

The Inquisitorial System and its Impact on the Witch-Hunts

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The witch-hunts that swept across much of Europe between the late medieval ages to the eighteenth century were a dark time in European history. Power was constantly shifting between the ecclesiastical and secular authorities. The rise of Christianity and the Catholic Church spiked a need to repress other religions that denied Christian teachings. The target of this repression would change throughout the centuries from pagans, witches, and heretics to Protestants and then back to the witches and heretics. Due to the complex nature of the times no single event, person, or idea can be pinpointed as the cause of the hunts as a whole. Why this slice of history occurred is not necessarily as important as what allowed it to reach the severity it did, in particular the Inquisition as it existed in the Italian Peninsula. Like with any crime, there could not be a crime without laws, and there could not be laws without punishment nor punishment without a punisher. The adoption of the Inquisition and inquisitorial procedure in the 13th century was a response to the revival of interest in Roman Canon law. By changing the trial procedures and allowing the use of torture to gain confessions, the Inquisition advertently made prosecuting witches easier and allowed the formation of the cumulative concept of witchcraft. However, in the mid to late 16th century, the Inquisition played a role in ending the witch-hunts when the frame of mind of the Church began to change.

Revival of Roman Law

As early as the Roman Republic, Roman law was poised to prosecute the crime of witchcraft. The “laws from the Twelve Tables of the Corpus Iuris Civilis of Justinian...condemned magic and its practitioners as vigorously as they were denounced by Augustine” (Peters, 8). The law carried harsh penalties for magic, particularly when it could be confirmed that the magic caused a loss or injury. Most harmful magic earned the accused the death penalty. A revitalization of interest in these Roman Laws greatly influenced the new canon laws and criminal procedure introduced in the thirteenth century.

In 1140, a monk from Bologna, Gratian, published the *Concordia discordantium canonum*, or the *Decretum*. In the *Decretum*, Gratian organized the Church’s legal doctrines. It created a single, comprehensive body of church law that made it immensely popular amongst priests and theologians. The *Decretum* was largely used as a teaching aide for ecclesiastical law and was a source of information throughout the course of the witch hunts (Peters, 71).

Another section of the *Decretum* outlined imaginary trials and potential responses from the church. It is important to note only small parts of the *Decretum* talked about any specific aspect of what would later develop into the concept of witchcraft. The main part on witchcraft, as it was understood in the later centuries, is *Causa 26*. Here, Gratian talks about divination and *superstitio*. Based on his opinion of other documents, Gratian declares that divination is a sin and magicians are to be excommunicated; he uses the *Canon Episcopi* to touch on superstition. Because the *Decretum* was a collection of ecclesiastical law only canons or edicts from the Papacy were included. Gratian was more selective still on which of these documents he included in his book. This led to the narrowed view of magical practices that later judges would turn to (Peters, 71).

In the thirteenth century lawmakers would add to the *Decretum* two more texts, the *Liber Extra*, written by Pope Gregory IX in 1234, and the *Liber Sextus*, by Pope Boniface VIII in 1298. These texts continued the subject of divination but also developed the link between magic and heresy. The *Liber Sextus* contained a letter from Pope Alexander IV, which stated that the Church could only prosecute magicians if they were heretical.

It is reasonable that those charges with the affairs of the faith, which is the greatest of privileges, ought not thereby to intervene in other matters. The inquisitors of pestilential heresy, commissioned by the apostolic see, ought not intervene in cases of divination or sorcery unless these clearly savour of manifest heresy. Nor should they punish those who are engaged in these things, but leave them to other judges for punishment.

(Peters, 99)

The Papacy paralleled magicians with the anti-Christ. As the anti-Christ, magicians became soldiers against God. From here, it was not a far leap to being guilty of heresy against the one true religion. The ambiguity of both the terms, “*magia*” and “heresy”, that Alexander IV used caused later theologians to then broaden the scope of power the inquisitors were able to exercise under the Pope.

Once the Church had established that magic was a form of heresy and needed to be controlled, a great explosion of writing depicting heretical beliefs and activities became more widely available. The Church saw the spread of magic and, by association, heresy as a direct threat to the establishment of power that the Church had been slowly gaining throughout the past centuries. Two of the main groups the Church targeted as heretics in the beginning were the Cathars and the Waldensians. The Cathars preached a dualist view of the world. They believed that there was a constant battle raging between God and Satan. Satan was the prince of this world and God was the king of the next. If one wanted to go to heaven they needed to live the most moral life possible. They did not use the sacraments or abide by the dictates of the clergy. This proposed a threat to the Church who easily turned their fear of the powers of Satan into a demonic worship; also, any sect that did not abide by the clergy was harder to control and a threat to its authority. The Waldensians posed an even larger threat; they preached a life of poverty, devoid of worldly goods, much like the original apostles. They openly criticized the clergy for their wealth. These new sects could not be suppressed solely by the church and would require the dual power of the state and church.

