

## **Some difficulties in forming persecuting societies before Lateran IV canon 8. Robert of Courson thinks about communities & inquisitions\***

My general question concerns what explanatory work we want to do with the ‘universal council’ (*concilium universale*) held at St John Lateran between the 11<sup>th</sup> and 30<sup>th</sup> of November 1215 and specifically the contents of inquisition (*inquisitio*) as set out in canon eight.<sup>1</sup> The fourth general council at the Lateran palace and church (I will use ‘Lateran IV’ henceforth) provides an important hinge in numerous interpretations of the period. A sign of how pivotal are the relatively unusual and interesting occasions when historians emphatically *avoid* giving Lateran IV a central functional role in their explanations. Thus Dominique Iogna-Prat’s ‘monumental history of the medieval church’ argues that for the history of the church as a physical concept and ritual container a terminus of 1200 not 1215 is preferable since ‘both on the level of doctrinal reflection in matters of cult space and in terms of the sacrality of Christian lands, as well as the theocratic conceptions which punctuate the history of the idea of Christendom, the essentials seems to me to have been said by then [1200]’.<sup>2</sup> Sir Richard Southern made a similar argument in his classic *The Making of the Middle Ages* where the Latin conquest of Constantinople in 1204 provided a symbolic terminus. It was by this point that the political, territorial, economic and ultimately social ‘secret revolution’ that made the Middle Ages was achieved; a point borne out specifically regarding Lateran IV which Southern argued (here on ordeals) was only ‘expressing a change of

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<sup>1</sup> C. R. CHENEY – W. H. SEMPLE (ed.), *Selected Letters of Pope Innocent III Concerning England (1198-1216)*, Edinburgh 1953, p. 145 (in *Vineam domini Saboath* summoning the council, 19<sup>th</sup> April 1213); J. P. MIGNE (ed.), *Patrologia Latina*, 217 vols, Paris 1844–55, CCXVI, cols 823–827 (Register XVI, Ep. 30).

<sup>2</sup> D. IOGNA-PRAT, *La maison Dieu. Une histoire monumentale de l’Église au Moyen Âge (v. 800–v. 1200)*, rev. ed. Paris 2012 [2006], p. 23 also 401–402, 613–617.

attitude which had been developing for a long time'.<sup>3</sup> Arguments for Lateran IV's centrality are however more common.<sup>4</sup> Sometimes it is or contributes to a period's terminus. Thomas Bisson provides an interesting recent case, arguing that the apparently limited degree of debate over Lateran IV's 71 canons during its sessions exemplifies the slow and fragmentary development of properly principled discussion in European councils in this period – and just where one might expect the opposite.<sup>5</sup> Lateran IV, alongside non-papal councils, is one of his foot-dragging, partial signs of the shift to a more officially accountable, principled, administrative approach to power, visible but still incomplete by *c.* 1215–1225 when the *Crisis of the Twelfth Century* closes. A far more emphatic use of the council as an terminus is R. I. Moore's *First European Revolution* where Lateran IV embodies the period's disciplinary 'systematization' such that the 'structure of Christian teaching and practice laid down by the Fourth Lateran Council would last for three hundred years, for a territory which stretched from the Atlantic to the Vistula, the Dniester and the Danube and from Greenland and the Baltic to Sicily' – 'the rest of the Middle Ages, at every level, might be described as a long and often unavailing attempt to put the decrees of Lateran IV into practice'.<sup>6</sup>

If this is to indicate something of the council's general role in historical explanation, very particular cases have been made for inquisition (*inquisitio*), the subject of canon eight (*Qualiter et quando*).<sup>7</sup> The *inquisitio* in question here then is not, in the first instance, inquisition into heresy, but rather inquisitions into clerical misconduct undertaken on the basis of *fama* (public report). Following canon 8 inquisition is a composite of clerical *ex officio* investigation of

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<sup>3</sup> R. W. SOUTHERN, *The Making of the Middle Ages*, London 1953, p. 15, 95. Southern's 'symbolic' starting point is 972 (the future-pope Sylvester II's travel to Reims to study, not the 955 battle of the Lech, nor Otto I's death in 973).

<sup>4</sup> An example from a recent general Anglophone interpretation is W. C. JORDAN, *Europe in the High Middle Ages*, London 2001, p. 194–212; from a German one, J. FRIED, *The Middle Ages*, tr. P. LEWIS, Cambridge MA 2015 [2009], p. 262–264, 341–342, though the argument that Kant's categorical imperative is a 'late flowering' of Lateran IV's principles seems arguable (263).

<sup>5</sup> T. N. BISSON, *The Crisis of the Twelfth Century. Power, Lordship and the Origins of European Government*, Princeton 2009, p. 495 also 422, 426, 541.

<sup>6</sup> R. I. MOORE, *The First European Revolution, c. 970–1215*, Oxford 2000, p. 180–181 and 174; also 11, 55, 189, 194.

<sup>7</sup> *Qualiter et quando* has been edited numerous times. The 1215 Lateran IV canon (X 5.1.24) is an adapted version of the 29 January 1206 letter with the same *incipit* (X 5.1.17). The 1206 version is in *Die Register Innocenz' III*, Graz and Vienna 1964–, 12 vols, VIII, p. 342–346 (Ep. 201 (200)) and in E. FRIEDBERG (ed.), *Corpus iuris canonici*, Leipzig 1879–81, II, cols. 738–739. The 1215 version is also here at vol. 2, cols. 745–747 and in *Conciliorum oecumenicorum generaliumque decreta. Editio critica*, II/1, Turnhout 2013, p. 170–173. In general below I provide only the standard canon law references for Gratian and the *Liber extra*, not the full reference to Friedberg's edition.

*excessus* (misconduct),<sup>8</sup> done on the basis of public *clamor* (outcry) and *fama* in the absence of an accuser where a consideration of the risk of *scandalum* (scandal) has been undertaken when deciding whether to take a case forward. Richard Fraher has argued for the revolutionary significance of *inquisitio* in relation to the development of criminal procedures.<sup>9</sup> Lotte Kéry has argued for the significance of *inquisitio* in similar terms but stressed greater fluidity and mutability between related procedures.<sup>10</sup> Wider interpretations such as Kenneth Pennington's have likewise stressed its role in relation to due process.<sup>11</sup> Jessalynn Bird has argued for the importance of *fama*-based inquiries in relation to pastoral care agendas.<sup>12</sup> Julien Théry-Astruc has argued for the fundamental role of *inquisitio* in disciplining prelates and the construction of an ecclesiastical sovereignty.<sup>13</sup> Elsewhere I have argued for a concurrent and contemporaneous

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<sup>8</sup> Such a translation does not wholly capture the term's valencies. For this see B. LEMESLE, *Corriger les excès. L'extension des infractions, des délits et des crimes, et les transformations de la procédure inquisitoire dans les lettres pontificales (milieu du XIIe siècle-fin du pontificat d'Innocent III)*, «Revue historique», 660 (2011), p. 747-780 and explored further in B. LEMESLE, *Le gouvernement des évêques. La charge pastorale au milieu du Moyen Âge*, Rennes 2015 which I have not been able to consult for this article.

<sup>9</sup> R. 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*, «Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler», ed. R. I. CASTILLO LARA, Rome 1992, p. 97–111.

<sup>10</sup> L. KÉRY, *Inquisitio – denunciatio – exceptio: Möglichkeiten der Verfahrenseinleitung im Dekretalenrecht*, «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung», 87 (2001), p. 226-268.

K. PENNINGTON, *The Prince and the Law, 1200-1600. Sovereignty and Rights in the Western Legal Tradition*, Berkeley 1993.

<sup>12</sup> J. BIRD, *The Wheat and the Tares: Peter the Chanter's Circle and the Fama-Based Inquest Against Heresy and Criminal Sins, c.1198-c.1235*, «Proceedings of the Twelfth International Congress of Medieval Canon Law: Washington, D.C. 1-7 August 2004», ed. U.-R. BLUMENTHAL – K. PENNINGTON – A. A. LARSON, Monumenta iuris canonici, Series C Subsidia 13, Vatican City 2008, p. 763-856.

