberts, 1858), pp. 438–39.

³⁶ See pp. 65–67.

³⁷ *Fasciculi zizaniorum*, pp. 438–39.

³⁸ *Ibid.*, pp. 441–42.

³⁹ *Ibid.*, p. 441.

doubtful matters, arguing 'I can not in consciens abiure and swere, that oure prelates opinion of the sacrament (that is, that the substaunce of brede and wine is verely chaunged in to the fleshe and bloude of our sauour Iesus Christ) is an vndouted article of the faythe, necessary to be beleauid vnder paine of dampnacyon.'⁴⁰ In defence of his decision not to abjure Frith stated 'I will not bynde the congregacion of Christe (by myn example) to admitte any necessary article by syde our crede, and specialy none suche as can not be proued true by scripture.'⁴¹ Here Frith revealed his theological disagreement with his interrogators regarding the authority of scripture as well as the power structure of the church.

Thirteen years later the confessions of Anne Askew and John Lascelles were circulating in manuscript. In the *lattice examinacyon* of Askew (a different hearing than the one in which Askew was asked by Bonner to sign an abjuration), John Bale included a document which he entitled 'The confessyon of her faythe whych Anne Askewe made in Newgate afore she suffered' which strikingly uses a style of identification in keeping with the opening of an abjuration. Her self-authored confession begins, 'I Anne Askewe, of good memorye, although my mercyfull father hath geuen me the breade of aduersyte, and the water of trouble, yet not so moch as my synnes hath deserved, confesse my selfe here a synner before the trone of hys heavenlye mageste desyerynge hys eternall mercye.'⁴² Askew positions herself in the heavenly, as opposed to the bishop's or monarch's, court, identifying herself according to conditions made possible by God (memory, bread, water) rather than ecclesiastical or civil jurisdiction (living in the bishop's diocese; being a king's subject). She also tellingly uses the vocabulary of confession here and thereby registers her awareness of inquisitorial form. Arguing that she takes her position before God's court 'to recorde' that she 'holde[s] no opynyons contrarye to hys most holye worde', Askew adopts the same argument as John Frith, and John Oldcastle before him: that the creed contradicts any notion of transubstantiation.⁴³ Askew then employs the creedal language of the faith confession: 'as touchyng the holye and blessyd supper of the lorde, I beleve it to be a most necessarye remembraunce of hys gloryouse sufferynges and death. More over I beleve as moch therin, as my eternall and onlye redemer Jesus Christ woulde I shuld beleve. Fynallye I beleve all those scriptures to be true. whom he hath confirmed with hys precyouse bloude.'⁴⁴ This document placed Askew in clear opposition to the demands of her interrogators and confirmed the death sentence she had already been given. What was remarkable was that Askew wrote her confession of faith as a separate document, or bill, in the style of an abjuration. By using this form she registered her opposition to the legality of the proceedings against her and, at the same time, turned it into a platform from which to express that opposition.

⁴⁰ John Frith, *A boke made by Iohn Frith prisoner in the tower of London* (Antwerp: [n. pub.], 1533), sig. L6v.

⁴¹ *Ibid.*, sig. L7r.

⁴² *Examinations of Anne Askew*, ed. by Beilin, p. 138.

⁴³ *Ibid.*, p. 138.

⁴⁴ *Ibid.*, p. 142.

John Lascelles, who served as sewer in the king's privy chamber, and who corresponded with Askew before they died together in Smithfield, wrote a confession of faith from prison that was printed in a compilation of three texts collectively titled *Wycliffe's Wicket*.⁴⁵ The title to Lascelles's document characterises it as 'The protestacion and confession of John Lasselles where uppon he suffered in Smythfielde at London. Anno M.CCC.CC.xi.vi.'⁴⁶ Identification of confession as protest links this text back to Frith's argument and, as well, to the title of the speech that the evangelical cleric Robert Barnes gave at his burning authorised by attainder, rather than trial, in 1543.⁴⁷

Lascelles's confession was much longer than Askew's, though shorter than her collected *Examinations*. He begins, not—as Askew does—with identification, but with a direct plunge into exegesis: 'Saynt Paule bycause of the sects and discentions amonge the Corinthians wrote this Epistle, and in lyke case (concerning my poore simple conscience) I do here protest my whole hert on the most blessed supper of the lord.'⁴⁸ What follows is a defence of sacramentarianism through reference to Paul's discussion of the last supper, noted by Alec Ryrie as 'subtle and idiosyncratic' in its theological argumentation.⁴⁹ Lascelles never moves beyond the rhetorical position of defence, performing mostly exegesis in an effort to support his position that 'the minister hath no further authoritye then to preache (and) pronounce the lordes death, or else to say, the Lorde Jesu sayd it' and thus cannot speak the words of consecration over the host. Lascelles eventually makes a confession of faith near the end of his protestation: 'I do stedfastlye beleue that when the bread is broken according to the ordinaunce of Christ, the blessed and immaculate lambe is present with the yees of oure fayth and we eate his fleshe and dryncke hys bloude, whych is to dwel with god and god with us in [. . .] his holy spiryte.'⁵⁰ That he recognises how this position opposes the court's will, where he refused to abjure, becomes clear in his subscription: 'John Lasselles seruaunt late to the king; and now I trust to serue the euerliuing God with the testimony of my bloud in Smythfielde. Farewell all in Christ Jesu.'⁵¹ Lascelles ensures that his entire confession becomes a 'testimony' to the evangelical cause.

Confessions of faith were not always written documents, just as written confessions were not always published by sympathisers, as Lascelles's was. One

⁴⁵ Askew's letter of response to Lascelles appears in *Examinations of Anne Askew*, ed. by Beilin, p. 133.

⁴⁶ *Vvicklieffes wicket: Faythfully ouerseene and corrected* [. . .] (London: John Day [?], 1548), sig. c. The *Wicket* was a lollard treatise on the eucharist. Lascelles uses some of the same language as the treatise, especially the 'abominable dissolacion', or idol, referred to in Daniel 11:31 and taken by lollards to be the idolatry of the mass. On reformers' adoption of lollard ideas, especially sacramentarianism, from *Wycliffe's Wicket*, see Ryrie, *Gospel and Henry VIII*, pp. 232–37.

⁴⁷ John Standish included Barnes's speech along with his point-by-point refutation of it in *A lytle treatyse composed by John Sta(n)dysshe* [. . .] *against the p(ro)testacion of Robert bar(n)es at (th)e time of his deth* (London: Pykerynge, 1540).

⁴⁸ *Vvicklieffes wicket*, sig. c.

⁴⁹ Alec Ryrie, 'Lassells [Lascelles], John (d. 1546)', in *ODNB*, <<http://www.oxforddnb.com/view/article/68897>> [accessed 1 May 2012].

⁵⁰ *Vvicklieffes wicket*, sig. c.1r.

⁵¹ *Ibid.*, sig. c.2r.

of the few original diocesan records surviving from the Marian period provides an example of an oral confession of faith delivered at the moment in which both defendants were asked to abjure. William Wolsey, a constable from the city of Wells, and Robert Pygot, a painter from the town of Wisbech in Cambridgeshire, stood trial in 1555 before John Fuller, chancellor to the Bishop of Ely, and several others gathered in the Mary Chapel of Ely Cathedral. When administered articles that stated former heretical claims, both defendants not only admitted to former opinions, but defended them in the present. Wolsey, who had already marked ‘oncharytable and ungodly notes in the margen’ of a book of sermons loaned to him for the purpose of achieving his conversion, not only agreed that he had called the host an idol, but also that ‘he wold bothe saye and do ageyn if it cam in his waye’.⁵² Robert Pygot, also, ‘confessith and doothe recognyse that he dyd saye all those thynges yt be conteyned in this article’, namely, his rejection of the real presence in the eucharist. ‘And beyng askid by the ludge if he will repent and forsake his former sayings and erronyous opynyons’, Pygot ‘saith that he doothe not nor will not repent nor forsake [them]’.⁵³ Given an early chance in his trial to admit that his belief was heretical, Pygot adamantly refused to take it.

When formally invited to abjure their beliefs, both Wolsey and Pygot refused to do so, providing oral statements of their positions that served as rival confessions of faith. Their responses maintained their dissenting belief even as they were about to be condemned for heresy and sentenced to death. Wolsey maintained ‘in Anglais verbis’ that:

The sacrament of thalter is an Idoll and the naturall body and bloud of our savyor Jhu Christe is not really present in the said sacrament and to that opynyon I wyll sticke. And I beleve verily that this is no heresy [that] I have spoken and have confessed but it is the veary trewith wherunto I will stand.⁵⁴

Similarly, Robert Pygot, when exhorted to ‘forsake and go from his former [. . .] heresy [. . .] and be reconciled’, said ‘I will stycke to the faythe that I have declared and I beleve that it is not heresy that I have confessed but the veary trewith whereunto I will stand.’⁵⁵ Since they used similar phrasing and vocabulary, both men may have rehearsed their language together. Possibly their similar language is due to the vocabulary of the notary rather than the defendants themselves, but this seems less likely because the register calls attention to Wolsey’s exact language by using the phrase ‘in Anglais verbis’. Regardless, both Wolsey and Pygot played upon the court’s attempt to secure their confession by using the vocabulary reserved for abjuration: while standing in court they claimed to have ‘confessed’ truth, not heresy.

⁵² Cambridge, Cambridge University Library, Ely Diocesan Register G 1/8, fol. 81v. I would like to thank Tom Freeman for bringing this manuscript to my attention.

⁵³ *Ibid.*, fol. 83v.

⁵⁴ *Ibid.*, fol 82 r.

⁵⁵ *Ibid.*

Foxe, who may have worked from a different source than the Ely register, reports that the court drafted an abjuration for Pygot to sign, tempting him with the easy solution of saving his life by signing the form.⁵⁶ This detail reminds us once more of the fraught circumstances of textual production, and especially the creation of the first-person voice, in heresy cases. John Christopherson, Dean of Norwich and confessor to Queen Mary, composed an abjuration for Pygot in the midst of the hearing. As Foxe tells it:

[C]hristopherson called for pen and inke and wrote these wordes following: I Rob. Pygot do beleue that after the wordes of consecration spoken by the Priest, there remaineth no more bread & wyne, but the very body and bloud of *CHRIST* really, substancially, the selfe same that was borne of the virgine Mary[.]⁵⁷

The reader pauses over the scene of composition: Christopherson penned ‘I, Robert Pygot’. But when given the abjuration to sign, Pygot denied its legitimacy: ‘No Syr, [. . .] that is your fayth and not myne.’ According to the Ely register, but never mentioned by Foxe, Pygot then delivered his own Protestant faith confession, quoted above.⁵⁸

The wording of abjurations, as well as the process of being asked to sign them, called attention to the public nature of confession. Those defendants who were not planning to abjure could use the moment already dedicated to the declaration of orthodoxy as a time in which to announce their dissent. This was obviously a performative choice that involved the medium of speech rather than writing. Wolsey and Pygot delivered their confessions orally but these speeches could also have been written ahead of time. Wolsey had, after all, added explosive notes to the margins of a text sent to him in prison.