A consequence of defining magic as heresy was that it became a crime of mixed jurisdiction. Secular courts had been trying heresy and condemning those convicted to death already, but when the church and state combined authority they created a formidable front. Punishments became more severe with the death penalty being introduced in ecclesiastical courts by Pope Gregory IX in 1231. Even with the added help of secular courts, the church needed its own policing force if it was going to stop the spread of heresy.

The Early Inquisition

The problem of an ecclesiastical police force was solved by the creation of Inquisitors. Prior to the Inquisition and for a long time after their initiation, various local bishops and priests, not the papacy, were the main authority in prosecuting heretics. With increasing use after 1231, the Inquisitors fought for the church to bring an end to heresy. They were appointed by the Pope or his generals and drew

all powers directly from the Pope. "They were outfitted with full powers of 'inquisitio,'" (Decker, 10). These powers included the right to investigate and try those they deemed heretics. The changes the Inquisition would bring about in the court systems greatly facilitated the spread and intensity of the witch-hunts across Europe.

The Inquisition, as it became known, was a well-established system from the last half of the thirteenth century on. It was not made to eclipse the local church jurisdiction but rather serve as a strong helping hand. The two systems were to collaborate with each other on trials and judgments when at all possible. The Inquisition also utilized the secular forces when it came to following through with the sentencing of the church. Inquisitors were sent to an area by request of local priests or bishops when heretical actions required more assistance. Other times, the Pope dispatched Inquisitors to regions where rumors said heretical sects were located or the government asked for the Inquisitors aid.

The Inquisition brought with it a whole new system of trial procedure. Prior to the 1200's most courts had been running under an accusatory arrangement. Each case had to have an accuser, someone who would point the blame of an incident onto another person. The accuser would present evidence against the defendant in an open court; the judge served as an unbiased party and the defendant served as his own attorney. "The accusation was a formal, public, sworn statement that resulted in the trial of the accused before a judge. If the accused admitted his guilt, or if the private accuser could provide certain proof, then the judge would decide against the defendant. If there was any doubt, however, the court would appeal to God to provide some sign of the accused person's guilt or innocence" (Levack, 75). The defendant would be required to undergo a test of sorts to prove his innocence. A common test involved holding a burning hot object and then showing his hands free of burns. There were other alternatives including a duel between the two parties or obtaining a certain number of people who would swear to the innocence of the defendant. Throughout the whole process the judge remained a mere regulator and did not play a hand in the prosecution.

This old process of criminal procedure made prosecuting crimes extremely difficult, no more so than in hidden crimes like magic. It was a non-rational process that relied on divine intervention, not an analysis of facts, to prove the innocence or the guilt of the defendant. "The court in effect abdicated its own responsibility to investigate crimes and left the matter in the hands of Gods" (Levack, 76). People put their faith in the hands of God and not their own judgments.

Under the Inquisitorial system the procedures of a trial changed drastically. These changes "facilitated the prosecution of all crime, but it proved to be most useful in the investigation and trial of heresy and witchcraft" (Levcak, 79). First, both the secular and ecclesiastical courts could initiate trials, which led to an increase in prosecution. Trials also no longer required an accuser to step forth. This eliminated the liability or fear the accuser was likely to face when accusing someone of magic. Instead, judges were given the power to initiate investigations of individuals or communities. Something as small as a rumor was enough to start an investigation and many trials began on information the court officer had obtained himself. This is especially important since most witches and "heretics were known only by reputation, and since there were no victims of their crimes demanding retribution, the only effective way of bringing them to justice was through either renunciation or official promotion" (Levack, 79). The procedural changes also improved the chance of conviction since the judge could collect his own evidence.