<sup>13</sup> J. THÉRY-ASTRUC [earlier works published as J. THÉRY], *Fama: l'opinion publique comme preuve judiciaire. Aperçu sur la révolution médiévale de l'inquisitoire (xiiie-xive siècle)*, «La Preuve en justice de l'Antiquité à nos jours», ed. Bruno Lemesle, Rennes 2003, p. 119-147; THÉRY-ASTRUC, *Justice et gouvernement dans la Chrétienté latine: recherches autour du modèle ecclésial (v. 1150-v. 1330). «Excès» et «affaires d'enquête»: Les procès criminels de la papauté contre les prélats, XIIIe-mi-XIVe siècle*, Université Paul-Valéry–Montpellier III, Dossier pour l'habilitation à diriger des recherches en histoire médiévale 2010) 2 vols and summarized in THÉRY-ASTRUC, *Excès' et 'affaires d'enquête'. Les procédures criminelles de la papauté contre les prélats, de la mi-XIIIe à la mi-XIVe siècle. Première approche*, «La pathologie du pouvoir. Vices, crimes et délits des gouvernants», ed. P. Gilli, Leiden 2016, p. 164-236 and THÉRY-ASTRUC, *Judicial Inquiry as an Instrument of Centralized Government. The Papacy's Criminal Proceedings against Prelates in the Age of Theocracy (mid-12th to mid-14th century)*, «Proceedings of the 14<sup>th</sup> International Congress of Medieval Canon Law (Toronto, 5-11 August 2012)», forthcoming. I am grateful to Professeur Théry-Astruc for sending offprints and drafts of his recent articles.

development between ecclesiastical inquisitorial procedures and communal, royal, and seignorial concerns with accountability, where this goes well beyond the simply fiscal.<sup>14</sup>

Here a dominant interpretation I wish to take as point of departure and return is R. I. Moore's, which is worth quoting at length given its sharpness and clarity.

Nothing illustrates the process [of economic and political intensification from the mid-twelfth century] better than the place of the *inquisitio* in the institutional development of the age. The confrontation at Toulouse in 1178 [between two heretical leaders and a papal legation allied with Louis VII, Henry II and Count Raymond V of Toulouse] illustrated dramatically its power to break through the carapace of instinctive solidarity that almost any community, large or small, presents in the first instance to the representatives of external authority. In the hands of men whose loyalties, interests and values committed them to the centre against the periphery, to law against custom, to kingdom against community, to lord against kin, it was a formidable and infinitely flexible instrument. If any single aspect of the twelfth-century revolution in government may be seen as decisive, it is surely the capacity developed by both secular and ecclesiastical powers to penetrate communities of every kind vigorously and ruthlessly, overriding the restraints of custom, and enlisting, or destroying, men of local standing or influence in the name of order, of orthodoxy, or of reform. This is the foundation upon which the reshaping of European society and culture in the high middle ages was built; and this is the force which prevented the vigour of the nascent European state from running into the sands of tribal or dynastic loyalties and unchallenged local hegemony, as its counterparts under the Mamluks, the Ottomans and the Mughals, even under [...] the Song and the Ming were destined to.<sup>15</sup>

*Inquisitio* (including here both heretical inquisitions and inquest-based procedures more widely) stands as a synecdoche for the wider form of a persecuting society in which a strong emphasis is placed on the polarisation of those inquiring and those submitting to those inquiries. Such strongly drawn accounts are valuable even – especially – if one does not wholly agree with them

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<sup>14</sup> J. SABAPATHY, *Officers and Accountability in Medieval England, 1170-1300*, Oxford 2014; J. SABAPATHY, *Accountable rectores in comparative perspective: the theory and practice of holding podestà and bishops to account (late twelfth to thirteenth centuries)*, «Hiérarchie des pouvoirs, délégation de pouvoir et responsabilité des administrateurs dans l'Antiquité et au Moyen Âge», ed. A. BÉRENGER – F. LACHAUD, Centre de Recherche Universitaire Lorrain d'Histoire, Université de Lorraine - Site de Metz 46, Metz 2012, p. 201-230; J. SABAPATHY, *A Medieval Officer and a Modern Mentality? Podestà and the Quality of Accountability*, «The Mediæval Journal», 1 (2011) n. 2, p. 43-79.

<sup>15</sup> R. I. MOORE, *The Formation of a Persecuting Society. Authority and Deviance in Western Europe 950–1200*, 2<sup>nd</sup> ed., Oxford 2007 [1987], p. 169–70. This passage belongs to a chapter new to the second edition.

since they starkly set out the fundamental drivers within arguments that may be more generally but less visibly present elsewhere – certainly not the case with Moore’s thesis.<sup>16</sup>

My question is can *inquisitio* bear this weight placed on it? My answer is a qualified ‘no’, and will suggest that greater emphasis needs placing on the role of communities’ agency and autonomy in the necessary playing out of inquisitions. The argument can be briefly summarized as follows. *Inquisitio* may be used as a synecdoche for wider late-twelfth/thirteenth-century patterns, not because its implications are clear, but because they are ambiguous: because of the tensions and ambivalences within the procedure rather than because it expressed or applied any definitional unity in terms of any persecuting society. I will suggest that the reason that Lateran IV canon eight and *inquisitio* more generally were resonant and significant was because they encapsulated tensions and uncertainties which were within thirteenth-century religion and politics more generally – namely, who was to be positively responsible, and for what, and who was to be merely accountable and how this was to work in practice.<sup>17</sup>

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<sup>16</sup> If it seems gratuitous to focus on Moore’s interpretation I can only suggest that it is worth doing since it remains both stimulating to think with and extremely influential. Any criticism below is a reflection of that stimulation. A rapid entrée to the debate is Moore’s own account in *ibidem*, p. 172–196. Interesting collections applying perspectives influenced by it are S. L. WAUGH – P. DIEHL (ed.), *Christendom and its Discontents. Exclusion, Persecution, and Rebellion, 1000-1500*, Cambridge 1996 and M. FRASSETTO (ed.), *Heresy and the Persecuting Society in the Middle Ages: Essays on the Work of R. I. Moore*, Leiden 2006, including an important critique by E. PETERS, *Moore’s Eleventh and Twelfth Centuries: Travels in the Agroliterate Polity*, p. 11-29. Further important critiques include: P. BUC, *Vox clamantis in deserto? Pierre le Chantre et la prédication laïque*, «Revue Mabillon», NS 4[65] (1993), p. 5–47 esp. 33–4; D. NIRENBERG, *Communities of Violence. Persecution of Minorities in the Middle Ages*, Princeton 1996, a counter-model; P. BUC, *Anthropologie et histoire (note critique)*, «Annales. Histoire, sciences sociales», 53 (1998), p. 1243–1249 (on Nirenberg and Moore); J. C. LAURSEN – C. J. NEDERMAN (ed.), *Beyond the Persecuting Society: Religious Toleration Before the Enlightenment*, Philadelphia 1998; A. PATSCHOVSKY, *Heresy and Society. On the Political Function of Heresy in the Medieval World*, «Texts and the Repression of Medieval Heresy», ed. C. BRUSCHI – P. BILLER, York 2003, p. 23–41; C. C. AMES, *Does Inquisition Belong to Religious History?*, «American Historical Review», 110 (2005), p. 11–37; J. H. ARNOLD, *Repression and Power*, «The Cambridge History of Christianity 4, Christianity in Western Europe, c.1100–c.1500», ed. M. RUBIN – W. SIMONS, Cambridge 2009, p. 353-371 esp. 363–4, 369–71; and E. MARMURSZTEJN, *La raison dans l’histoire de la persécution. Observations sur l’historiographie des relations entre juifs et chrétiens sous l’angle des baptêmes forcés*, «Annales. Histoire, sciences sociales», 67 (2012), p. 7-40. The ‘persecuting society’ as it pertains to heretics and ‘Cathars’ has become a major field of controversy. On this see the proceedings of a major conference held at University College London in 2014 in press as A. SENNIS (ed.), *Cathars in Question*, Woodbridge 2016. I thank Professors John Arnold and Peter Biller for sending me advanced drafts of their papers for this volume.

<sup>17</sup> This contrast between an active responsibility and a more passive accountability should not be made into a hard and fast distinction but a useful dialectic. For different analytical formulations see SABAPATHY, *Officers and Accountability*, p. 255–257.