Conclusions

Faced with condemnation and a fiery death, Frith, Askew and Lascelles penned defences of their beliefs as confessions of faith, and Wolsey and Pygot delivered their confessions orally. Among these dissenting authors, Askew most clearly imitated, and therefore inverted, the rhetoric of abjurations. Askew and Lascelles appear not to have written anything else and so demonstrate for us the ways in which trial encouraged authorship from persons not otherwise inclined, or in a position of authority, to write. Moreover, Askew and Lascelles would not have written their confessions in the manner that they did except for having been tried and refusing abjuration. If they had been hoping to avoid condemnation they might have written equivocal confessions, as Oldcastle did,

⁵⁶ See Editorial Commentary on Wolsey and Pygot in *TAMO*, which argues that Foxe worked from an account other than the register. Foxe does use very similar language to that stated in the Ely register, which suggests either that the Ely register was his source or that Foxe’s source and the register both record what happened in court. See Foxe, *TAMO* (1570), pp. 1932–33.

⁵⁷ Foxe, *TAMO* (1570), p. 1933.

⁵⁸ Foxe remarks that ‘immediatly iudgement was giuen vpon them to dye. Which done, after the sentence (was) red, they were sent againe to the prison’, *TAMO* (1570), p. 1933.

and as Askew and Lascelles's immediate contemporary, Edward Crome, proceeded to do in his recantation sermon at Paul's Cross delivered nineteen days before Askew and Lascelles were burned.⁵⁹ Together the confessions of Frith, Askew and Lascelles illustrate what became the norm under Marian Protestants, here demonstrated in Wolsey and Pygot's trial, of justifying a refusal to abjure by writing or speaking their own confession of faith.⁶⁰

Heresy trials, and particularly the attempt to make defendants sign abjurations, contributed to the flurry of faith confessions that emerged from pens and presses in the fifteenth and sixteenth centuries. The importance of those confessions was simultaneously reinforced in the sixteenth century by reformed theology's commitment to justification by faith. The Henrician clerics 'Crome, Garrett, Barnes, Wisdom, Lambert, Lawney and Champion' set the standard from the pulpit, repeatedly 'preaching impassioned sermons proclaiming "only belief, only, only, nothing else"'.⁶¹ Defendants in heresy trials did nothing other than admit or deny particular beliefs, and John Foxe, recognising what edification might be had by reading about the brave defence of belief, leafed through register after register in order to copy the beliefs for which Protestants died. Foxe constructed an overwhelming narrative of the defence of belief through testimony and death. But some lollards, as well as Edward Crome and John Frith, took the opposite, less spectacular position that some beliefs are not worth dying for even if, in the case of Frith, they died for them anyway.

⁵⁹ Susan Wabuda, 'Crome, Edward (d. 1562)', in *ODNB*, <<http://www.oxforddnb.com/view/article/6749>> [accessed 1 May 2012].

⁶⁰ See, for example, the confession of faith written by Thomas Causton and Thomas Higbed; the joint confession written by sixteen martyrs in Stratford the Bow; and the abjuration of an abjuration that Cecily Ormes had written for her, described in Foxe, *TAMO* (1563), p. 1172 (Causton and Higbed); (1570), p. 2135 (Stratford the Bow martyrs); (1570), p. 2259 (Ormes). I discuss Causton, Higbed and Ormes in Gertz, *Heresy Trials and English Women Writers*, pp. 19–24, 40–47.

⁶¹ Susan Brigden, *London and the Reformation* (Oxford: Clarendon Press, 1989), p. 265.

Chapter 9

Imitating Inquisition: Dialectical Bias in Protestant Prison Writings*

RUTH AHNERT

Today, a fair trial is regarded as a basic human right. Article ten of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution and Article six of the European Convention of Human Rights define the right to a fair trial in broadly the same terms. These include the defendant's right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, adequate time and facilities to prepare his or her defence, access to legal representation, the right to examine witnesses against them (or to have them examined) and the right to the free assistance of an interpreter.¹ The ultimate aim of these provisions is to ensure the proper administration of justice. It is important to note, however, that the way this is achieved is by establishing a set of rules in which adversarial dispute is controlled. The aim of the provisions is that both defence and prosecution should have an equal chance to argue their cases, that their arguments are heard by an unbiased judge or jury, that the defendant is not merely the subject of questioning, nor that he is tricked into responding in a certain way without the chance of having a legal representative who can step in. The concept of a fair trial, then, is what Douglas N. Walton describes as an 'abstract normative structure that provides an ideal model of a type of dialogue exchange in which arguments can be evaluated as strong or weak, correct or incorrect, reasonable or fallacious'.²

This essay is concerned with the way that sixteenth-century heresy trials and examinations conformed to, or departed from, this ideal model of dialogue, both in terms of inquisitorial due process, and the forms in which this process was

* I would like to thank Mary Flannery, Thomas S. Freeman and Daniel Wakelin for their comments on earlier drafts of this essay.

¹ European Commission for Democracy through Law, Council of Europe, *The Right to a Fair Trial* (Strasbourg: Council of Europe Publishing, 2000), pp. 10–23, 95–109; *Fair Trial Rights of the Accused: A Documentary History*, ed. by Ronald A. Banaszak (Westport, CT: Greenwood, 2002), pp. 46–48.

² Douglas N. Walton, *One-Sided Arguments: A Dialectical Analysis of Bias* (New York: SUNY, 1999), p. 248.

recorded and imagined by Protestant prisoners.³ Walton, a well-known scholar of rhetoric and logical fallacy, draws up an opposition between the ideal model of a fair trial and the inquisitorial process used in heresy trials.⁴ This distinction, however, is based upon some common misconceptions about the nature of *inquisitio*, particularly that the accused were arrested solely on the basis of suspicion, that they were presumed to be guilty until proven innocent and that prosecution took place in utmost secrecy—misconceptions that Henry Ansgar Kelly has persistently challenged in this volume (Chapter 1) and elsewhere.⁵ With regard to sixteenth-century heresy trials, it is worth giving due consideration to Thomas More's assertions that inquisitorial due process was followed in English trials without resort to the kinds of judicial abuse, hearsay testimony and torture that were rumoured to be common practice in continental heresy inquisitions.⁶ Most critics now agree that heresy procedures in England during the Reformation were largely motivated by the ecclesiastical and secular authorities' desire to correct the 'religiously wayward', not to persecute and kill them.⁷ In his recent book on the prosecution of heretics during the reign of Mary I, Eamon Duffy describes the preliminary examinations of those charged with heresy as 'taking the form of private or semi-private conversations between the prisoner and one or more commissioners':

All of those who recorded examinations were involved in such conversations more than once, in some cases a dozen or more times, and most record the resort to experienced persuaders, often men who had themselves once professed evangelical convictions, to 'talk brotherly' with them.

He goes on to describe these repeated examinations taking on a 'gladiatorial character'.⁸ But once the process moved to its formal stages in the Consistory, which (especially in London) would be crowded with spectators, these exchanges took on a much more performative quality: 'both sides [. . .] often spoke for effect, their words designed not merely or mainly to persuade or answer objections, but to engage sympathy for or against the catholic cause'.⁹

³ I am using 'Protestant' as a convenient shorthand because most of the prisoners I am writing about were incarcerated after 1553, by which point the term had become naturalised in England. When referring specifically to Henrician religious reformers, however, I will use the now more widely accepted term 'evangelical'. For discussion of this terminology, see Diarmaid MacCulloch, *Thomas Cranmer: A Life* (New Haven, CT: Yale University Press, 2002), pp. 2–3; and Alec Ryrie, *The Gospel and Henry VIII: Evangelicals in the Early English Reformation* (Cambridge: Cambridge University Press, 2003), pp. xv–xvi.

⁴ Walton, *One-Sided*, pp. 239–40; Douglas N. Walton, *Legal Argumentation and Evidence* (University Park: Pennsylvania State University Press, 2002), p. 186.

⁵ See Chapter 1 in this volume, and H. A. Kelly, 'Inquisition and the Prosecution of Heresy: Misconceptions and Abuses', *Church History*, 58 (1989), 439–51.

⁶ H. A. Kelly, 'Thomas More on Inquisitorial Due Process', *English Historical Review*, 123 (2008), 847–94, but also Chapter 1, p. 28, n. 94 in this volume.

⁷ Susan Brigden, *London and the Reformation* (Oxford: Clarendon Press, 1989), p. 607. See also Brad Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe* (Cambridge, MA: Harvard University Press, 1999), p. 81; and Eamon Duffy, *Fires of Faith: Catholic England under Mary Tudor* (New Haven, CT: Yale University Press, 2009), p. 102.

⁸ Duffy, *Fires of Faith*, p. 106.

⁹ *Ibid.*, p. 108.

Rather than the biased form of dialectic suggested by Walton, Duffy represents Marian heresy proceedings as something akin to the modern fair trial: the examinations are ‘conversations’ not interrogations, and the ‘experienced persuaders’ ‘talk brotherly’ with the prisoners. Duffy’s words suggest an exchange that takes place between equals that is unbiased and offered in the spirit of amity and empathy. Even when the resistance of certain defendants to confession and recantation leads to ‘gladiatorial’ debate, the adjective suggests a battle where both parties are well armed with the eristic subtleties of late-medieval logic and the rhetorical and dialectical skills bestowed by *studia humanitatis*.¹⁰

However, there is reason to mistrust this picture, and to give some room to Walton’s description of inquisition as a form of biased dialectic. While the humanistic education, with its emphasis on arguing *in utramque partem* (on either side of the question), may have provided the prosecution and more educated defendants with skills for debate, it was not in the interest of the authorities to let examinations and trials become a forum for balanced exchange.¹¹ As Genelle Gertz points out in her contribution to this volume, ‘an extreme power differential existed between members of the ecclesiastical court, who both recorded the trial and rendered judgement, and the accused, who stood trial before them’.¹² The most important factor was the demonisation of reformist beliefs during the reign of Henry VIII, both before and after the king’s break with Rome, and the pro-Catholic reign of Mary I, which is demonstrated by the large numbers who were sentenced to death during these years: fifty-three evangelicals were put to death for heresy in England and Scotland in the period 1527–1546, and at least 282 Protestants perished under Mary I.¹³ There was clearly no chance of compromise, no chance that the persecuting authorities would modify their attitudes to these beliefs in light of persuasive argumentation. Moreover, the threat of the stake, the encouragement to confess at length in order to gain lighter punishment and the psychological distortion of ‘confessing personalities’ all led to a biased dialectic, or what John H. Arnold describes as ‘impoverished speech’.¹⁴ In formal examinations inquisitors did not ask

¹⁰ For an overview of rhetorical education up to 1475, see *Medieval Grammar and Rhetoric: Language Arts and Literary Theory, AD 300–1475*, ed. by Rita Copeland and Ineke Sluiter (Oxford: Oxford University Press, 2010); for the later period, see *Renaissance Figures of Speech*, ed. by Sylvia Adamson, Gavin Alexander and Katrin Ettenhuber (Cambridge: Cambridge University Press, 2007).

¹¹ On the tense relationship between religious conservatism, dissent and academic training in logic, rhetoric and dialectic, see Marjorie Curry Woods and Rita Copeland, ‘Classroom and Confession’, in *The Cambridge History of Medieval Literature*, ed. by David Wallace (Cambridge: Cambridge University Press, 1999), pp. 376–406; Rita Copeland, *Pedagogy, Intellectuals, and Dissent in the Later Middle Ages: Lollardy and Ideas of Learning* (Cambridge: Cambridge University Press, 2001); Gary Remer, *Humanism and the Rhetoric of Toleration* (University Park: University of Pennsylvania Press, 1996).