Another change brought on by the adoption of the inquisitorial trial procedure involved the proof needed for conviction, which directly resulted in the institution of torture that is so often attributed to witchcraft trials. Since heresy and witchcraft were capital crimes, a strict set of standard was set in place to establish guilt beyond a doubt. In the old accusatory system the accuser acted as an eyewitness and could verify the guilt of the defendant; however the citing of trials based on rumors or reputations took away that vital proof of guilt. To bridge this gap, the Inquisition turned to the Roman-canonical law of proof. Under this law, two eyewitness accounts of the crime being committed or the full confession of the accused were the only evidence that sufficed for a capital punishment. Finding two eyewitnesses presented a large problem in heresy cases, so confession became the only way to condemn witches and heretics. "Confessions, however, were not always forthcoming, and consequently judicial authorities began to allow the use of torture in order to obtain them" (Levack, 80). With this knowledge one is able to speak of torture as a direct consequence of the implementation of the inquisitorial system.

"In 1252 Pope Innocent IV authorized papal inquisitors to use torture in the prosecution of heresy" (Levack, 81). This authorization got its basis from the Roman law as well; in ancient Rome, those who committed treason were often tortured, free or not. Because heresy was the equivalent to treason in the eyes of the Church, the adoption of torture was deemed acceptable. The theory behind using torture was that a person subjected to pain would confess the truth, and, while this was sometimes true, it could also elicit false confessions. This is particularly true if the accused is innocent asked leading questions, or the torture is excessive. The officials, aware of the possibility of false confessions, wrote a set of rules that were to be followed by the courts. These rules were not uniform across countries and the degree they were abided by varied. The original rules stated that torture could not be used unless the judge could prove that a crime had been committed and there was concrete evidence of the accused guilt. Evidence of guilt amounted to half of what was needed for conviction: one eyewitness testimony or circumstantial evidence. The judge could only administer the use of torture as a last resort and after the accused had been threatened with it. When it came to the torture itself, the severity and length of the torture was regulated. Torture could not kill the accused and no repetition of the torture was allowed. Leading questions were not to be used and any confession made while undergoing torture had to be reiterated later under no distress.

Unfortunately, these rules were rarely followed in their entirety. Through the use of torture the cumulative concept of witchcraft carried in the mind of the Inquisitors was pushed onto the peasant population. "Although the various ideas regarding witchcraft were synthesized and spread mainly by the authors of learned treatises, their fusion first occurred in the courtroom, where inquisitors used torture to confirm their suspicions and to realize their fantasies" (Levack, 87). Leading questions caused the accused to say what they believed the Inquisitors wished to hear. They would speak of midnight flights, devils, the Sabbath, and accuse others of witchcraft with the hopes of ending the torture. These ideas, once substantiated, were spread in the literature written by the Inquisition.

Early Inquisitorial System in Italy and England

The best way to illustrate the impact the Inquisition had on the prosecution of witchcraft in Europe is a comparison of two regions. In Italy, the Inquisition was readily established and the Inquisitorial procedure swiftly employed in its fullest force. In England, however, the Inquisitorial ideals were not accepted nor established and the accusatory system was still heavily relied upon.

When looking at the Inquisition in Italy we are presented with a model of an Inquisition at its finest. Early in the thirteenth century Roman pontiffs instituted the Inquisition in order “to make the repression of non-conformist religious ideas and movements speedier and more efficient, in a time in which heresy seemed to grow at a pace that threatened the Catholic Church’s monopoly” (Duni, 23). These tribunals were not sufficient which caused Pope Gregory IX to create the Papal Inquisition which was made up of special judges tasked with finding, trying, and punishing heretics solely and independently. The Papal Inquisition did not replace the local tribunals; instead, they worked at times as assistants who were available when needed.

Italy also employed the use of torture; this allowed the witch-hunts to reach their severity. The laws governing the use of torture stated previously also applied in Italy. However, due to the lack of centralization of the Inquisitors, the rules were largely disregarded or creative loopholes were found, such as stating a second round of torture was simply a continuation of the first. Since Italy used torture, the cumulative concept of witchcraft manifested itself completely in the mindset of the Italian Inquisitors and the peasants. Literature of the time, written by Inquisitors, struck fear into the minds of the peasants and large-scale witch hunts created a world of chaos. From the late fifteenth century to the beginning of the sixteenth century large trials began in northern Italy and resulted in mass executions. Throughout the Italian countryside in areas such as Milan, Val Camonica, and Venice, large-scale trials led by the Inquisitors shook the foundations of peasant life. Writers at the time stated over a thousand trials took place a year and more than a hundred witches were executed (Duni, 30). These figures are most likely exaggerated but they point to the scope of the witch-hunts in the Italian Peninsula. Between the initial creation of the Inquisition and its reordering into the Holy Roman Inquisition of the mid sixteenth, no central cooperation was in charge of all the various courts and judges. The inquisition in Italy in the sixteenth century will be discussed later but it is relevant to state that the witch-hunts were still active beyond the fifteenth century.