The essay focuses on these tensions and ambiguities as they are seen in the thought of one individual. The essay's answers are qualified therefore in so far as it focuses on one particular area and period (mostly northern France c. 1201–1215) and one particular individual, the English theology master, cardinal, papal legate, university reformer, and crusade preacher Robert of Courson who died during these last duties at Damietta in 1219.<sup>18</sup> He is chosen as a hopefully instructive case because in him intersect a number of features key to interpretations of inquisition. He should therefore provide a useful figure through which to think assess them afresh. First, Courson was a central spoke in Peter the Chanter's 'biblical-moral' circle at the schools of Paris, a circle that included for a time that future pope Lotario dei Conti di Segni and therefore of obvious relevance in relation to Lateran IV's agenda. This they famously influenced and, following Bird's painstaking analysis, we can add 'fama-based inquiries' à la canon eight to the issues of ordeal and marriage that Baldwin showed the theologians' impact on at the council.<sup>19</sup> Further, literate clerics and particularly Paris masters and the schools' techniques of analysis and classification have been enlisted as crucial actors in arguments for the development of a European 'persecuting society' and one of its particular expressions, the 'war on heresy'.<sup>20</sup> Second, as this implies Courson himself was directly involved in developing both the thought

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<sup>18</sup> See M. DICKSON – C. DICKSON, *Le Cardinal Robert de Courson. Sa vie*, «Archives d'histoire doctrinale et littéraire du Moyen Âge», 9 (1934), p. 53–142 with J. W. BALDWIN, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols, Princeton 1970, I p. 19–25 and *passim*; W. MALECZEK, *Papst und Kardinalskolleg von 1191 bis 1216. Die Kardinäle unter Coelestin III. und Innocenz III.*, Vienna 1984, p. 175–179; and J. E. SAYERS, *Courson, Robert de (d. 1219)*, «Dictionary of National Biography», Oxford 2004, online edn.

<sup>19</sup> For the Paris school and Lateran IV see BALDWIN, *Masters, Princes and Merchants*, esp. I p. 315–343 for Lateran IV; J. W. BALDWIN, *Paris et Rome en 1215: Les réformes du IV<sup>e</sup> concile de Latran*, «Journal des Savants» (1997), p. 99–124; J. W. BALDWIN, *The Intellectual Preparation for the Canon of 1215 Against Ordeals*, «Speculum», 36 (1961), p. 614–626; BIRD, *Wheat and the Tares*. On the group more generally: P. BUC, *L'Ambiguïté du Livre. Prince, pouvoir, et peuple dans les commentaires de la Bible au Moyen Âge*, Paris 1994; M. GRABMANN, *Die Geschichte der scholastischen Methode*, 2 vols, Freiburg 1911, II p. 476–501. A significant re-appreciation of the Chanter and Courson is forthcoming within E. CORRAN, *Lying and Perjury in Medieval Practical Thought: A Study in the History of Casuistry* from whom I have learnt a great deal.

<sup>20</sup> R. I. MOORE, *The War on Heresy: Faith and Power in Medieval Europe*, London 2012, p. 219–220, 226–227, 228–229, 255, although of this generation Alain of Lille (d. 1202) rather than the Chanter (d. 1197) is important to his argument. Courson himself does not figure especially prominently (see MOORE, *The Formation*, p. 90–91 on Courson and on clerics' role generally 127–132). For criticism of the *War on Heresy* see P. BILLER, *Review: The War on Heresy: Faith and Power in Medieval Europe*, «Reviews in History» 1546 (2014) with Moore's response, accessed online at <http://history.ac.uk/reviews>. There is further substantive discussion (including by Moore and Biller) forthcoming in SENNIS, *Cathars in Question*.

behind and the practice of *fama*-based inquests into crimes, including heresy<sup>21</sup> – possibly against Evrard of Chateauneuf at the Council of Paris in 1201 (he clearly knew all about it), certainly against the Amalricians in 1210, and also during the Albigensian Crusade when he legislated against heresy at the Council of Montpellier (January 1215).<sup>22</sup> Amalric and his teachings were condemned by name at the end of Lateran IV canon two.<sup>23</sup> Third, the French conciliar legislation that Courson promulgated as cardinal and papal legate in the years immediately preceding Lateran IV (1213–1215) makes Courson a particularly interesting figure to examine to see how these ideas were percolating out legally.<sup>24</sup> Courson’s *Summa penitencie* itself shows a strong familiarity with the contents of *Compilatio prima* (c. 1191) and canon law more widely.<sup>25</sup> Fourth, this *Summa* which provides my focus here is an exceptionally interesting text with a focus on guiding priests and clerics on penitence and other practical matters. It has several advantages as a focus. It includes pragmatic considerations, not ‘merely’ ideal or legalistic ones. It works out their ramifications and can make nicely explicit the sorts of thinking behind precepts which can sometimes otherwise be elusive. It may well be more instructive than the ideal exegesis of the so-

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<sup>21</sup> Although I am focusing on the moving parts of Lateran IV canon eight which have there a non-heretical application I will include instances where Courson takes the parts and applies them to heresy; there seems considerable fluidity about the procedural means and the salvific ends in this period. I will sometimes use Bird’s formulation ‘*fama*-based inquests’ since it helpfully avoids the very burdened ‘inquisitorial’ language and also stresses key moving parts of the process.

<sup>22</sup> On the Amalricians: J. M. M. H. THIJSEN, *Master Amalric and the Amalricians: Inquisitorial Procedure and the Suppression of Heresy at the University of Paris*, «*Speculum*», 71 (1996), p. 43–65; G. DICKSON, *The Burning of the Amalricians*, «*Journal of Ecclesiastical History*», 40 (1989), p. 347–369; further BIRD, *Wheat and the Tares*, p. 802–803 (Evrard), 816–820 (Amalric), 826 (accused heretic at the 1210 Council of Bordeaux). Courson summoned the Montpellier council whose canons were modelled on his Paris 1213 ones. For Montpellier: G. D. MANSI (ed.), *Sacrorum conciliorum. Nova et amplissima collectio*, Graz repr. 1969–1961, XXII, cols 935–954 at 950; W. A. SIBLY – M. D. SIBLY (tr.), *The History of the Albigensian Crusade. Peter of les Vaux-de-Cernay’s Historia Albigensis*, Woodbridge 1998, p. 242 n. 123; MALECZEK, *Papst und Kardinalskolleg*, p. 176.

<sup>23</sup> *Conciliorum oecumenicorum generaliumque decreta*, II/1, p. 166.

<sup>24</sup> Although he was not the addressee of an important 1204 letter of Innocent III on inquisitorial procedure (*Per tuas nobis*, X 5.3.32) as Friedberg thought. Cf. FRIEDBERG (ed.), *Corpus iuris canonici*, II, col. 761 n. and BIRD, *Wheat and Tares*, p. 787 n. 75 with Register *Innocenz’ III*, VII, p. 408 (VII/243(244)) and MALECZEK, *Papst und Kardinalskolleg*, p. 175.

<sup>25</sup> For *Compilatio prima* see E. FRIEDBERG (ed.), *Quinque compilationes antiquae nec non Collectio canonum Lipsiensis*, Graz repr. 1956. For Courson’s legislation see MANSI, XXII, cols 817–54, 897–924, 935–954; O. PONTAL, *Les conciles de la France capétienne jusqu’en 1215*, Paris 1995, p. 391–402; O. PONTAL, (ed.), *Les statuts synodaux français du XIII<sup>e</sup> siècle*, 1, *Les statuts de Paris et le synodal de l’ouest (XIII<sup>e</sup> siècle)*, Collection de documents inédits sur l’histoire de France. Série in-8o, 9, Paris 1971, p. 264 s.v. Bourges (1214), 272 s.v. Paris (1213), 274 s.v. Rouen (1214); C.-J. HEFELE – H. LECLERQ, *Histoire des conciles d’après les documents originaux*, V.ii, Paris 1913, p. 1308–1316; BIRD, *Wheat and Tares*, p. 780, n. 60, 786 n. 74.

called of biblical-moral school for seeing how the fluctuating elements comprising inquisitorial practice were being flexed before Lateran IV formalized them. From this perspective a *Summa* is also useful to focus on since its desire for authority encouraged some interpretative restraint thus enabling us to assume that whatever is said is meant seriously and practically.<sup>26</sup>

The *Summa* (by mid-1212)<sup>27</sup> itself is notably reflective about the effects of sin individually and collectively. It includes sections on the *ordo iudiciarius*, accusation, *infamia*, fraternal correction, and scandal.<sup>28</sup> It is therefore a useful way of observing Courson's quality of thought in relation to *fama*-based inquests *before* Lateran IV was summoned in April 1213 – appealing as that summons did for suggestions of matters that required correction or reformation.<sup>29</sup>

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<sup>26</sup> Cf. BUC, *Ambiguïté du Livre*, p. 363. Buc's contrast here is with classroom *reportationes* which, as all teachers know, can be considerably more informal than any printed incarnation. A contrast with exegetical material may also be in order, and which can include, as Buc here shows, quite radical political positions, see *ibidem*, p. 350–378 for the Chanter's generation and K. CHAMBERS, "When We Do Nothing Wrong We Are Peers". *Peter the Chanter and Twelfth-Century Political Thought*, «*Speculum*», 88 (2013), p. 405–426.