¹² See p. 130 in this volume.

¹³ See Brad Gregory, ‘The Anathema of Compromise: Christian Martyrdom in Early Modern Europe’ (unpublished doctoral thesis, Princeton University, 1996), p. 13.

¹⁴ See John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001), pp. 6–8; Robert E. Lerner, *The Heresy of the Free Spirit in the Later Middle Ages* (Berkeley: University of California Press, 1972), p. 5.

contextualised questions but followed handbooks or a standard list of articles, which meant deponents were not free to say whatever they wished but had to follow the patterns set by inquisition.¹⁵ Even in more informal examinations, where questions were not set, power sat with the questioner to determine the direction of the interrogation.¹⁶

There were many other subtle ways in which the accused might be denied a level playing field when being interrogated, either formally or informally. An extreme example is the show-trial of John Lambert, in which King Henry VIII himself played the role of judge and inquisitor, a move that clearly biased the trial's outcome.¹⁷ Similarly, during the reign of Mary I, the authorities sought to make an example of three of the most prominent Protestant prisoners—Thomas Cranmer, Hugh Latimer and Nicholas Ridley—by forcing them into public disputation at the universities. Whilst not a part of the formal heresy proceedings, these disputations mimicked the structures of examinations and trials: they appeared to be giving the three former bishops an arena in which to argue their case on topics such as transubstantiation. But, according to Latimer's *Protestation*, the prisoners were put at a great disadvantage by being denied consultation with their books or notes, and, from his previous experiences, Latimer himself clearly expected to be interrupted with 'snatches, revylinges, checkes, rebukes and tauntes'.¹⁸

One thing that allows us to see these biased interrogations as more 'gladiatorial' (to use Duffy's term), with two equally powerful opposing sides, is our ability to read the prisoners' own accounts of their examinations and trials, rather than the court records alone. The official records in episcopal registers and court records usually comprised a list of the articles put to the accused, their answers (either added in the margin or as a long list afterwards), and the text of the sentences read against those found guilty. As such, they are so terse and schematised that they tell us very little about what the examination process looked like. The prisoners' accounts of their trials and examinations, by contrast, were highly detailed. They often gave a favourable representation of their answers to the questions and interrogations of the authorities (sometimes clearly bordering on wish-fulfilment); they sought to make those examining them look foolish or to demonstrate the error of Catholic beliefs; and in some cases they were designed to act as a supplement and corrective to their spoken word. In

¹⁵ John F. Davis, *Heresy and Reformation in the South-East of England, 1520–1559* (London: Royal Historical Society, 1983), p. 9, emphasises that the formularies of articles used in interrogation had to be sensitive to current heretical opinion. With the emergence of Lutheranism in England in the 1520s and 1530s, bishops spent considerable energy in bringing their lists of articles of suspected heresy up to date. See Duffy, *Fires of Faith*, p. 104 on the standard list of articles used in the Marian reign.

¹⁶ See Walton, *One-Sided*, pp. 44–46 on information-seeking dialogue.

¹⁷ See G. W. Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church* (New Haven, CT: Yale University Press, 2005), pp. 492–94.

¹⁸ Hugh Latimer, *Protestation*, Cambridge, Emmanuel College, MS 262, fols 171r–174v (transcript). Also printed John Foxe, *The Unabridged Acts and Monuments Online* or TAMO (Sheffield: HRI Online Publications, 2011), (1563 edition), pp. 1046–48. Available from: <<http://www.johnfoxe.org>> [accessed 21 June 2012].

other words, they attempted to correct the dialectal imbalance of the inquisitorial process in a way not dissimilar to how revisionist historians, such as Duffy, have sought to correct Whig-Protestant historiography by presenting sixteenth-century Catholicism in a positive light and Protestantism as a destructive force. Literate Protestant prisoners, in the reigns of both Henry and Mary, addressed the dialectical bias to which they had been subject in the inquisitorial process by producing accounts of their trials, examinations and other conversations with the authorities in a manner that at once mirrored and inverted this bias in their own favour.

In order to see prisoners' trial narratives as a kind of textual 'answer' to the techniques used by the prosecuting authorities, it helps to consider them in light of the ten indicators that Walton uses to detect bias in a given argument. These are: (1) something to gain, (2) selection of arguments, (3) lip-service selection, (4) commitment to an identifiable position, (5) closure to opposed argumentation, (6) rigidity of stereotyping, (7) treating comparable cases differently, (8) biased language, (9) emphasis and hyperbole and (10) implicature and innuendo.¹⁹ The presence of bias in an argument does not necessarily mean that the speaker or writer is unethical or bad; in fact, many of the strategies that they are harnessing derive from the scholastic and humanistic training that prepared courtiers, civil servants, politicians, lawyers and churchmen for civic life. Only by noticing what these devices are, and how they are employed, is it possible to make a fair evaluation of the content of their discourse. The presence of bias indicators within the prisoners' writings means that, although the dialogues each give the impression of being a two-sided exchange of viewpoints, they are in fact one-sided arguments. In this way, trial narratives allow for the clear argumentation of the author's beliefs: a true and accurate confession of faith, as opposed to the distorted and truncated confessions elicited through inquisition.

Literature of Vindication

The most obvious way for prisoners to respond to a legal process in which their arguments were interrupted and redirected by their interrogators—and then edited and truncated by the court records—was to write their own accounts. As Gertz's essay in this volume (Chapter 8) demonstrates, this had its origins in Wycliffite writings but was increasingly common from the 1530s onward. Prisoners produced accounts of each stage of the inquisitorial process, from the preliminary private examinations to the informal disputations mentioned by Duffy, and the public trials. Usually they presented these texts as something akin to a transcript, providing a blow-by-blow account of what was said by whom, and often formatting the resulting piece like a formal dialogue or play-text, with the speaker's name at the beginning of the line. The two major motivations for writing these accounts were to justify recantation, or, if the prisoner did not yield

¹⁹ Walton, *One-Sided*, p. 91. On implicature, see Paul Grice, *Studies in the Way of Words* (Cambridge, MA: Harvard University Press, 1989), pp. 24–40, 138–44; and Stephen C. Levinson, *Pragmatics* (Cambridge: Cambridge University Press, 1983), pp. 97–166.

to the pressure to abjure, to justify the beliefs for which they were willing to die. Most of the texts discussed in this chapter fall into the latter category.

In the case of those prisoners unwilling to recant, the first question to ask is: what could they possibly have to gain by producing their own account of the inquisitorial process? For the religious reformer prepared to die for his or her beliefs, whether a lollard or Marian Protestant, the worry was that they might miss the opportunity to use their stoic act of resistance to further their religious cause. Simply put, by writing an account of his or her inquisition, the prisoner gained a vital opportunity to produce propaganda. This is the first indicator of bias in these writings. Unlike the arena of courtroom, where the judge was bound to sentence to death those found guilty of heresy, the trial narrative aimed to put its case before a different set of judges: the prisoner's co-religionists. Given the conditions under which the texts were produced and the audience at which they were aimed, we can take for granted that the trial narratives demonstrate commitment to an identifiable position (bias indicator 4). Successfully forged texts could hope to strengthen their co-religionists in their beliefs, to instruct those who might have to undergo inquisition in the future and even to convert new members to the cause. In order to achieve these aims, prisoners employed a range of strategies to vindicate their position and to bias the record of the inquisitorial process in their favour.

The most important of these is the demonstration of the prisoner's resistance to opposed argumentation (bias indicator 5). This resistance is not demonstrated solely by reporting the prisoner's responses to the interrogators' questions and persuasions; prisoners also often sought to justify why they should not cooperate with their interrogators through *vituperatio* (a speech of blame).²⁰ The use of the denunciation *ad hominem* functions to demonise the other side so that the arguments they put forward will be discredited as worthless in advance.²¹ Crucially, this is often achieved by accusing the opponent of unfairly biasing the argument. John Philpot, a former archdeacon of Winchester, employed this strategy in his accounts of the numerous examinations he underwent in 1555. Throughout his accounts Philpot repeats the accusation that he is being questioned in the wrong diocese:

phil. I haue not offended in your dioces. For that which I spake of the Sacrament, was in Paules Church in the Conuocation house, which, as I vnderstand, is a peculiar iurisdiction, belonging to the Deane of Paules, and therefore is counted of your lordshyps dioces, but not in your dioces. *Boner.* Is not Paules church in my dioces? Well I wot, it cost me a good deale of money by the yeare, the leading thereof.

phil. That may be, and yet be exemted from your Lordships iurisdiction.²²

²⁰ On the epideictic rhetoric of *laus* and *vituperatio*, see Richard A. Lanham, *A Handlist of Rhetorical Terms*, 2nd edn (Berkeley: University of California Press, 1991), pp. 164–65; Brian Vickers, *In Defence of Rhetoric*, corrected edn (Oxford: Clarendon Press, 1997), pp. 21–23, 54–62; and J. A. Burrow, *The Poetry of Praise* (Cambridge: Cambridge University Press, 2008).

²¹ Walton, *One-Sided*, p. 102.

²² Foxe, *TAMO* (1563), p. 1463.

This exchange with Edmund Bonner, the Bishop of London, is based on a very good legal argument. Bonner's authority to prosecute him was tenuous at best; rather, Philpot should have been prosecuted by his ordinary, Stephen Gardiner, the Bishop of Winchester. The exchange, as Philpot reports it, demonstrates not only Bonner's lack of authority but also his unwillingness to admit he is at fault and to correct the error. By implication (bias indicator 10), the reader deduces the bishop's disregard for due process in his drive to prosecute heretics, and concludes that he should therefore be deemed both untrustworthy and immoral. Philpot repeats this complaint throughout his examinations in order to underline Bonner's awareness of his error, and also to remind the reader of the bishop's untrustworthiness.²³

The Henrician evangelical Anne Askew used the denunciation *ad hominem* in the accounts of her 1546 examinations.²⁴ In her *first examinacyon*, for example, she accuses her interrogators of misrepresenting her:

Besydes thys my lorde mayre layed one thyng unto my charge, which was never spoken of me, but of them. And that was, whether a mouse eatynge the hoste, receyved God or no? Thys questyon ded I never aske, but in dede they asked it of me, wherunto I made them no answere, but smyled.²⁵

At first glance, all Askew seems to be doing is setting the record straight about her precise words (or, indeed, her lack thereof) during her examination. She does not explicitly call the mayor of London a liar or manipulator, but these are the charges implied by the passage. By crediting the lord mayor with the question, Askew suggests that the mayor must either have been subjecting her to disorientating questioning techniques—trying to trick her into confessing her beliefs about the sacrament of the altar—or else that he is an incorrigible liar. In either case, these conclusions would justify Askew's non-compliance with her examiners, and signal to the reader that they should not be trusted. She also employs personal epithets connoting blame, such as 'papist', 'Judas', and accuses her questioners of trying to 'tempt' her, implicitly aligning them with the Serpent tempting Eve in the Garden of Eden, and Satan tempting Jesus in the desert.²⁶

In both Askew's and Philpot's accounts of their examinations, the *ad hominem* attack functions as a clever deflection. By pointing out how their interrogators are failing to play fair in their argumentation, these prison writers are able to distract the reader from the strategies they are using to bias the written dialogue in their own favour. The success of these narratives is derived from their ability to disguise their bias with the appearance of fair reporting. One way of achieving this is through lip-service selection (bias indicator 3). Quite often advocates presenting biased argumentation for one side of an issue will try to make their

²³ See also *ibid.*, pp. 1464 and 1468.