England never adopted the Inquisition and all that it entailed, because of this we are faced with a very different situation. The witch-hunts never became the epidemic it did on the continent mostly due to England’s unique justice system of centralization that “had its origins in the establishment of the common law” (Levack, 100). England never instituted the Inquisitorial procedure into its courts and instead relied heavily on accusations that were brought forth. The courts never initiated trials and a jury instead of a single judge tried people. Almost all witchcraft trials took place in circuit courts that were strictly monitored and controlled by judges appointed directly from the Crown. The courts were required to make a unanimous verdict and, thanks to the English Statutes of 1542, 1563, and 1604, had other forms of punishment besides execution they could levy against the accused.

Another aspect of English laws was the sparse use of torture which meant the cumulative concept of witchcraft never fully formed. “Torture [in England] could be used only at the specific command of the Privy Council and only when matters of state were involved. This prohibition was strictly enforced” (Levack, 218). Without torture the concept of witchcraft was never solidified or absorbed by the English. The elite never accepted the image of the diabolical witch, since it was not spoken of in confessions. They did not experience the paranoia felt in the continent. The lack of torture stopped the domino effect of trials moving from one community to the next by lessening the likelihood that the defendant would accuse others of witchcraft, which was often the case when torture was applied. Due to the fact that the Inquisitorial system was not adopted in England nor was torture used heavily,

the overall concept of witchcraft was not accepted and the trials never reached the magnitude they did in Italy.

The Inquisition from the Mid Sixteenth Century On

The mid-sixteenth century marked a turn in the history of the Inquisition. It was reorganized in response to the emergence of a new threat and, later, the mindset of the Church evolved causing the very institution that facilitated the spread and severity of the witch-hunts to help put a stop to it. It was a time of political and religious unrest. The new religious ideas of the Protestant Reformation were infiltrating the region from the north and the papacy was on constant vigilance against them. The threat of Protestantism was deemed top priority and constituted the greatest threat of heresy against the Church. It became quickly apparent that the Inquisitorial system of the past centuries was not adequate to stifle the new insurgence of heretical ideology.

In 1542 Pope Paul III established a new committee under the bull *Licet ab initio*. It was made up of six cardinals who were given distinctive powers to fight heretics. This new group was deemed the Holy Office of the Inquisition to differentiate it from its predecessor. It differed in many ways from the earlier system; the Holy Office was a much more centralized organization with six cardinals located in Rome who exercised absolute control over the local bishops, "from the appointment of judges to all the decisions of importance these had had to take: when to torture a suspect, whether evidence was solid enough to condemn someone, what kind of punishment to inflict, and so on" (Duni, 32). They routinely requested manuscripts of whole trials and were often approached by the local authorities for advice. The six cardinals had at their disposal a highly qualified staff, including a chief prosecutor, a secular priest, and a variety of theologians (Decker, 86). The strengthening and reorganizing of the Inquisition into the Holy Office marked a change from trust in a local authority to a more centralized one located in Rome. The Holy Office held unquestionable power throughout the Italian Peninsula. This made it different from other Inquisitions at the time who barely controlled land beyond the Papacy's borders.

The reason the Inquisition had been reorganized was not forgotten and for the next forty years the Inquisition focused on prosecuting Protestants rather than witches based on the edicts of zealous popes such as Paul IV. The Protestants became the central focus in the eyes of the Church and the Reformation presented a larger evil than witchcraft. "Paul IV, in one of his first decrees, ordered that any persons who denied the Trinity and thus the divinity of Jesus were to be punished with death" (Decker 87). In this way, the Inquisition's duties grew to incorporate the prosecution of blasphemy. While those who practiced witchcraft were also guilty of denying the Holy Trinity, the decree was aimed at Protestants. The responsibilities of the Holy Office under Paul IV did not stop there; they prosecuted prostitution, homosexuality, and the Jews. "Paul IV regarded his creation, the Inquisition, as the most important means to accomplish these means: 'We hold that no court works more honorably or with greater zeal for the honor of God than the Inquisition, and so we have decided to hand over to it every case that touches upon the articles of the faith or could have an effect on them'" (Decker, 90). However, witchcraft trials were not unheard of during this period, yet in many regions, only one trial or less a year took place.