<sup>27</sup> DICKSON – DICKSON, p. 72 dated the *Summa* to 1204–1207 and thought (64–65) that Courson could still have been studying with the Chanter in 1197 (such that composition must date to some time later). BALDWIN, *Masters, Princes, and Merchants*, I, p. 23, II, p. 14–15 n. 67 dated the *Summa* to 1208–1212/1213 on the basis that Courson refers to Innocent's March 1208 calling for a Crusade against Raymond VI of Toulouse following the January murder of papal legate Peter of Castelnau. A 1212/1213 terminus follows from the presumption Courson lacked the time to write following his appointment as Cardinal of S. Stefano in Celimonte (June 1212) and then legate in France (April 1213). Thijssen's work on the Amalricians and Courson's awareness of them seems to provide a latest external reference point in the *Summa* of 1210 (though further analysis of the *Summa* remains necessary, see the next note). Nevertheless THIJSEN, p. 50 dates the *Summa* to 1204–1208, presumably interweaving Dickson and Baldwin. I infer BIRD, *Wheat and the Tares*, p. 799 uses the Amalrican trial as a *terminus a quo* and Courson's appointment as Cardinal as a *terminus ante quem*, giving a date of c. 1210–1212 (though p. 803 gives a date of c. 1208–1210). Courson's 1212 elevation as Cardinal seems a sensible *terminus ante quem* but I do not see why the *terminus a quo* should not predate the latest event alluded to in the *Summa* (i.e. it may well have been started before 1208). I am very grateful to Emily Corran for discussion.

<sup>28</sup> The *Summa*'s value is increasingly recognized and portions of it have been edited but a complete edition is sorely needed. For its contents see V. L. KENNEDY, *The Contents of Courson's Summa*, «*Medieval Studies*», 9 (1947), p. 81–107 who also edited the introduction and section on penance, V. L. KENNEDY, *Robert Courson on Penance*, «*Medieval Studies*», 7 (1954), p. 291–336. See also: G. LÉFÈVRE, *Le traité De usura de Robert de Courçon*, «*Travaux et Mémoires de L'Université de Lille*», 10 (1902) 30; THIJSEN, p. 61–65 for a *quaestio* on excommunication; BALDWIN, *Masters, Princes and Merchants*, II *passim* for extracts; J. W. BALDWIN, *The Language of Sex. Five Voices from Northern France Around 1200*, Chicago 1994, Appendix 1 p. 239–245, chapters on sex; and CORRAN, *passim*. I have consulted British Library Royal MS 9 E XIV (henceforth BL Royal MS 9 E XIV), Bibliothèque Nationale de France MS latin 14524 and MS latin 3259 (henceforth BNF MS lat 14524 and 3259). I use 14524 below as my principle MS. For comment on the MSS see Baldwin, *Masters, Princes and Merchants*, II p. 14–15.

<sup>29</sup> CHENEY – SEMPLE, 144–147; MIGNE, CCXVI, cols 823–827 (Register XVI/30).



So, Courson is demonstrably close to the major practical, moral, and legal currents feeding into ‘inquisitorial’ thought around 1215, heretical or otherwise. In his thought and activities we can explore the wider dynamics of responsibility and accountability – such as were articulated in Lateran IV canon eight – and suggest different ways of placing inquisitions within a wider account of the period. The *Summa* illustrates a less masterful, more complicated and interesting attitude to accountability, responsibility and *fama*-based inquests than one might expect. In particular there are two things I want to put in suspension for the moment. The first is a pre-ordained sense of inquisition as an ineluctable steam train cutting a deep line in Christendom’s development. The second is the question of a non-clerical élite’s agency in relation to inquisition, an agency which is often – understandably but undesirably – bleached out by a concentration on repressive clerical activity.<sup>30</sup> In particular I am interested in the agency of those groups that the clerical readers of Courson’s *Summa* would have been preoccupied by: the souls they had cure of. Inquisition in fact seems to me to be quite a complex and in some ways contradictory solution to the problems it was perceived to address in the period and this oddity has become somewhat flattened by interpretations stressing its penetrative power.

Let us start from Courson’s perspective. What was the perceived problem that canon eight seems to solve? This is nicely illustrated by two worked *quaestiones* in the *Summa*, §34.4 (*infamia*) and §25.22 (*scandalum*).

*Summa* §34.4 deals with the question of ‘whether someone should be condemned on the basis of *infamia* alone’.<sup>31</sup> Courson cites Augustine, Ambrose, Gratian and *Compilatio prima* (c.1191) to make the case.<sup>32</sup> He then considers the objections.

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<sup>30</sup> Important analyses stressing, in very different ways, this side include: J. B. GIVEN, *Inquisition and Medieval Society. Power, Discipline and Resistance in Languedoc*, Ithaca 1997, sketched in GIVEN, *Social Stress, Social Strain and the Inquisitors of Medieval Languedoc*, «Christendom and its Discontents. Exclusion, Persecution, and Rebellion, 1000-1500» ed. S. L. WAUGH – P. D. DIEHL, Cambridge 1996, p. 67–85; J. H. ARNOLD, *Inquisition and Power. Catharism and the Confessing Subject in Medieval Languedoc*, Philadelphia 2001; M. G. PEGG, *The Corruption of Angels: The Great Inquisition of 1245-1246*, Princeton 2001; J. FEUCHTER, *Ketzer, Konsuln und Büßer. Die städtischen Eliten von Montauban vor dem Inquisitor Petrus Cellani (1236/1241)*, Tübingen 2007; P. BILLER, *Intellectuals and the Masses: Oxen and She-Asses in the Medieval Church*, «The Oxford Handbook of Medieval Christianity» ed. J. H. ARNOLD, Oxford 2014, p. 323–39. A striking analysis of popular agency not focusing (as these do) on heresy is T. N. BISSON, *Tormented Voices. Power, Crisis, and Humanity in Rural Catalonia, 1140-1200*, Cambridge MA 1998.

<sup>31</sup> ‘Utrum aliquis sit condemnandus propter solam infamiam’, BNF MS lat. 3259, fol. 156ra.

But it is objected. A usurer, or a priest taking a concubine, or whomever, is criminally infamed in the bishop's diocese, but the bishop should punish with respect to the *infamia*, yet he himself does not know whether such a person is infamous [*infamis*]. In such a case it is asked what the bishop should do. If you say that because of these things he should compel such a person to provide a purgation in public because he hears that he is infamed, by the same rationale he ought to thus accuse someone else on the basis of hearsay [*auditum*]. If he completely abandons this accusation, the whole neighbourhood [*vicina*] will be scandalized. If he himself accuses such a person, but he himself is the judge, it would result thereby that in the same case someone was both judge and actor, or accuser.<sup>33</sup>

A community is scandalized, a bishop should act against his inferior. However, lacking proof doing so would entail accusing similarly in other case on the basis of hearsay alone. This nicely expresses the double bind of the need for responsible episcopal action tangled with the need to observe some credible due process.<sup>34</sup> Courson's solution is as follows.

Solution. We believe in such a case it should be distinguished whether the presumptions against such a person whether of *infamia* or of an infamous crime are vehement or probable – or not. If the presumptions are vehement, such as the concubine was seen in the priest's house, with her chicken, namely arguments walking on the ground, and against the usurer pledges taken up or recovered for profit, then the bishop without distinction should compel them to provide a purgation in public. And if they do not want to purge themselves and if they fail to purge themselves then they are to be punished as committers of crime.<sup>35</sup>

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<sup>32</sup> On Alain of Lille, *Liber in distinctionibus dictionum theologialium*, MIGNE, CCX, col. 743a under 'clamare' (on Cain), Alain attributing it to Augustine; Ambrose on 'manifesta accusatione non indigent', perhaps cited through C. 2 q. 1. c. 15; Gratian on a priest infamed by his people (*plebe*), C. 2. q. 1 c. 20 and C. 2 q. 5 c. 13; Comp. 1 5.2.10 (= X 5.3.11, Alexander III to the Archbishop of Toledo).