²⁴ Gertz also discusses Askew in her contribution to this volume (Chapter 8); see pp. 136–37, 141.

²⁵ *The Examinations of Anne Askew*, ed. by Elaine V. Beilin (Oxford: Oxford University Press, 1996), p. 27.

²⁶ *Ibid.*, pp. 24, 97, 34.

arguments seem more persuasive by endeavouring to appear as if they are engaging in a critical discussion and rationally considering the arguments on both sides.²⁷ An example of this technique can be found in the account that the prisoner Nicholas Ridley (a former bishop martyred under Mary I, in 1555) wrote of an informal conversation conducted over dinner one night during his incarceration with Sir John Bourne (the secretary of state), Sir John Bridges (the lieutenant of the Tower), John Feckenham (the Dean of St Paul's) and Sir Roger Cholmley (Lord Chief Justice). According to Ridley's account, this discussion begins with Bourne and his companions searching for a definition of the term 'heretic'. Feckenham quotes Augustine (very loosely), '*Qui adulandi Principibus vel lucri gratia, falsas opiniones gignit, vel sequitur, hereticus est*' ['Whoever brings forth or follows false opinions for the sake of flattering rulers or profit is a heretic'], before adding that whoever denies that the sacrament of the altar is the true body and blood of Christ is also a heretic. Asked by Bourne whether he agrees, Ridley retorts: 'syr sayd I, in some thinges I do and shall agree with hym, and in some thinges which he hath spoken, to be plain, I do not agree with him at al'. Another confession of partial-agreement is found later:

but what saye ye, quod M. Secretary, of the vniuersalitie, antiquitie, and vnitie, that maister Fecknam did speake of? I ensure you said I, I thinke them matters weightie and to be considered wel.²⁸

Both statements seem to indicate a co-operative conversation, and a rejection of the adversarial tone we are familiar with from accounts of examinations and trials. It is important that Ridley is seen to respond thoughtfully to Feckenham's argumentation because of the terms that have been set for this exchange. Bourne, Bridges, Feckenham and Cholmley have explicitly given Ridley leave to speak off the record and, according to his account, seem to be genuinely interested in hearing his opinion on the nature of heresy. Bourne and his companions establish a conversation in which they challenge one another and disagree with opposing viewpoints, but in a way that is responsive to opposing positions and allows all speakers to express their opinions freely. However, despite paying lip-service to critical discussion, Ridley's written record of the conversation does not permit his opponents' speech to proceed unchecked.

Ridley makes sure to report those parts of the conversation where he can demonstrate more knowledge than Bourne, Bridges, Feckenham and Cholmley, or where he has to correct them (for example, Feckenham's assertion that the Protestant rejection of transubstantiation is a newfangled idea). However, there is also some reason to suspect that he might not be including those arguments that show him in a less favourable light. Indeed, Ridley makes it clear that he is exercising his right to editorial licence over his text, at one point writing: 'Nowe, here euery man would haue his saying, whiche I passe ouer, not muche materiall for to tell.' Similarly, later in the account he writes:

²⁷ Walton, *One-Sided*, p. 96.

²⁸ Foxe, *TAMO* (1563), pp. 996 and 994.

and here when we speak of lawes and decrees, maister Chomley thoughte himselfe muche wronged, that he could not bee suffered: the reste was so ready to speake, and then he vp and tolde a long tale what lawes was of kynges of England made against the bishop of Rome, & was vehement to tell how they alway of the clergy did flie to him: and here because he semed to speake of many things besyde our purpose, whereof we spake before, he was aunswered of his owne felowes: and I lette them talke.²⁹

These passages execute a clever manoeuvre. Ridley could have chosen silently to edit out the material he deemed irrelevant, but by indicating the cuts made he implies that he is an honest editor, which makes the reader more likely to accept his judgement about the irrelevance of the excised speeches ('not muche materiall for to tell'; 'he semed to speake of many things besyde our purpose'). Nevertheless, we cannot ignore the fact that what he is doing is selecting arguments (bias indicator 2): he is deciding on the reader's behalf that his opponents' arguments are irrelevant rather than letting the reader judge for himself. This contrasts with the ideal model of a fair trial wherein prosecution and defence both put forward their arguments to be judged as strong or weak, relevant or irrelevant, reasonable or fallacious. In other words, Ridley commits the 'sin of omission' in this account: he may indeed have written 'nothing but the truth', but he does not tell the 'whole truth'.³⁰ The result of this editing is that this dialogue, which purports to be a straightforward account of a conversation, becomes a piece of polemic against the Catholic doctrine of transubstantiation. Those counterarguments that do not provide Ridley with a platform for his arguments or that take the conversation on to a broader consideration of heresy (such as Cholmley's account of 'what lawes was of kynges of England made against the bishop of Rome') are elided.

Ridley's use of elision is revealing. Whereas the other bias indicators discussed above are commonly found in verbal exchanges, the success of Ridley's contribution to the argument relies upon a textual process after the event. Depending on the degree to which such editing is employed, and whether it is signalled or employed silently, the line between a biased account and a fictionalised one begins to blur. As well as removing problematic arguments posed by their interrogators, prisoners could also choose to show their arguments in a more positive light, or even engage in some wish-fulfilment, changing the phrasing, length or even content of their contributions. It is impossible to guess at the extent to which this occurred, but the fact that it could, and probably did, tells us something important about how we should think about the function of these texts. We cannot use them as unproblematic indicators of what the inquisition process was like because Protestants producing records of the inquisitorial process quickly realised that their written accounts could serve a very different function from that of the original dialogue. Unlike the structure of the inquisitorial process, which was dictated by the aims of the

²⁹ Ibid., pp. 998 and 999.

³⁰ Frederick J. Little, Leo A. Groarke and Christopher W. Tindale, *Good Reasoning Matters: A Constructive Approach to Critical Thinking* (Toronto: McClelland & Stewart, 1989), p. 61.

authorities (to secure confession followed by recantation), the written accounts served the aims of the prisoner: as a confession of faith; as propaganda against the Catholic authorities (through *ad hominem* attacks); as another means of disseminating polemic on controversial issues such as transubstantiation; to prepare those who would be facing inquisition in the future; and as a means of self-memorialisation. Factual accounts undoubtedly served these aims well, but lightly fictionalised, or even completely invented, dialogues also had their place.

Fictional Dialogues

There was ready acknowledgement among prisoners that a straightforward, (mostly) factual account of their examinations was not always the best way of providing a confession of faith, or, indeed, of fulfilling any of the other functions mentioned above. As suggested in my introduction, the psychological effect of being interrogated, subjected to disorientating questioning techniques and threatened with death, left the defendant at a disadvantage. Latimer expressed his fear of being interrupted with ‘snatches, revynges, checkes, rebukes and tauntes’ in his *Protestation*, a piece of writing that he presented to Hugh Weston before the disputation at Oxford on 20 April 1554, after having refused to dispute in formal university fashion. The reasons he gives for this refusal were the infirmities of his age, the rustiness of his Latin, as well as the certainty of interruption. This text, then, substitutes for the dialogue. In it he is able to set out his opinion on the eucharist freely: by casting off the restraints the disputation imposed (specifically, the questions and interrogations of his opponents) the passage reads more like a sermon or a piece of polemic. Similar texts include John Lascelles’s *Protestation*, written in 1546 and published two years later, and Robert Wisdom’s *Vindication of himself*, written in 1543. Although they are not substitutes for the biased dialectic of inquisition like Latimer’s *Protestation*, they are intended to supplement it. Both texts take issue with the articles with which the prisoners were charged: Wisdom, for example, disputes the article ‘that I saide Christ shall at the day of Judgement rewarde onli of mercy and not ovr merits’, which acts as a springboard for his own confession of faith on the issue of grace versus good works.³¹ Neither of these texts, however, is a dialogue in the strict sense: they only debate the articles propounded against them. But there are other texts—also designed to supplement the inquisitorial process—that style themselves as dialogues, such as the mock trial composed by Ridley and the continuation that John Rogers added to the account of his examinations.

In his trial narrative Rogers represents his chief examiner, Stephen Gardiner, as authoritarian and mocking, ‘intent on exacting answers to narrowly framed questions and impatient with Rogers’s efforts to broaden the argument’.³² By his account, Rogers is repeatedly interrupted and overwhelmed. For example, he reports: ‘Here my Lord chancellor wold suffer me to speake no more: he bad

³¹ London, British Library, MS Harley 425, fol. 4r.

³² John R. Knott, *Discourses of Martyrdom in English Literature, 1563–1694* (Cambridge: Cambridge University Press, 1993), p. 18.

me sitte downe, mockinglye sayinge that I was sent for to bee instructed of them, and I wold take vpon me to be their instructour.³³ The choice of the word 'instructour', with its educational overtones, seems reminiscent of the connection that Marjorie Curry Woods and Rita Copeland have drawn between the role of teacher and priest, suggesting that the 'catechizing of penitents reproduced the structure of examining pupils'.³⁴ Gardiner, of course, is not a priest in a confessional, but his task *is* to extract a confession, and his self-definition as an instructor suggests that he perceives his role as that of teacher and corrector. His accusation that Rogers was trying to reverse the necessarily asymmetric discourse between instructor and student/penitent demonstrates his recognition of the strategies by which a prisoner might seek to appropriate the discourse for his own ends. Gardiner's tight control of the exchange, and his use of various intimidating techniques (as Rogers reports them), ensure that the defendant cannot enter into the kind of dialogue that would provide good fodder for an edifying and instructive trial narrative.

But rather than let his interrupted answers stand alone, Rogers appended an additional text to his account of the examination. He begins:

But now, dearly beloved, heare what I wold have sayd further, and what I had devised the night before, partely, as the lord knoweth, with sighinge and teares, partely with prayer, and partely by imaginige in my mynde after what order I wolde speake, when I shuld come before the foresayd judges: the beginninge ye have before heard: now heare how I was utterly purposed to have proceeded.³⁵

This passage announces to the reader that the following text constitutes what Rogers did not get a chance to say in his examination. He also makes it clear that this is not merely a product of hindsight (the retrospective clarity one experiences following a heated exchange, when one thinks 'if only I'd said...'); it also comprises the arguments that he had practised in advance of his examinations, and thus reflects his frustration that the care he had taken in his preparation was not evinced in the answers he was able to give. What he is doing here, then, is describing two of the five parts of rhetoric outlined by Cicero: *inventio* (invention, or the discovery of material), and *dispositio* (the arrangement of the argument).³⁶

The text that follows appears to be a continuation of the dialogue rather than a straightforward supplementary text. By this I mean that Rogers arranges his continuation as if it were speech, sprinkling his prepared answers with phrases such as 'I say' and 'I speake'.³⁷ He also employs a second-person mode

³³ John Rogers, *John Rogers: The Compiler of the First Authorised English Bible; the Pioneer of the English Reformation; and its First Martyr*, ed. by Joseph Lemuel Chester (London: Longman, Green, Longman and Roberts, 1861), p. 315. Transcription of London, British Library, MS Lansdowne 389, fols 187v–199r. I have silently expanded contractions present in this edition, here and below.