"Following the destruction of the Italian Protestant movement, witchcraft came back to occupy center stage, but in a context that was substantially different from that of the earlier decades of the century" (Duni, 33). The Roman Inquisition

took on a more cautious approach to witch-hunting. An excellent example of the early caution of the Roman Inquisition comes to us from a case involving the archbishop of Milan, Charles Borromeo. He was characterized as highly ambitious, educated, and the perfect example of piety; he was also a zealous combatant of magic. He wrote to Rome about four women who had pleaded guilty to participating in a witches' Sabbath and killing children. They were not given the death penalty because they were first time offenders and repentant; Canon law required leniency towards them. Borromeo wished for the Holy Office to repeal an early decision made by the late Paul IV and sentence them to death. The cardinals responded by questioning the facts of the case, particularly the deaths of the children. They showed reluctance at condemning the women to death when magic as the cause of the children's deaths could not be attested to with any certainty. The outcome of the case is not known but the indication that Rome was beginning to question the legitimacy of the trials was very telling to the new mindset evolving (Decker, 96).

Another aspect of the late sixteenth century was the growing reluctance to try witches when heresy was not involved. Under Pope Gregory XIII, the Holy Office extended its cautious approach to witchcraft. The cardinals were approached with a case in 1575 where six women were accused of magic. One woman failed to confess and was accused of infanticide. The direct statement of the Holy Office was as follows: "Proof of the woman's guilt must not consist only in the fact that she was seen at the witches' Sabbath. It must consist in some circumstance or some fact separate from the witches' Sabbath, something that indicates heresy" (Decker, 98). This showed a lack of willingness of the Holy Inquisition to prosecute someone based on the testimony of a fellow witch and a strengthening of the need for heretical activity to warrant a trial by the Inquisition. By not trying witches based solely on another witch's accusation successfully ended the threat of mass prosecutions.

After the 1580's the church began to show skepticism on the reality of the Sabbath and respect for the due process of the law. "They insisted that the *corpus delicti*—proof of the connection between a harmful spell and the sickness or death of somebody—be present before prosecution could start. They systematically urged local courts to caution and respect of legal propriety in cases of witchcraft, stressing that more often than not the defendants—especially if women—were somewhat deluded and therefore not to be believed" (Duni, 35). The idea of skepticism was not unheard of in the Holy Office. The *Canon Episcopi* was written in the first century CE and included in Gratian's *Decretum*. The canon expressed a view of disbelief in the reality of the Sabbath; it characterized witches as poor deluded women. For centuries earlier there had been people who cited the *Canon Episcopi* to support their own distrust in the Church's view of the demonic witch. The growing sense of doubt in the reality of major aspects of witchcraft led to distrust in the legality of torture as well.

After the reformation, the Church desired to stamp out superstitions in its Counter Reformation. The Inquisition was expanded to incorporate a more complicated system of priests, bishops, and judges in order to pursue the goals of the Counter Reformation. This complexity created a lag time in trials. It could take months or years for permission to start a trial or approval of sentences to reach the local level. The Church saw witch trials as a liability and created discord. "Roman cardinals must have seen witch-hunts as an unwelcome occasion for friction and conflicts with lay magistrates and governments, whose cooperation was needed" (Duni, 36). All of these facets merged together to lessen the Church's interest in the prosecution of witch-hunts. Just as the rise of the Church's power coincided with the rise of the witch-hunts, its lessening of power led to the gradual end of the hunts.

More often witch trials were given over to secular authorities for prosecution. Without the zeal of the church leaders, the threat of the witches less imminent.

The Inquisition was a response to the need of an ecclesiastical force able to persecute heresy. Interest in ancient Roman law set the groundwork for the Canon laws of the thirteenth century and the Inquisitors became the highest authority, taking their power from the pope. The Inquisitorial procedure in courts allowed the crime of heresy to be more easily tried. Torture proved to be of monumental importance in validating the guilt of a defendant and led to the formation of the cumulative concept of witchcraft that spread throughout Europe. Inversely, the Inquisition also brought about the end of the Church's prosecution of witches. After the Protestant Reformation, a change in the Church's views on the reality of witchcraft and legality of torture lessened the ambition of the Inquisitors and a decline in trials resulted. Unfortunately, witch trials and executions would continue in Europe at a lesser level and by the secular authorities until the eighteenth century.

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