<sup>33</sup> 'Sed obicitur. Fenerator uel sacerdos focarius uel quicumque criminosus infamis est in episcopatu illius, sed episcopus debet punire de infamia, sed ipse nescit talis sit infamis. Hic queritur quid sit faciendum episcopo. Si dicas quod propter hoc debeat talem compellere ad purgationem in publico prestandam, quia audit esse infamem, eadem ratione quemque alium propter solum auditum debet sic accusare. Si desistat omnino ab accusatione eius tota uicina scandalizabitur. Si ipse accuset talem, sed ipse est iudex, ergo in eadem causa potest quis esse iudex et actor, siue accusator'. (BNF MS lat. 14524, fol 115rb).

<sup>34</sup> On the double bind see G. BATESON, *Steps Towards an Ecology of Mind*, Chicago 1972, p. 202–212. Sylvain Piron showed me his usefulness.

<sup>35</sup> 'Solutio. Credimus hic ita esse distinguendum, aut uehementes et probabiles sunt presumptiones contra aliquem de infamia suie de crimine infamante, aut non. Si uehementes sunt presumptiones uelut si focaria uisa est in domo sacerdotis et pulli eius, scilicet argumenta ambulancia super terram, et contra feneratorum uadia sumpta et resumpta pro fenore, tunc episcopus debet indistincte compellere tales ad purgationem in publicum prestandam. Et si noluerint se purgare et si defecerint in purgatione tunc puniendi sunt tamquam actores criminum'. (BNF MS lat. 14524, fol. 115rb). BNF MS lat 14524 fol. 115rb and BNF MS lat 3259 fol. 156rb slightly disagree about where this §34.5 falls. I follow 3259 here. BL Royal MS 9 E XIV lacks the same level of section

Initially this *solutio* seems quite weak. Courson's 'arguments walking about the earth' are sufficiently strong for him to avoid really addressing the principle (a *rector* with imperfect knowledge faced with publicly alleged crime). He does then deal with cases where there are no 'probable presumptions' close to hand and the bishop remains doubtful of the *infamia* about the *infamis*. In such a case

Then the bishop ought to compel some good and serious men of the neighbourhood to swear that they will not hide that person's crime, rather that whatever they know of that person's crime they will make known.<sup>36</sup>

Courson justifies this by appealing, via Gratian, to Pope Eutychian's (275-83) oath for synodal witnesses.<sup>37</sup> This provides for the relic-swearing neighbourhood elite to reveal to the bishop or his delegate that he will not hide for love, fear, or money when asked whatever he knows or has heard that is 'against the will of God and right Christianity in that parish'.<sup>38</sup> Courson could also have pointed to Lucius III's *Ad abolendam* canon on heretics providing that:

the archbishop or bishop themselves, or their archdeacon or other honest and responsible [*idoneasque*] persons once or twice a year parish, should go through particular parishes in which there has been a rumour [*fama*] of heretics living, and compel there three or more men of good standing [*boni testimonii*] to swear – or even the whole neighbourhood if it should seem expedient – that if someone should know there of heretics or others celebrating secret meetings, or dissenting from the common practice of faith [*communi conuersatione fidelium*] in their life and actions, that s/he will be sure to reveal him to the bishop or a' deacon.<sup>39</sup>

Courson bolsters this by citing another *Compilatio prima* text in full, *Si quis presbiter*:

If a priest, neglecting his life allows himself to be suspected of evils through his bad example, and the people, bound by oath or [ban] of Christianity by the bishop, assert his infamy, and particular

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division and cannot help. 14524 has roman numeral division for chapters and sections but only titles for chapters. 3259 has titles for both chapters and sections but no numerical division. Royal MS 9 E XIV has titles for chapters and some sections.

<sup>36</sup> '...tunc episcopus tenetur compellere aliquos bonos et graues de uicina ad iurandum quod non celabunt crimen ipsius, immo quicquid sciuerint de crimine ipsius notificabunt...', (BNF MS lat. 14524, fol. 115rb).

<sup>37</sup> C. 35 q. 6 c. 7.

<sup>38</sup> '...contra uoluntate dei et rectam christianitatem in illa parrochia.', BNF MS lat. 14524, fols 115rb-115va.

<sup>39</sup> '...archiepiscopus vel episcopus per se vel archidiaconum suum, aut per alias honesta idoneasque personas, bis vel semel in anno propriam parochiam, in qua fama fuerit haereticos habitare, circumeat, et ibi tres vel plures boni testimonii viros, vel etiam, si expedire videbitur, totam viciniam iurare compellat, quod, si quis ibidem haereticos scierit vel aliquos occulta conuenticula celebrantes, seu a communi conuersatione fidelium vita et moribus dissidentes, eos episcopo vel archidiacono studeat indicare (X 5.7.9).

accusers regarding the crime are absent, then he is to be warned firstly by the bishop, then with two or three witnesses if he will not correct himself the bishop shall warn him with a public rebuke. If even then he will not correct himself he shall be suspended from office until appropriate satisfaction [is given], lest the faithful people suffer scandal through him.’<sup>40</sup>

Courson goes on,

By these and similar reasons and authorities it is completely clear that any bishop today or prelate can purge all fornication in clerics and all usury in the laity and all crimes of enormity through which any *infamia* sprouts up, nor ought they have recourse to that poisonous cover of notoriety and dissimulation whereby today idiotic prelates excuse themselves.<sup>41</sup>

It is an important sub-text of this last comment that there are clearly those who disagree strongly with Courson about this then.

A picture of various elements of *fama*-base inquests was coalescing in a form similar to but distinct from that which would be formalized at Lateran IV. *Fama* plays an obvious role. There is also concern about agency. The bishop too cannot conflate two activities (acting and judging). Critically there is concern about scandal’s effects on a community. Finally, there is also agency by the community (to which I will return). It is interesting that there is not a wholly clear sense of a bishop’s investigatory powers nor where they lead. Depending on where one is coming from (England in Courson’s case) the sworn group look something like an English jury of presentment, asserting what they have heard; something like Lucius III’s ‘men of good standing’. Nor is it wholly clear from Courson that the bishop goes further than this to investigate, instead of acting on the community’s collective public view of the infamed individual (explicitly clerical or lay). It is worth stressing that if the community takes someone as *infamis*, then he or she is.

This problem of legally disempowered knowledge of perceived crimes is one problem from which to adduce the reason for rulings such as *Qualiter et quando*. In the case just discussed the social or political environment Courson was addressing posed no especial problems. This was not

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<sup>40</sup> I cite from the *Summa* (not X 5.34.2 = 1 Comp. 5.29.1): ‘siquis presbiter uite sue negligens prauis exemplis mala suspicari de se permiserit et populus ab episcopo iuramento sue [banno in X 5.34.2] christianitatis astrictus infamiam eius patefecerit, et certi accusatores criminis eius defuerunt admoneatur primo seorsum ab episcopo, deinde sub duobus uel tribus testibus [et in FRIEDBERG] si se non emendauerit episcopus eum publica increpatione admoneat. Si uero neque tunc correxit se, ab officio suspendatur usque ad condignam satisfactionem, ne fidelium populus in eo scandalum paciatur. (BNF MS lat. 14524, fol. 115va).

<sup>41</sup> ‘Hiis et consimilibus rationibus et autoritatibus manifeste patet quod quilibet episcopus hodie uel prelatus purgare poterit omnem fornicationem in clericis et omnem usuram in laicis et omnia crimina enormia de quibus aliqua pululat infamia nec debent recurrere ad illa medicata scuta notorii et dissimulationis quibus se hodie stolidi prelati excusant’ (*ibidem*, fol. 115va).

the case in his discussion of scandal in §25.22, and this may provide a second reason, worth quoting at length.