³⁴ Woods and Copeland, 'Classroom and Confession', p. 377.

³⁵ Rogers, *John Rogers*, p. 319.

³⁶ Sylvia Adamson, Gavin Alexander and Katrin Ettenhuber, 'Introduction', in *Renaissance Figures of Speech*, ed. by Adamson, Alexander and Ettenhuber, pp. 1–14 (p. 2).

³⁷ See for example, Rogers, *John Rogers*, pp. 321–22.

of address as if he is still speaking to his examiners. Strictly speaking, the continuation does not perpetuate the question-answer structure of the account of the examination, but Rogers does pose his lengthy arguments in response to objections previously made by Gardiner and his associates:

Ch. My Lord chancellor tolde me that we gosple preachers marred the realme.

Ro. Let all men be iudges, that have a zeale to religion and trueth, whether this turninge about of the papistes have not broughte the simple lay people, yea, and many worldly wise men therto, to this poynte, that they can not tell whom they shuld beleve, or wherevnto they shuld truste.³⁸

There are a number of ways that Rogers attempts to make his text appear dialogue-like. The indication of speakers—Ch. (Gardiner) and Ro. (Rogers)—invites the reader to interpret Gardiner's previous questions as the prompt for Rogers's extended polemic on issues such as the pope's spurious claims to authority, the defence of Protestant preachers in the Edwardian church and the authority of scripture. Whilst elsewhere in the text Rogers makes it clear that these questions were asked during the examination the previous day ('my Lorde chancellor had the day before sayd'),³⁹ in the passage above the chronology of Gardiner's words is ambiguous, so that the reader is encouraged to imagine a present adversary. Overall, though, Rogers's attempt at putting his adversary's voice into the text is half-hearted: he introduces only a handful of Gardiner's questions and objections, which means that the resulting text exhibits an exaggerated form of argument selection (bias indicator 2). He selects only those questions posed by Gardiner that he wishes to answer, and imagines none of the criticisms and follow-up questions with which the Lord Chancellor might have responded. In fact, more than ninety-seven percent of the total words in the continuation are given over to Rogers. Quite clearly, then, the 'answers' Rogers gives are the epitome of a one-sided argument. Furthermore, not only does Rogers demonstrate an unwavering commitment to what Walton would call an 'identifiable position' (bias indicator 4) and closure to opposed argumentation (bias indicator 5), he also employs biased language (8) and hyperbole (9). He talks about the 'traitrous hearts' of those who say the country is in 'schisme and in heresie' since the break with Rome (i.e. they are traitors against Henry VIII and Edward VI), and he accuses the bishops of being cruel, tyrannous, 'full of corruption or wickednes' and of 'preachinge false lyes [. . .] the popes poyssen and destrution of sowles'.⁴⁰ Many of these words are loaded terms, being employed without evidence to support Rogers's conclusions.

Rogers's account of his examination, and its continuation, present a comparison of two kinds of biased dialectic. From Rogers's perspective, of course, the two parts of his text demonstrate the difference between the prisoner's ideal examination in comparison to the 'reality' of inquisition, wherein examiners

³⁸ *Ibid.*, p. 324.

³⁹ *Ibid.*, p. 326.

⁴⁰ *Ibid.*, pp. 323 and 325.

could cut him off, chide him, mock him and direct questioning against his interests and agenda. From a neutral position, however, we can see that the interrogators' bias in Rogers's 'reality' pales in comparison with the one-sidedness of Rogers's fictional continuation. We find another strongly biased fictional dialogue in Nicholas Ridley and Hugh Latimer's *Certein godly, learned, and comfortable conferences*, but the strategies that they employ differ from those employed by Rogers due to divergent aims. Whilst Rogers's text served primarily as a confession of his faith to counteract the official court records, and as a piece of polemic against Catholic beliefs and practices, Ridley and Latimer's dialogue was designed to prepare these two martyrs, and possibly their co-religionists, for *inquisitio*. Training for interrogation appears to have been a common practice: as Rogers made clear in his introduction to the continuation, he spent time preparing his answers before his interrogation; and, as Gertz suggests, the similarities in William Wolsey's and Robert Pygot's answers in their trials may also indicate that they rehearsed their language together.⁴¹ The practice has clear analogues in the *Sixteen Points on which Bishops accuse Lollards*, and the *Thirty-Seven Conclusions of the Lollards*,⁴² texts which were undoubtedly designed as pedagogical aids, 'providing readily reproducible "model answers" along with exemplary citations of authorities'.⁴³ Ridley and Latimer's *Godly conferences* follow this lollard practice.

The conferences constitute two separate but related literary exchanges between the former bishops, which took place during the early period of their incarcerations, prior to their being held in the same cell of the Tower (sometime between September 1553 and February 1554). In the first, Ridley wrote a list of eleven 'causes [. . .] that moue me to abstayne frome that Masse',⁴⁴ which he then sent to Latimer, who added a comment to each of Ridley's reasons and concluded his additions with an exhortation not to attend mass. The similarity of this text to the Wycliffite *Sixteen Points*, for example, is clear. However, it is the second instalment with which we are concerned here, which introduces another element to the conference: a fictional interrogator called Antonian, who faces Ridley with fourteen 'objections' concerning his non-attendance at mass, to which, once more, Latimer added his comments. This innovation bears the clear marks of the rhetorical training bestowed by *studia humanitatis*, specifically the technique of *ethopoeia* or mimetic speech; that is, the representation of the character (the *ethos*) of an orator or another person by imitative speech. *Ethopoeia* is particularly apparent in the art of logographers, or speechwriters, who usually worked for those who had to defend themselves in court, and, as Joel B. Altman has shown, it was also used to train future playwrights in the fundamentals of

⁴¹ See p. 143 in this volume.

⁴² 'Sixteen Points', in *Selections from English Wycliffite Writings*, ed. by Anne Hudson (Cambridge: Cambridge University Press, 1978), pp. 19–24; [*Thirty-Seven Conclusions*,] *Remonstrance Against Romish Corruptions in the Church*, ed. by J. Forshall (London: Longman, Brown, Green and Longmans, 1851).

⁴³ Copeland, *Pedagogy, Intellectuals, and Dissent*, p. 178.

⁴⁴ Nicholas Ridley, *Certein godly, learned, and comfortable conferences* ([Emden: E. van de Erve], 1556), sig. a. 5r. Included in this edition are the responses added by Hugh Latimer to Ridley's texts.

dramatic characterisation.⁴⁵ Ridley tells us that the name Antonian refers to the Arian bishop Antony who persecuted Trinitarian Christians in the Vandal kingdom during the fifth century, but this figure was also almost certainly meant to represent the contemporary inquisitor, Stephen Gardiner, who had used the pen name 'Marcus Antonius Constantius', and the editor of the *Godly conferences* identifies him as such in his marginal annotations.⁴⁶

Whilst Ridley's dialogue uses an ostensibly fictional interrogator, through his use of *ethopoeia* he creates a much more realistic and believable dialogue than that found in Rogers's continuation to his examination account. Moreover, it is set out on the page like the trial narratives discussed in the previous section—and, indeed, Tudor play-texts—with the speakers' names indicated in the margins. Ridley's answers are written in response to Antonian's questions, and his interrogator's questions and objections build upon Ridley's arguments. For example, in Antonian's sixth objection, he says: 'That church *which you have described vnto me*, is inuisible, but Christes is visible and knowen' (my emphasis).⁴⁷ In fact, this imagined inquisition feels much more like the kind of critical discussion that Ridley describes in his account of his conversation with Bourne and his associates, discussed above. He does not underestimate the intelligence of his imagined interrogator (and, indeed, his real future interrogators) by putting easy questions in the mouth of Antonian, but rather gives his opponent some persuasive arguments:

Consider into what daungers you cast your self, if you forsake the church:
and you can not but forsake it if you refuse to go to masse. For the Masse
is the sacrament of vnitye.⁴⁸

This is not only a persuasive argument; it represents Antonian as being genuinely concerned about Ridley's salvation.

But rather than redeem the interrogator in the eyes of the reader, Antonian's assertion (and, indeed, each of the challenges he puts to the prisoner) are merely set-ups for Ridley's answers. Ridley's ability to counter Antonian's apparently solid argumentation functions to make the prisoner's lengthy, well-constructed replies look all the more impressive. The fact is, though, that however difficult Ridley makes the questions seem, the reader knows that they are really the product of his imagination. Argument selection (bias indicator 2), as I have discussed above, is one of the most effective ways to make biased arguments look like they are balanced. Ridley may, of course, have been stretching himself by thinking of the hardest objections he could, but he gave himself the time to come up with a suitable retort, and may even have had the benefit of reference

⁴⁵ Carolyn R. Miller, 'Writing in a Culture of Simulation: Ethos Online', in *Towards a Rhetoric of Everyday Life: New Directions in Research on Writing, Text, and Discourse*, ed. by Martin Nystrand and John Duffy (Madison: University of Wisconsin Press, 2003), pp. 58–83; Joel B. Altman, *The Tudor Play of Mind: Rhetorical Inquiry and the Development of Elizabethan Drama* (Berkeley: University of California Press, 1978), pp. 48–49 and throughout.

⁴⁶ Ridley, *Godly conferences*, sigs. f.1r–1v, b.8v.

⁴⁷ *Ibid.*, sig. c.5v. My emphasis.

⁴⁸ *Ibid.*, sig. c.4v.

material (this text was written before his books were confiscated).⁴⁹ One important way that we can see that Ridley has employed argument selection is that he puts into Antonian's mouth neither loaded questions nor any other strategies that interrogators commonly used to bias the dialectic in their favour. This removal of biasing strategies from the opponent's questioning is a subtle way of influencing the direction of the discourse in Ridley's favour. Moreover, when we observe that the opponent's questions merely act as a springboard for Ridley's long polemics on doctrinal issues (the ratio of words given to Ridley and Antonian is roughly 3:1 in favour of Ridley), it is clear that this is unequivocally a one-sided argument. In reality, neither the historical bishop Antony nor Gardiner would have given a suspected heretic such a generous hearing.

This raises a question about the effectiveness of *ethopoetic* exercises in preparing prisoners for inquisition. Rogers's account of his examination and his continuation clearly demonstrate that answers to imagined questions are not a foolproof method of preparation. Ridley may have been anticipating this when he sent his own dialogue to Latimer asking for his comments because 'you are an olde soldyar, and an experte warriour, and God knoweth, I am but a yong sowldyar, and as yet of small experience in these feates'.⁵⁰ Ostensibly Ridley is asking the older bishop to evaluate the strength of his arguments. However, in asking Latimer to critique his fictional dialogue, Ridley is also covertly testing Latimer's response to unseen questions. Latimer seems to suspect as much for he writes: 'Syr I beginne now to smel what you meane by traueling thus with me. Yow vse me as Bilney dyd ones when he conuerted me, pretending as though he wold be taughte off me.'⁵¹ Furthermore, by producing a text through their mutual instruction, the two former bishops left a document that might also usefully instruct their co-religionists: by providing a list of questions, model answers and commentary, the finished text provided instruction for other Protestants to make their interrogations an opportunity for preaching the gospel.

Conflict Resolution

Neither the process of *inquisitio*, nor the trial narratives it inspired, conform to the definition of a fair trial that opened this essay. In the case of the latter, though, we may be able to attribute some of this to the differences between dialogue as an 'abstract normative structure', and the characteristics of dialogue within a literary tradition. Trial narratives share both visual and rhetorical characteristics with a range of other influential literary traditions that also took a dialogic form, including the Renaissance dialogue, drama and polemic. All of these genres crucially derive their value from their ability to represent an essentially one-sided argument as if it were a real conversation, a skill deriving from humanistic training, which taught scholars to argue *in utramque partem*.

The Renaissance dialogue, which sits behind all of these associated genres,

⁴⁹ See Foxe, *TAMO* (1563), p. 999.

⁵⁰ Ridley, *Godly conferences*, sig. b.8v.

⁵¹ *Ibid.*, sig. c.1v.

takes its power from the ability to blur 'modern distinctions between fiction and nonfiction, orality and literacy, or poetry, prose, and drama'.⁵² Examples, such as Baldassare Castiglione's *The Book of the Courtier*, Desiderius Erasmus's *Praise of Folly* and book one of Thomas More's *Utopia*, may be characterised simply as a play of wit and rhetorical craft; but they also provide hypothetical resolutions to social, religious and political debate. Early Tudor drama was not far removed from the dialogue: at this time plays constituted little more than a staged debate, in which characters functioned like spokesmen rather than individuals.⁵³ There are clear parallels between these genres and trial narratives: the connection between examination accounts and Ridley and Latimer's second *Godly conference* demonstrates how the trial narrative shades into imaginative literature. Indeed, recent criticism has made much of the 'theatrical self-consciousness' of trial narratives, both on the parts of their authors and on the parts of their editors.⁵⁴ Richie D. Kendall, for example, has drawn suggestive parallels between the tyrant plays of the mystery cycles and accounts of heresy trials.⁵⁵ The difference, however, is that the genres of dialogue and drama free the writer to put forward an agenda without claiming that it is true; and the reader encounters such texts with the knowledge that the dialogues are hypothetical and mere performances. Trial narratives, by contrast, are more opaque about their relation to fact. For this reason they more closely resemble polemic than these other, more clearly imaginative, genres.

The style in which polemic was written in the sixteenth century resembled a dialogue: writers would quote their opponent at length in order to allow for a point-by-point refutation, with the name of the 'speaker', polemicist or opponent, signalled in the margin.⁵⁶ The result may have looked like a play-text, but Tudor polemic rarely used fictionalised opponents or imagined scenarios. Nevertheless, it shared the crucial characteristic of mimicking balanced debate in order to give credibility to intrinsically biased dialectic. The way that polemicists sought to convince their readers of a fair exchange is perhaps best summed up by a metaphor utilised by the Henrician prisoner John Frith in a piece of polemic written against the dramatist John Rastell, called *An other boke against Rastel named the subsyde or bulwark to his fyrst boke*. In this text Frith not only interrogates Rastell's arguments in support of the existence of Purgatory (in a polemical work now lost), but also his rhetorical strategies. In particular, he responds to Rastell's boast that he did not cite scripture against Frith, but instead

⁵² Dorothea B. Heitsch and Jean-François Vallée, 'Foreword', in *Printed Voices: The Renaissance Culture of Dialogue*, ed. by Dorothea B. Heitsch and Jean-François Vallée (Toronto: University of Toronto Press, 2004), pp. ix–xxiii (pp. x–xi).

⁵³ See Daniel Wakelin, 'Gentleness and Nobility, John Rastell, c. 1525–27', in *The Oxford Handbook of Tudor Drama*, ed. by Greg Walker and Thomas Betteridge (Oxford: Oxford University Press, 2012), pp. 192–206 (p. 192); and Altman, *Tudor Play of Mind*, pp. 107–29.

⁵⁴ Janette Dillon, *The Language of Space in Court Performance, 1400–1625* (Cambridge: Cambridge University Press, 2010), p. 155.

⁵⁵ Ritchie D. Kendall, *The Drama of Dissent: The Radical Poetics of Nonconformity, 1380–1590* (London: University of North Carolina Press, 1986), pp. 58–67.

⁵⁶ See Rainer Pineas, *Thomas More and Tudor Polemics* (Bloomington: Indiana University Press, 1968), pp. 80–92.

rehearsed the evangelical's own scriptural quotation against him, thus tossing the ball back over the net. Frith wittily replies that this does not end the game:

Not withstodenge yow know ryght wel that it is noughte I noughe for a man playenge at tennes to tosse the ball agayn / but he must so tosse it that the tother take it not. For yf the other smyte it ouer agayne then is the game in as great ieoberdy as it was before besydes that he muste take hede that he neyther smyte to shorte of the lynne nor yet vnder / for then it is a losse and he had ben better to let it go. And finallye somtyme a man smyteth ouer and thynkethe al wonne / and yet an vngracious poste ston-deth in the waye and maketh the balle to rebounde backe agayne ouer the corde and loseth the game.⁵⁷

Frith recognises that the tennis metaphor with which Rastell had flirted presents a neat way of conceptualising the rhetorical strategies employed in adversarial dispute. The way to win an argument, according to this metaphor, is to 'tosse [the ball] that the tother take it not': the last thing you want is to permit a rally. However, some techniques can 'rebounde' on the server as he later demonstrates. For example, Rastell had employed an *ad hominem* attack by accusing Frith of argument selection (bias indicator 2) in an earlier polemic on the topic of Purgatory (Frith's *Disputacion of purgatorye*),⁵⁸ contending that the evangelical quotes only part of Romans 3 to prove salvation by faith alone. This, however, rebounds on Rastell when Frith returns the accusation of selective and misrepresentative quotation by quibbling with Rastell's own interpretation of this chapter: 'for euen in this same Chapytre that he allegeth Paull sayeth: that of workes of the lawe noo flesshe shalbe iustfyed'.⁵⁹ By showing how Rastell had employed these biasing strategies, Frith himself employs an *ad hominem* attack so that the arguments Rastell puts forward are discredited in advance. What is noticeable about these techniques is their similarity to those employed by prisoners writing accounts of their examination; but where Frith's polemic differs is in the self-conscious way that he demonstrates the techniques of bias used by controversialists.

But all is not quite as it seems. The tennis match metaphor may, indeed, demonstrate the use of bias in adversarial dispute, but in so doing it falsely creates the illusion of a game of two sides. The sense of a rally being maintained by the men is enhanced by the style of quotation-and-refutation employed by Tudor polemicists, which is emphasised by the alternating names in the margins. Of course, a real rally is impossible in this mode of textual exchange, for the polemicist must wait until he has a copy of his opponent's text before he can set about writing his answer. All the individual text really does is launch a barrage of balls over the net; the opponent is merely a textual persona, a varia-

⁵⁷ John Frith, *An other boke against Rastel named the subsedye or bulwark to his fyrst boke* ([London]: S.n., [1537(?)]), sigs A.4v–A.5r.

⁵⁸ John Frith, *A disputacio[n] of purgatorye* ([Antwerp: S. Cock, 1531(?)]).

⁵⁹ Frith, *An other boke*, sig. C.1v. For further discussion of Frith's rhetorical strategies, see Rainer Pineas, 'John Frith's Polemical Use of Rhetoric and Logic', *Studies in English Literature, 1500–1900*, 4 (1964), 85–100.

tion of the *ethopoetic* fabrication, constructed from the opponent's previous writings, thus allowing for considerable argument selection. In this pretence of fair exchange we see an important analogue to the fictional dialogues by Rogers and Ridley; but more importantly, with its use of quotation and its pretence of real engagement, it also suggests how apparently factual examination accounts might have been constructed.

Frith, like these authors after him, demonstrates his understanding that, for a one-sided argument to be palatable and persuasive to a reader, it must at least try and look like a fair and balanced exchange. But the only way to know if a polemicist is representing his adversary correctly is to read his opponent's work. In the same way, our perception of the heresy trial is incomplete unless we supplement examination accounts with other documentary evidence produced by *inquisitio*, including court records where they survive. Both *inquisitio* and Protestant trial narratives represent strongly biased dialectics, which arise from a particular set of prejudices that preclude a true two-way dialogue. The careful scholar, therefore, must always read these opposed dialectics in conversation with each other, and judge for him- or herself which arguments can, in Walton's words, 'be evaluated as strong or weak, correct or incorrect, reasonable or fallacious'.

Chapter 10

Response Essay: Chaucer's Inquisition

EMILY STEINER

The question that drives *The Culture of Inquisition* is: what does inquisition have to do with imagination? This is not an easy question to answer, in part because modern assumptions about law and literature often get in the way. Like any legal procedure, inquisition relies on both repetition and enforcement, or, in other words, the idea that it can be performed the same way under a variety of circumstances for a long time to come. Though basic to law, this idea is sometimes conflated with bad practices associated with pre-modern inquisition, for example, coercion, torture and the persecution of minority beliefs. To put the problem a different way, modern writers tend to identify the sadistic or primitive qualities of pre-modern inquisition with an inflexibility or non-progressive-ness in law. Human rights advocates, for example, will often call 'medieval' those (usually non-Western) legal practices they consider immoral, such as public flogging or trial without representation, regardless of whether these practices are medieval in origin. Conversely, literary critics often take the view that imaginative literature—even medieval literature—is modern by comparison to law insofar as it is capable of bringing about change, for example, by criticising abuses and injustice, or by subverting social norms.

As the contributors to this volume show, it is critical to understand law as capable of invention, and even imagination. Moreover, as I will argue here, it is where literature seeks its inventiveness in law that it calls attention to the desires that implicate both literature and law and both medieval and modern readers. For one thing, law in practice is neither fully self-regulating nor unchanging. For another, law leaves much to the imagination: for example, legal transcripts construct narratives, record dialogue and name names, but they necessarily leave out details about emotion, gesture and bias. From this perspective, law is inventive because it invites modern critics and historians to participate imaginatively in legal processes centuries after a case officially has been closed.

Importantly, too, law is the product of many innovations. As Henry Ansgar Kelly explains in his survey (Chapter 1), *inquisitio* was one of the great innovations of medieval canon law. However notorious inquisition would become, particularly as it was applied to heresy, it was first introduced to help prosecutors establish guilt in a variety of proceedings. The earlier procedure, *accusatio*, was less effective, because the accuser, if shown to be in error, was himself liable

to punishment; *inquisitio*, by contrast, formalised the common report (*publica fama*) about a specific crime while often providing information about a person's conduct or beliefs. To take another example from this volume, Edwin Craun (Chapter 2) explains that canon lawyers developed the procedure of fraternal correction among clergy and laity, both as an alternative to the secrecy of the confessional, and as a charitable practice that enabled people to check the behaviour of others while at the same time preserving the communal good.