It happens in practice often that the very powerful [*prepotentes*] are accused by public infamy, either because of usury, rapine, or heresy. However there is no one who dare step forward to accuse them because of their power [*potentiam*]. Now you are the judge and bishop of that place. You have both swords. Some such powerful person is led to your court. You, because of his very great infamy lock him up in prison until he purges himself, or until his is purged by someone. What should you do in this case about him? You will not release him on two counts. You have learnt, but extra-legally, that he is a heretic and you know that if you were to release him the whole region would be scandalized because of him, believing that you had released him with money changing hands. and so, unless you are to scandalize everyone you cannot release him. Likewise you cannot condemn him because he has neither confessed nor is convicted in law. Likewise, if following purgation by seven hands you release him, the purgation will not come to anything since it will not satisfy the people, because he will find 100 such who will purge him, reckoning our sacraments as nothing. But what if he will offer himself to the judgement of iron or water – against the canons which reject such a thing? Solution: In such a case a prelate should not release so infamous a person. Indeed so vehement is the presumption against him that he should not release him but enclose him between two walls with the water of affliction and with the bread of distress [cf. 3 Kings 22:27] for however long, either until he confesses the crime and repents or until he can undergo some appropriate purgation that will satisfy the the people and church, and if he himself seeks the judgement of iron or water, the bishop’s official should not deny it to him where no other remedy can be found because then God is not tempted [by the ordeal]. Whence Pope Alexander is said to have responded to Baldwin Bishop of Noyon asking what should become of such people, ‘Follow the custom of the realm’. And this is drawn from that decretal ‘Ad abolendam’. This is enough about scandal.<sup>42</sup>

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<sup>42</sup> Item de facto sepe accidit quod prepotentes infames aut per usuram, aut per rapinam, aut per heresim accusantur a publica infamia, sed non est aliquis qui propter eorum potentiam audeat prosilire in eorum accusationem, et tu iudex et episcopus loci es, habes utrumque gladium, adducitur aliquis talis potens ad forum tuum, tu propter eius tantam infamiam retrudis eum in carcerem quousque purget se, uel quousque purgetur ab aliquo. Quid facies in hoc articulo de illo? Tu non dimittes eum duplici de causa: tu cognouisti extra ius quod hereticus est, et scis quod si dimittes eum tota regio scandalizaretur per eum credens te dimisisse eum ad interuentium pecunie et ita ne omnes scandalizes non potes eum dimittere. Item tu non potest eum condemnare, quia nec conuictus nec confessus est in iure. Item si pro purgatione facta eum dimittis septima manu, nulla erit talis purgatio, quia per illam non satisfacet populo quia inueniet tales centum purgatores qui nichili reputant nostra sacramenta; sed quid si offerat se ad iudicium ferri uel aque contra canones qui huiusmodi detestantur? Solutio. In tali articulo non debet prelatus dimittere talem et tam infamem, immo tam uehemens potest esse presumptio contra ipsum quod non debet eum dimittere, sed inter duos muros in aqua tribulationis et pane angustie [cf. 3 Kings 22:27] eum tam diu recludere, quousque aliquis ad eius accusationem accedat, uel quousque crimen confiteatur et peniteat, uel aliquam condignam pugationem subeat ut populo et ecclesie satisfiat, et si ipsum

What is here and what is not? Here is the very real brick wall that accusatory procedure hit when questions of threat and pure power became wrapped up in malfeasance. Here again is the galvanizing power of a vocal community – both asserting *publica infamia* and preventing the helpless bishop from simply releasing the *prepotens* since the ‘whole region would be scandalized’ were he to. Not here is a procedural solution of *ex officio* investigation to get to the bottom of matter (perhaps because the case already hypothesizes that the *prepotens* can circumvent due process by purging himself, technically leaving nothing to answer for). It is worth immediately stressing the determinative role given here to public opinion in working out whether a solution is satisfactory or not, a point I return to.

The problem here for the church was how – safely – to make explicit a shared but tacit public consensus about abusive power. That abuse need not be parsed solely in terms of a persecuting elite’s particular normative grid, since it is a premise of Courson’s thought experiment that it may pertain to abusive power in terms of salvation (heresy), equity (rapine), or both (usury). That is even if ‘the people’ did not share a definition of heresy, or possibly usury with Courson there seems better grounds for thinking they might all agree about the undesirable nature of rapine. One might even suggest, mischievously, using James C. Scott’s formulae, that what is going on here is an attempt to make public a ‘hidden transcript’ about a perceptibly abusive power that otherwise might not be acted on until it violently exploded above the line so becoming public.<sup>43</sup>

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iudicium ferri uel aque petat officialis episcopi ei non debet degnegare ubi nullum aliud inuenitur remedium, quia tunc non temptatur deus. Unde Alexander papa fertur respondisse Balduino nouiomensi episcopo petenti quid fieret de talibus sequere consuetudinem regni, et hoc elicitur ex illa decretali Ad abolendam. Hec de scandalo sufficiant’, (*ibidem*, fols 89vb–90ra, corr. with BNF MS lat 3259, fols 113rb–va). Further discussion in BIRD, *Wheat and the Tares*, p. 799; BALDWIN, *Masters, Princes and Merchants*, I p. 301, 302. I take this reference to *Ad abolendam* (X 5.7.9) to be a reference solely to its provision for accused heretics to be purged ‘iuxta patriae consuetudinem’. Courson’s reference does not seem clear enough to suppose he is thinking of *Ad abolendam* in reference to either (a) its provision for the laity merely ‘sola ecclesiae suspicione notabiles’ to clear themselves or (b) the means of annual diocesan surveys based on a 2-3 strong sworn claims of ‘boni testimonii uiros’. If he was relying on *Ad abolendam* for this he would hardly need to imprison a *prepotens* until someone dared to come forward to accuse them. Given that he is asserting the validity of the ordeal here it seems sensible to assume he is only thinking about the justification of local custom at this point. I have not determined whether this is, presumably, the Noyon Bishop Baldwin II (1148–1167) or Baldwin III (1167–1174): *Gallia christiana in provincias ecclesiasticas distributa*, IX, *De provincia Remensi*, Paris 1751, cols. 1002–1004; O GUYOTJEANNIN, *Episcopus et comes. Affirmation et déclin de la seigneurie épiscopale au nord du royaume de France (Beauvais-Noyon, Xe-début XIIIe siècle)*, Memoires et documents publiés par la Société de l’École des Chartes 30, Geneva 1987, p. 178–181.

<sup>43</sup> See J. C. SCOTT, *Domination and the Arts of Resistance. Hidden Transcripts*, New Haven 1990, p. 25–28, 198–201, 206–227. For Courson and rapine see BISSON, *The Crisis*, p. 446, 448–453 also 455.

Such hidden transcripts have normally been described in relation to subaltern groups whose frustration and resistance is generally only legible – beyond violent ‘disorder’ – through the repressive texts of those dominant elites (as in inquisitorial depositions). Further, in much of the medieval historiography discussed above those dominant elites are taken to include clerics such as Courson, so it is interesting to think that he might be partially aligned with the ‘subaltern’ here.<sup>44</sup> Nevertheless, it is perfectly possible to argue that Courson was seeking here to enable a community at least partly in a way that they would have recognized without also naively taking Courson for an innocently benevolent figure. It does not seem, *mutatis mutandis*, that what is going on here was ‘above all dedicated to repression and that its agenda was essentially negative’.<sup>45</sup> There seems some shared transcript between Courson and the community that he was thinking of.

This then suggests a wider question about the relative powers of communities in relation to those apparently in power in early thirteenth-century northern France. What did an activist like Courson want from the *fama*-based inquests they were experimenting with; what was their intention? Part of the thesis about the formation of a persecuting society is that there was no intentional desire to create that society.<sup>46</sup> But while obviously seeking to avoid any teleology it is clear from the above that there were perceived problems that clerics were consciously seeking clear solutions to. Courson sees himself contributing to a longer history: his references to past popes indicate thought and reflection about problems of (e.g.) hidden crimes and the effectiveness of the practical solutions for dealing with them.<sup>47</sup> We can also hear a clear echo of his northern French concern with unpunished crimes at the Curia early in Innocent’s pontificate. This is clearly audible in Rainerius Pomposa’s *Liber decretalium* (c. 1201) where titles 20-23 collect rulings on

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<sup>44</sup> The helpfulness of Scott’s framework for medieval historians is well-seen in GIVEN, *Inquisition and Medieval Society*, *passim*. Given’s complex attitude to his protagonists is summarized p. 213–220. See also the helpful comments of C. WICKHAM, *Gossip and Resistance among the Medieval Peasantry*, «Past and Present » 160 (1998), p. 3-24 at 14–15, 18. It seems to me that Scott remains valuable for medieval historians to think with.

<sup>45</sup> GIVEN, *Inquisition and Medieval Society*, p. 216 here talking generally about Languedoc inquisitors into heresy. The comment of Foucault below at n. 58 is also pertinent.

<sup>46</sup> MOORE, *The Formation*, p. 170-171 and explicitly connecting the persecuting society with wider patterns of governmental and administrative reform.