Craun acknowledges that this procedure may have been less than effective in practice. After all, an inferior might be reluctant to correct a superior or because publicly admonishing someone might initiate inquisitorial proceedings against him. However, as Craun and Kelly demonstrate in different ways, even where law is repressive or compromised, it still widens the scope of invention within a culture. Indeed, if we do not appreciate law's peculiar inventiveness, we cannot understand literature's investments in law. As *The Culture of Inquisition* shows, creativity is not always antagonistic to law; on the contrary, law broadens the category of the literary, stimulates textual production, and models ways of representing relationships, behaviour and belief. In medieval England, for example, inquisition law mediated between continental and insular writing, between law and ethics, and between judicial and pastoral realms. As Ian Forrest (Chapter 3) argues, with the advent of heresy legislation in England, English provincial handbooks of canon law received a shot in the arm. To take a very different example, in her essay on Protestant trials under Mary I, Genelle Gertz (Chapter 8) shows that even official abjurations generated a reformist literature of texts about belief; Ruth Ahnert (Chapter 9) similarly argues that sixteenth-century Protestant defendants, concerned to 'correct the dialectal imbalance of the inquisitorial process', sought inspiration in institutional forms.¹

At this intersection between legal and literary invention is the community, both real and imagined. Diane Vincent (Chapter 4) shows, for example, that the successful prosecution of accused heretics, such as John Aston and later John Oldcastle, entailed the management of public opinion—for instance, strategic broadcasts of what the defendant did or did not say. The community likewise plays an important role in the relationship between confession and inquisition. As Mary Flannery and Katie Walter (Chapter 5) explain, these two practices have much in common and are, to some degree, interdependent: both confession and inquisition are meant to uncover what is secret or internal; both are charged with discovering a truth with respect to a larger Christian truth; and both attempt to negotiate between the individual and his or her reputation in the community. Yet, as Jenny Lee (Chapter 6) rightly points out in her discussion of Thomas Usk, the logic of inquisition was that it surpassed sacramental confession: like confession it recorded admissions of guilt, but unlike confession it did so in order to mete out human justice 'often in the form of corporal punish-

¹ Ahnert (Chapter 9), p. 150 in this volume.

ment or death'.² The difference between the two was a site of literary imagining, especially in texts that feature judicial events, such as purgation or trial by combat. In Middle English romances such as *Athelston*, in which the murderer's identity is revealed in confession, or *Sir Gawain and the Green Knight*, where Gawain confesses to a priest before the rendez-vous at the Green Chapel, confession works as a kind of wish-fulfilment, namely, the wish that the erasure of sin could take the place of public shame and public pain.³ Confession in a judicial setting also fulfils the wish for something local and intimate, a priest or hermit instead of an emperor or papal legate. As James Wade (Chapter 7) observes, though romance is committed to the representation of interiority—the very thing that confession brings to light—romances do not usually feature sacramental confession. But, as Wade argues, confession could be dressed up for romance and deployed at key moments, as when, in the *Erle of Tolous*, the queen's lover, disguised as a hermit, confesses the queen before hazarding his life in judicial combat.

Most challenging to modern critics are those literary texts, like the *Erle of Tolous*, that seek their inventiveness in law and especially in inquisition. These texts force us to revise our assumptions about law and literature, and about the relationship between the medieval and the modern. They also confront us with our own desires to inhabit the past as prosecutors and advocates, as shared sufferers and as dealers in ingenuity and truth. Such desires do not confer virtue in any straightforward way, nor can they be reduced to the single desire to rectify a past wrong or to reveal a hidden tale. Rather, they include the desire to extract information, to exact punishment and to take pleasure in the dynamics of subordination and dominion.

A good example is Chaucer's Prologue to the *Legend of Good Women*, a poem that seeks its inventiveness in law at the same time that it invites its readers to enjoy the inquisition of the poet. In the Prologue, Chaucer's obtuse narrator falls hard for a daisy to whom he devotes himself day and night. As he freely admits, he is no practised lover like those noble folk in the companies of the Flower and Leaf, and yet, like them, he is a connoisseur of courtly ritual. Love is his religion, and he has mastered the eroticised religious discourse of courtly love: he plans 'with dredful hert and glad devocioun, / For to ben at the resureccioun / Of this flour, whan that yt shulde uncloze / Agayn the sonne' (F.109–12).⁴ It is no surprise, then, that, while keeping vigil by his daisy, he sees the God of Love himself, flanked by his consort, Alceste, and attended by a large company of ladies ready to perform their springtime observances. The God of Love spots the narrator kneeling by the flower and charges him with 'heresy'. Love has gotten wind of

² Lee, p. 95 in this volume.

³ For *Sir Gawain and the Green Knight*, see *The Poems of the Pearl Manuscript*, ed. by Malcolm Andrew and Ronald Waldron (London: Edward Arnold, 1978), pp. 275–76. For *Athelston*, see *Four Romances of England*, ed. by Ronald B. Herzman, Graham Drake and Eve Salisbury (Kalamazoo, MI: Medieval Institute Publications, 1999), pp. 341–72.

⁴ Geoffrey Chaucer, *The Riverside Chaucer*, ed. by Larry D. Benson, 3rd edn (Oxford: Oxford University Press, 1987). All references to Chaucer's works will be taken from this edition, and cited above by line number.

Chaucer's translations of the *Romance of the Rose* and *Troilus and Criseyde*, texts that make women look bad and discourage male lovers. Says the God in anger: 'Thou maist yt nat denye, / For in pleyn text, withouten need of glose, / Thou hast translated the Romaunce of the Rose, / That is an heresy e yeins my lawe, / And makest wise folk fro me [their allegiance] withdrawe' (F.327–31). Queen Alceste, rising to the dreamer's defence, makes excuses for him, cites his good works and convinces Love to commute his punishment into a penalty, namely that Chaucer write a legendary of tales about women who suffered for love.

As critics have amply noted, 'heresy', in this passage, refers both to a courtly love convention, which portrays love as a doctrine opposed to misogamy, and to a scriptural literalism, which requires no gloss to moralise a sacred story or, in the case of a pagan one, to explain it away.⁵ In this way, Chaucer's heresy charge provocatively situates the text between the reception of the *Romance of the Rose* in the English court, and the debates about biblical translation after the 1370s. In this scene, in which the God of Love is represented as a monarch susceptible to flattery and easily aroused, 'heresy' may also allude to accusations of treason, which were rife in the period leading up to the Merciless Parliament of 1388, the period in which the Prologue was likely written.⁶ In the Prologue, in other words, 'heresy', is always standing in for something else: for politics rather than religion, for misogamy rather than apostasy. And although the God of Love charges the dreamer with heresy against his law, what follows is not exactly an inquisitorial trial. Alceste's intercession forestalls the interrogation of the narrator, and the queen ends up playing most of the parts in this legal drama: she advocates for the dreamer, anticipates his responses and inspires his penalty.

Still, inquisition remains central to this scene for it is through inquisition that the poet produces himself as an author complete with reputation, oeuvre and readers (in the G Prologue, he also receives a reading list, courtesy of the God of Love). The incontrovertible proof for the narrator's crime lies in his translations of the *Troilus* and the *Rose*, but, as in inquisition trials, it is his *publica fama*, his reputation for a specific crime, which has established his guilt. Alceste takes pains to point out that the common report may turn out to be nothing more than rumour. As she reminds the God of Love, there are many liars and schemers at court who invent tales out of jealousy or to gain the king's ear (F.352–57).⁷ A God should realise that rumour is not sufficient grounds for a criminal charge. The queen defends the narrator's reputation by examining his intentions in translating the *Troilus* and the *Rose*: perhaps he was ignorant of the contents, or perhaps he translated them without endorsing them. Maybe he was simply following orders: 'Or him was boden maken thilke tweye / Of som persone, and durste yt not withseye' (F.366–67).

⁵ See Sheila Delany's classic work on the *Legend of Good Women*, *The Naked Text: Chaucer's 'Legend of Good Women'* (Berkeley: University of California Press, 1994), and Florence Percival's *Chaucer's Legendary Good Women* (Cambridge: Cambridge University Press, 1998).

⁶ See also Michael Hanrahan, 'Seduction and Betrayal: Treason in the Prologue to the *Legend of Good Women*', *Chaucer Review*, 30 (1996), 229–40.

⁷ On common report and tale-telling, see also Flannery and Walter, p. 90 in this volume.

Alceste further rehabilitates the narrator by turning *publica fama* into literary reputation. As she explains, Chaucer's oeuvre contains many witnesses to his unimpeachable orthodoxy, either because they promote romantic love (like 'The Knight's Tale' or the ballade, 'Hyd, Absolon, thy tresses') or because they support institutional Christianity, such as the life of St Cecilia ('The Second Nun's Tale'), the Pseudo-Origen homily on Mary Magdalene and Innocent III's treatise *De misera humane conditionis*, the latter two translations which do not survive.

Simply put, inquisition gets to the heart of literary invention because it helps to produce an author. As Gertz argues in this volume (Chapter 8), Protestant abjurations made authors of the accused by advertising the first-person voice, a voice which was meant to confess wrongdoing but which was meant to do so as if voluntarily. Gertz further argues that a dissenting authorship, accessed through inquisitorial forms like the abjuration, increased in the sixteenth century with the proliferation of trials in general, and trials of former clergy in particular. As she acknowledges, the ability of inquisitorial forms to create dissenting English authors can be seen as early as William Thorpe's *Testimony* (1407), which I have discussed elsewhere and return to below. Here I only want to point out that Chaucer's loose adaptation of the inquisitorial trial, played for comedy, generates an authorship that feels modern, rather than pre-modern, and which confers canonicity in a distinctly secular rather than religious form.

The fashioning of Chaucer's reputation, the naming of persons, places and books (for example, the titles of Chaucer's works, fictional characters such as Alceste and Cleopatra, the royal residences of Eltham and Sheen, where the narrator is ordered to submit his legendary), the elaboration of the penalty: all of these catapult the poet into visibility. They also guarantee his posterity. Chaucer could not have known that abundant evidence for his life would survive, but his imagined inquisition in the Prologue to the *Legend of Good Women*, alongside his 'Retraction' to the *Canterbury Tales*, testify to his corpus in ways that his life records do not. As Jenny Lee argues about Chaucer's unfortunate contemporary, Thomas Usk, Usk wrote his *Testament of Love* to counteract his *Appeal*, a text which failed to save him from the executioner. And yet, his wish to preserve his reputation as a literary one would backfire, resulting in 'the effacement of his name from his own testimony'.⁸ Ironically, Chaucer's imagined trial for heresy helped make his modern literary reputation, whereas Usk, whose work survives only in an early printed edition, would be remembered through readers' misattribution of the *Testament* to Chaucer. This misattribution is partly the fault of a passage in the *Testament* in which Usk rewrites the God of Love's heresy charge. In this passage, Love praises Chaucer as (her) 'owne trewe servaunt the noble philosophical poete in Englissh', who has boosted people's devotion to love, while at the same time, in the *Troilus*, tackling big Boethian questions about fortune and providence.⁹

In the Prologue, as we have seen, Chaucer uses inquisition to rewrite *publica*

⁸ Lee (Chapter 6), p. 102, in this volume.

⁹ Thomas Usk, *The Testament of Love*, ed. by R. A. Shoaf (Kalamazoo, MI: Medieval Institute Publications, 1998), III.5.247-59.

fama as literary reputation. In doing so, he imagines a readership past, present and future. Like those folk, anonymous or not, jealous or coerced, who voice the *publica fama* of the accused, all of Chaucer's readers attest to his reputation as a writer. Likewise all those involved in the narrator's inquisition—his anonymous accusers, the God-king who charges him with heresy, his advocate, Alceste—are his future readers as well as his potential patrons.

As the Prologue makes clear, moreover, one's best readers are the most dedicated, if not necessarily the most supportive, and, notably, this is an insight that Chaucer shares with fifteenth-century heretics. For instance, in his *Testimony*, accused lollard William Thorpe, thrown in prison by Archbishop Thomas Arundel, claims to welcome the charges against him, because he is certain they will increase his audience. One of the archbishop's agents attended Thorpe's sermon at Shrewsbury, and has reported on him to the archbishop, but Thorpe does not mind in the least: the reading of the report in the archbishop's chambers is the perfect occasion to elaborate on the sermon he preached at Shrewsbury. Further, his written account of the proceedings should satisfy the ardent desires of his followers: 'ymagynyng þe greet desire of þese sondir [widespread] and diuerse frendis of sondri placis and cuntrees, acoordinge alle in oon, I occupiede me herwiþ diuerse tymes so bisili [in] my wittis þat þoruþ Goddis grace I perseyued, bi her good mouyng [intentions] and of her cheritable desir, sum profit þat myȝt come of þis writing'.¹⁰ Though hostile to his interrogators, he recognises that judicial inquiry has the ability to invent as well as silence authors and to find new readers.¹¹ For Thorpe, those readers consist of his loyal followers and far-flung readers whose faith needs bolstering, but they also consist of those present: the archbishop's man, who ratted him out, the clerks who harassed him in Arundel's chambers and his most committed interlocutor, the archbishop himself, who compulsively rolls and unrolls the report, and who is by turns wheedling and incensed.

Unlike Thorpe, however, or the early Protestant martyrs, Chaucer's goal is not to write an alternate script in spite of his accusers, or even to avoid punishment. Instead, he is gleefully complicit in his imagined inquisition, which is, for him, a form of art, through which more art can be generated. Key to making inquisition a form of art is highlighting the desires that drive both inquisition and poetry. The poet invites us to take pleasure in *all* aspects of his suffering: in his alienation from the court and the sovereign's comic displeasure, in the narrator's fear of punishment and, most obviously, in the penalty—that is, the legendary of women. Likewise his imagined readership, a readership that extends indefinitely in the future, comes into focus through the complex of

¹⁰ 'The *Testimony of William Thorpe*', in *Two Wycliffite Texts*, ed. by Anne Hudson, EETS os 301 (Oxford: Oxford University Press, 1993), pp. 24–93 (p. 25, lines 41–45).

¹¹ On Thorpe's *Testimony*, see Rita Copeland, 'William Thorpe and the Historical Record', in Rita Copeland, *Pedagogy, Intellectuals, and Dissent in the Later Middle Ages: Lollardy and Ideas of Learning* (Cambridge: Cambridge University Press, 2001), pp. 191–219; Emily Steiner, 'Lollard Rhetoric and the Written Record', in Emily Steiner, *Documentary Culture and the Making of Medieval Literature* (Cambridge: Cambridge University Press, 2003), chapter 6, pp. 229–39, and Elizabeth Schirmer, 'William Thorpe's Narrative Theology', *Studies in the Age of Chaucer*, 31 (2009), 267–99.

desires that inquisition—and literature—generates. We feel the pain of his relentless penalty—he is charged to ‘make the metres’ (F.562) of 20,000 women’s lives!—but like Thorpe’s desiring readers, we also want to see the penalty prolonged as text. And just as the God of Love demands to be satisfied by a perpetual punishment, so we, as modern readers, demand to know what the narrator as Chaucer has written in the past, what survives and what is lost, and we desperately want him to have written more (did he originally write nine or nineteen or twenty-five legends? Did he give up partway through?). In the imaginary world of the Prologue, Chaucer’s extensive writings have saved him from bodily punishment, effacement and death. This is truly a cause for celebration! As Alceste points out to the God of Love, ‘Hym oughte now to have the lesse peyne: / He hath maad [written] many a lay and many a thing’ (F.429–30). And yet, with the legendary, the prospect of the defendant’s suffering has taken a sadistic turn, transferred to repeated acts of writing and to the legendary’s immolated subjects: Cleopatra, Medea, Thisbe and other female ‘martyrs’ who died and killed for love: ‘some were brend, and some were cut the hals, / And some dreynt for they wolden not be fals’ (G.292–94).

Finally, the poet asks us to take pleasure in service, and specifically in the submission to lordly will and desire that was medieval service’s moral centre. Secular love may be the poet’s religion, but that love is not only romantic love but also a deeply held piety toward lordship. His confrontation with the God of Love reveals that the narrator is guilty, not of loving women too little but of loving lords so much. His fantasy is one of total subordination, in which he performs tedious and never-ending tasks at the behest of an aristocratic patron. We have seen that inquisition reveals a subject’s most desired and most desiring readers. In Thorpe’s *Testimony*, to the great frustration of Thomas Arundel, these desires do not mesh. Arundel, Archbishop of Canterbury, a baronial lord, and Thorpe’s most present reader, continually demands submission from the accused in the form of a confession and retraction, and he is willing to defer this desire as long as it takes to get what he wants (apparently, it is the archbishop’s pressing and unfulfilled desire that prolongs the *Testimony*—and Thorpe’s life). Arundel, obsessed with sovereignty and threatening violence, ignores his clerks’ advice to make an end of the interview. Although continually rebuffed by Thorpe, he tries repeatedly to seduce him with the language of service: ‘If of good herte þou wolt submytte þee now here mekely to be reulid fro þis tyme forþ by my counseile, obeiyng þee wilfully and lowely to myn ordynaunce, þou schalt fynde it moost profitable and best to þee for to do þus. Þerfore tarie þou me now no lenger; graunte to do þis þat I haue seide to þee now here schortly, eiþir denyen it vtterli.’¹² To Arundel’s frustration, however, Thorpe refuses to submit, substituting the imagined desire of his followers for the archbishop’s lordly will. By contrast, Margery Kempe, throwing a more positive light on her subject, interprets her prolonged conversation with Arundel as further evidence of his condescension and forbearance: ‘Ful benyngly and

¹² ‘*Testimony of Thorpe*’, ed. by Hudson, p. 86, lines 2019–24.

mekely he suffred hir to sey hir entent [i.e. to speak her mind about too much swearing in his court] and gaf a fayr answer, hir supposyng it schuld ben the bettyr. And so her dalyawns [conversation] contynuyd tyl sterrys apperyd in the fyrmament.¹³

These twinned desires—the desire of the subject who hopes to satisfy an audience, and the desire of the person in power who demands results—link inquisition inexorably to the ethics of medieval service. They also shed light on the peculiar experience of being a modern reader of medieval law and literature, someone who ostensibly reads and writes outside the bounds of service, but who, as a lover of the past, is still vulnerable to the desires that govern medieval social relationships. Here it might be instructive briefly to compare Chaucer's Prologue to the *Legend of Good Women* with John Trevisa's well-known treatise on translation, the *Dialogue between a Lord and a Clerk*, written in 1387. In the dialogue, appended to Trevisa's translation of the *Polychronicon* and dedicated to Trevisa's patron, Lord Thomas of Berkeley, a Lord and his Clerk debate the value of English translation. At the climax of the debate, the Clerk argues that all translation, like biblical translation, is on the verge of committing an impropriety (not unlike Chaucer's heresy in translating the *Troilus* and the *Rose*). The Lord, outraged, reminds the Clerk that *his* needs and desires determine the propriety of any literary project. By the end of the dialogue, the Clerk, predictably, has agreed to the translation in the form most desired by the Lord, his most dedicated reader, but he worries still about detractors. The Lord assures him that his desire will cover for him: 'I desire not translacioun of these bokes the best that myght be [. . .] But I wold have a skilfulle translacioun that myght be knowe and understand.'¹⁴ In the *Epistle* to Lord Berkeley, which accompanies the *Dialogue*, Trevisa, too, frets about detractors but claims to seek comfort in the fact that his work is pleasing to God and written in accordance with the will of Berkeley, his lord: 'in wityng that Y wote that it is youre wille'.¹⁵

Certainly not all legal defendants, real or imagined, were as pious about lordship and service as Chaucer and Trevisa, and even Margery Kempe. And yet many medieval and early modern writers understood inquisition to be a site of legal and literary invention, not only because it inspired resistance, as Gertz and Ahnert show, but also because it tapped into rich veins of cultural desire. This was true for authors like Chaucer who dealt in literary fictions and devoted themselves to vernacular art; it was also true for sermon-writers, political theorists, romancers and chroniclers. Ruth Ahnert, in her critique of Eamon Duffy, rightly points out that how we choose to interpret inquisitorial records—for example, whether we regard sixteenth-century records to be repressive or conversational, punishing or remedial—exposes our own historiographical

¹³ *The Book of Margery Kempe*, ed. by Lynn Staley (Kalamazoo, MI: Medieval Institute Publications, 1996), lines 845–47.

¹⁴ John Trevisa, 'Dialogue Between the Lord and the Clerk on Translation (Extract) and Epistle to Thomas, Lord Berkeley, on the Translation of Higden's *Polychronicon*' in *The Idea of the Vernacular: An Anthology of Middle English Literary Theory, 1280–1520*, ed. by Jocelyn Wogan-Browne et al. (University Park: Pennsylvania State University Press, 1999), pp. 130–38 (p. 134, lines 120–22).

¹⁵ Trevisa, 'Epistle', p. 134, lines 1441.

commitments.¹⁶ I would add that it is as a repository of cultural desire that inquisition, like other forms of pre-modern law, makes us rethink the relationship between literature and law and between modern, early modern and medieval discourses. In the Prologue to the *Legend of Good Women*, Chaucer places what would become a modern notion of authorship—the author as the sum of his works, who defines his life as a life of writing, who wants to get credit for what he has written—within a judicial context, inquisition for heresy, which otherwise might feel irrecuperably pre-modern. Holding up a mirror to our admiring self-regard, Chaucer asks us, what are our true stakes in inquisition, as readers and writers, as scholars, medievalists and moderns?

¹⁶ Ahnert (Chapter 9), pp. 148–50 in this volume.

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Inquisition in medieval and early modern England has typically been the subject of historical studies that have examined it in the light of heresy. This volume, however, makes it the subject of cultural investigation, revealing the much broader role played by inquisition in medieval English culture, not only in relation to sanctions like excommunication, penance and confession, but also in the fields of exemplarity, rhetoric and poetry. Beyond its specific legal and pastoral applications, inquisition was a dialogic mode of inquiry, a means of discerning, producing or rewriting truth, and an often adversarial form of invention and literary authority.

The essays in this volume cover such topics as the theory and practice of canon law, heresy and its prosecution, Middle English pastoralia, political writing and romance. As a result, the collection redefines the nature of inquisition's role within both medieval law and culture, and demonstrates the extent to which it penetrated the late-medieval consciousness, shaping public fame and private selves, sexuality and gender, rhetoric and literature.

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WESTFIELD MEDIEVAL STUDIES

Cover illustration: *Frontispiece to The Erle of Tolous*, MS. Ashmole 45, fol. 2r.
The Bodleian Libraries, The University of Oxford.

Cover design by Workhaus.



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an imprint of BOYDELL & BREWER Ltd
PO Box 9, Woodbridge IP12 3DF (GB) and
668 Mt Hope Ave, Rochester NY 14620-2731 (US)
www.boydellandbrewer.com