<sup>47</sup> As well as the reference immediately above to Alexander III see (e.g.) BNF MS lat. 14524, fols 76va-b, 79ra (§20.4, 20.11 on fraternal correction).

notoriety, inquisitions, and *infamia*.<sup>48</sup> The *Liber*'s headings, Pennington has suggested, are 'probably closer to Pope Innocent III's vision of law than to the practices and preoccupations of the schools [...] his titles and organization may well reflect Innocent's political and ecclesiological agendas during the first years of his pontificate'.<sup>49</sup> There is plainly some intention here. This being so it may seem hard to avoid concluding that there was some intention to produce some sort of persecuting society supposing the intrusive, divisive nature of *fama*-based inquests to be so manifest. Here there is a deep interpretative division between historians such as Moore who see this increased intrusion as the index of organized lay or ecclesiastical powers penetration into communities' happy self-regulation in order to remake it for their own hegemonic purposes over the twelfth and early thirteenth centuries. Inquisitions are the nutcrackers for breaking open 'little communities'.<sup>50</sup> Other historians draw the opposite conclusion, most recently Bisson, arguing that as a consequence of these same processes of administrative and governmental self-assertion that by c. 1200 greater restraint was exercised over previously unregulated lordly violence and that 'government ceased to be intrusive'.<sup>51</sup> Do we see any of this in Couson's thinking about his *fama*-based inquests?

There are clear aspects of legal coercion and guilt that confirm aspects of Moore's penetrative model of inquisitorial power. Who else is going to see the concubine's chickens around the priest's house of a morning except his neighbours? How else will this be known except through some inquest? Similarly, a bishop doubtful of someone's *infamia* was to compel 'the 'good and serious men of the neighbourhood' to divulge whether they had seen or heard anything untoward.<sup>52</sup> Such policing though is as interested in clerical as lay conduct. More interestingly, if there is a conflict between clerical wrong and communal outrage there often seems a preference for the peace of mind of the populace over granting the benefit of the doubt to the clergy.<sup>53</sup> The *ordo iudicarius*

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<sup>48</sup> MIGNE, CCXVI, cols 1173–1272, ed. from Reims, Bibliothèque municipale, MS 692 (G. 525), fols 1–28r, available online at <http://bvmm.irht.cnrs.fr>.

<sup>49</sup> K. PENNINGTON, *Decretal Collections 1190–1234*, «The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX», (ed.), W. HARTMANN – K. PENNINGTON, Washington D.C. 2008, p. 293–317 at 302.

<sup>50</sup> MOORE, *First European Revolution*, *passim*, 'little community' is a chapter heading.

<sup>51</sup> BISSON, *The Crisis*, p. 572.

<sup>52</sup> BNF MS lat. 14524, fol. 115rb (§34.4).

<sup>53</sup> E.g. with a priest allegedly having a concubine, even if there are no legitimate witnesses: BNF MS lat. 14524, fol. 111vb (§32.6).



can be dispensed with because of exceptional risk to the community – again the role of public opinion is key.<sup>54</sup> Likewise in cases when condemning without accusation those who are notorious or publicly infamed.<sup>55</sup> A straightforward privileging of ruling élite against little communities is not apparent.

The above example of the superpowerful (*prepotentes*) is significant here. Many of the cases of *fama*-based inquests address existing forms of power. The *prepotens* is a resident and intrusive figure. The problem is that is no way for a group to cope with him precisely because of his overweening power.<sup>56</sup> A safe or legal means to circumvent his power is lacking. As I have said, the interests of reformer and community overlap but are not coterminous here. But a partial ‘coincidence of interest between the reformers and the *pauperes*’ does seem apparent.<sup>57</sup> Here one power (reforming ecclesiastical) wishes to reconfigure another power (principally secular but also potentially complicit ecclesiastical powers). The reforming power’s motives are mixed. It has a set of its own norms which it wants imposed and because of this it has sympathy with the *populus* that the ‘unreformed’ power is abusing. Courson’s solution in this case is literally to contain the problem through imprisonment – arguably a reflection of how difficult an adequate solution to resident entitled power was. It does not, therefore, seem clear that intrusion here is a simple binary matter of oppressive outsiders imposing themselves on unoppressed insiders who otherwise have satisfactory means of coping with local powers. To say this is – obviously – not to say that *fama*-based inquests could be coercive, but that they also served some purpose on these little communities’ own terms.<sup>58</sup>

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<sup>54</sup> *Ibidem*, fols 111vb–112ra (§32.6).

<sup>55</sup> *Ibidem*, fol. 116ra-b (§35.4).

<sup>56</sup> *Ibidem*, fols 89vb–90ra (§25.22).

<sup>57</sup> R. I. MOORE. *Family, Community and Cult on the Eve of the Gregorian Reform*, «Transactions of the Royal Historical Society», 30 (1980), p. 49–69 at 69 on mid-eleventh century reform movements.

<sup>58</sup> Michel Foucault’s arguments about the creative attractiveness of power are important here: ‘If power were never anything but repressive, if it never did anything but to say no, do you really think one would be brought to obey it?...[Power] also traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It needs to be considered as a productive network that runs through the whole social body, much more than as a negative instance whose function is repression.’, M. FOUCAULT, *Truth and Power*, in «Power. Essential Works of Foucault 1954–1984, 3 », ed. J. D FAUBION, London 2001, p. 111–133 at 120. GIVEN, *Inquisition and Medieval Society* offers a distinct (and compatible) interpretation: inquisitorial reliance on local knowledge and agents frequently enabled ‘little communities’ to hollow out the ‘ruling elite’s’ agenda for their own purposes.

A deeper paradox and tension seems to me to exist in relation to who is empowered to act by investigations underpinned by *infamia*. ‘Persecuting Society’ models indicate that the wider attitude of late twelfth-/early thirteenth-century Paris Masters ought to be one evacuating local communities of power. Yet Philippe Buc has clearly shown that amongst some of them, especially Peter the Chanter and Radulphus Niger, the opposite was the case. It is an important irony that on the one hand it is the biblical-moral Paris theologians who are driving the extension of *infamia*-based approaches.<sup>59</sup> Yet it is also this group that has a theory of popular justified criticism of royal and ecclesiastical misuses of power.<sup>60</sup> Courson then is obviously interesting to look at on this count.

In his legislative texts for the Council of Paris (summer 1213), where one would most expect a clear favouring of discipline through hierarchy one does indeed find that, directed as the statutes are to the secular clergy, those in orders, nuns, archbishops and bishops (as well as a section on usurers and robbers).<sup>61</sup> ‘Subjects should humbly obey, and prelates rule them discretely and carefully.’ This rubric is specifically for those in religious orders. For these prelates too there is equally a warning against their scandalizing their own communities through the exploitation of a debt of obedience.<sup>62</sup> Similarly in the *Summa* there is a clear rule that the laity should not be involved in *accusations* against the clergy.<sup>63</sup> The precise point of *infamia*-based procedure however is that legally it does *not* rely on accusation. The question therefore is raised of what Courson thought more widely about popular reproof of the clergy, indeed prelates, when that was not formally accusatorial.

Here we can turn to Courson on fraternal correction where there is a full and complex *quaestio* on whether there is a general obligation to correct, following the biblical precept.<sup>64</sup> A range of biblical proofs are cited in favour of the proposition that ‘even lessers are obliged to correct their

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<sup>59</sup> BIRD, *Wheat and the Tares*.

<sup>60</sup> See section III of BUC, *Ambiguïte du Livre*; also CHAMBERS, “*When We Do Nothing Wrong*”.

<sup>61</sup> For a 1213 not 1212 dating see PONTAL, *Les conciles de la France*, p. 396–397 and DICKSON – DICKSON, p. 90. The final clauses in MANSI, XXII, cols 852–854 (‘Item de usurariis’ onwards) appear to be from later councils.

<sup>62</sup> MANSI, XXII, col. 829 (cap. 12), citing 1 Kings 15: 22.

<sup>63</sup> BNF MS lat. 14524, fol. 113v (§32.22).

<sup>64</sup> *Ibidem*, fol. 75vb (§20.1). The general rule is Matthew 18: 15–17.

betters' a position sealed by proofs from Gratian.<sup>65</sup> A final justification and assertion of its validity to the top of the ecclesiastical tree is cited from 1 Galatians 2: 11 where Paul rebukes Peter for eating with Jews.<sup>66</sup> An objection is offered that this is not a general obligation, but a special obligation on prelates. Courson's conclusion is as follows:

It seems to us just as we heard it from the Cantor of Paris, that anyone, be they greater or lesser, free or slave, is bound to correct his brother, that he should correct him with the zeal of justice but not at all times or all places, because there is a 'time for being silent and a time for speaking' [Eccl. 3:7], as Solomon says. And David says, 'In my heart I hid your speech' [Ps. 118: 11].<sup>67</sup>

This, he goes on, should be done cautiously, lest the one corrected responds in an even worse. Nevertheless,

If someone perhaps objects that fraternal correction does not pertain to such a person, smack their mouth with the authority of John the Baptist. Who, even when he knew Herod to be a foreigner and incorrigible nevertheless because he was right next to him resisted him face on saying 'It is not permitted to you to have your brother's wife' [Mark 6:18]. By the same logic [*ratione*], it is permitted to anyone today, indeed anyone is bound to correct someone from the church, where he knows his crime and even though he seems to be incorrigible.<sup>68</sup>

The principle is clear: everyone has a license to correct his brother, even if the brother is greater. The risk of incurring damnation redounds on those who do not resist – as with Herod's murder of John the Baptist. 'Thus even the lesser are bound to correct the greater'.<sup>69</sup> It is clear in Courson's anticipation of disagreement both that his stance is not uncontroversial and that it is one he is

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<sup>65</sup> *Ibidem*, fol. 76ra (§20.2). MS 14524 cites C. 2 q. 7 c. 47, C. 1 q. 1 c. 5 and C. 24 q. 3 but gives no *capitula*. BNF MS lat 3259 94vb gives C 24 q. 3 c. 14.

<sup>66</sup> This seems misplaced in BNF MS lat. 14524 fol. 76rb though appearing at an intelligible point in BNF MS lat 3259 fol. 94vb.

<sup>67</sup> 'Nobis uidetur sicut a Cantore parisiensi accepimus quod quilibet siue maior siue minor, siue liber siue seruus tenetur ad correctionem fratris ut eum corripiat zelo iusticie sed nec in omni tempore nec in omni loco, quia 'tempus est tacendi et tempus loquendi', ut dicit Salomon. Et David dicit, 'In corde meo abscondi eloquia tua etc', BNF MS lat. 14524, fol. 76rb. The two scriptural references are cited together in M. BOUTRY (ed.), *Petri Cantoris Parisiensis Verbum adbreuiatum. Textus conflatus*, Corpus Christianorum Continuatio Mediaevalis 196, Turnhout 2004, §1.61, p. 416), *de bona taciturnitate*.

<sup>68</sup> '...et si quis forte obloquatur quod non ad quamlibet spectat fraterna correctio, obtunde os eius illa auctoritate iohannis baptiste. Qui cum sciret herodem esse alienigenam et incorrigibilem, tamen quia eius erat proximus restitit ei in facies, dicens, 'Non licet tibi habere uxorem fratris tui'; eadem ratione cuilibet hodie licet, immo quilibet tenetur corripere quemlibet de ecclesia, ubi scit crimen eius, quamuis et uideat eum incorrigibilem...', *ibidem*, fol. 76rb (§20.2). Here de ecclesia', could be translated 'concerning the church'.

<sup>69</sup> 'Sic ergo etiam minores tenentur ad correctionem maiorum', *ibidem*, fol. 76ra (§20.2).

happy to assert in the strongest terms. Courson inveighs heavily against his contemporaries who use legalities to avoid ascribing notoriety to crimes unless this has been already proven by conviction or confession.<sup>70</sup>

That there is audible disagreement within the cadre of ecclesiastical intellectuals is important. One can find the same precept used to argue polarized positions regarding resistance to established authority. A persecuting elite's circuitry can accordingly seem the opposite of hard-wired, certainly at this point: different players can make the current flow in opposite political directions. Take the precept that responsibility for an uncondemned outrage falls on silent bystanders. Romans 1:32 licenses death for those who act against God's justice. This was developed by Gratian who argued that 'he is not free from suspicion of secret complicity who does not clearly oppose the crime' (D. 83 c. 3; D. 86 c. 3; C. 2 q. 7 c. 55). Peter the Chanter and Radulphus Niger in turn used it to justify active resistance to established powers.<sup>71</sup> But a little later Innocent III would take his master's application of that precept and flip its logic. Innocent used it to condemn the English bishops who did *not* condemn the baronial action taken against King John in 1215.<sup>72</sup> It is clear that there were disagreements amongst intellectuals about how fraternal correction was supposed to work.<sup>73</sup> Raising as it did issues of status, hierarchy, correction, and reproof it is unsurprising that this should be contentious. It seems perfectly reasonable to suppose that here there were hardliners, moderates, radicals and pragmatists on the issue whose complex complexion we can barely recover. Courson's position on the ordeal was itself less hardline than the Chanter's, as we have seen. Churchmen were trying to work out what they thought. An apt formula has been suggested by Chris Wickham: up until Lateran IV ecclesiastics were trying to work out what their script was; after Lateran IV everyone was trying to apply the script.<sup>74</sup> This was being done, assuredly, in relation to a hegemonic institution – the church – but it was being done in such a way that numerous protagonists were entertaining a

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<sup>70</sup> *Ibidem*, fol. 78ra (§20.9), 'Sunt quidam et fere hodie omnes qui pretendentes excusationes in peccatis qui dicunt nichil esse notorium nisi per conuictionem aut confessionem in iure fiat manifestum', also fol. 79ra (§20.11).

<sup>71</sup> BUC, *Ambigüité du livre*, p. 353-354, 380-384, 392. Radulphus Niger still awaits a dedicated study.

<sup>72</sup> J. SABAPATHY, *Thinking Politically with Innocent III. Prudence and Providence*, «Thirteenth Century England XV. Authority and Resistance in the Age of Magna Carta. Proceedings of the Aberystwyth and Lampeter Conference, 2013» ed. J. BURTON – P. SCHOFIELD – B. WEILER, Woodbridge 2015, p. 115–136 at 124.

<sup>73</sup> Cf. e.g. also the acknowledgment of disagreement at BNF MS lat. 14524, fol. 76v-78r (§20.4-8, on hidden crimes).

<sup>74</sup> In discussion of this paper at the All Souls College seminar.

recalibration of the right relations within and without that hierarchy and asking how those in positions of power should themselves be disciplined – a wider problem in the period as a whole.<sup>75</sup>

Pressing deeper into the question of correction we find a similarly complex view in relation to issues of status and competence. At several points Courson proposes the view that one should correct in proportion to the talents one has. The question is one of status (right) and skill (ability). So we – unsurprisingly – do find that being a *litteratus* entails greater standards of responsibility in contrast to those who are not *litteratus*. An example is whether one should eat meat on the sabbath in a monastery where you are a guest. Here being *litteratus* is a means of resisting wrong action on the basis of the greater social status one has.<sup>76</sup> One's standing both enables and obligates resistance to the bad custom. But the position is significantly more complex than a mere matter of élite ecclesiastical intellectuals' chauvinistic self-regard. On the one hand Courson is pragmatic. He raises the question whether any private person, even a stupid or uneducated one is bound to correct a wise offender or an earthly prince?<sup>77</sup> Not all private persons are necessarily *necesse* bound to correct, Courson suggests, using the later eleventh-century example of the heretical Berengar of Tours where only Lanfranc's learning was sufficient to refute him.<sup>78</sup> An uneducated person would not have understood the crime. This might seem to support the self-serving model of *litterati* finding reasons for their expertise to be privileged. On the other hand Courson takes the opposite tack. In 12.12 he argues for the role of the simple (*simplices*) to speak out as whistle-blowers. How should priests get around the problem of money-lenders who are protected by rural deans and bishops?

Solution. So that rural deans and bishops may be confounded, this seems to us to be the most profitable advice, that a priest should induce their simple parishioners [*simplices... parrochianos*] by any means to accuse [*accusent*] those who they know to be such [i.e. usurers protected by rural deans and bishops] and if unwilling he can charge them to do this in place of all fasting and penitential satisfaction as he would normally do, so that they shall accuse all such persons and thus these people shall be excommunicated and finally corrected or cut off if they refuse to be

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<sup>75</sup> Scott, *Domination and the Arts*, p. 202-6 is an interesting discussion on the line between acceptable nonconformity and unacceptable defiance in relation to resistance. This line must necessarily be blurred in periods when élites are themselves trying to work out where the line should be.

<sup>76</sup> BNF MS lat. 14524, fol. 88vb (§25.16), fol. 89va (§25.21).

<sup>77</sup> *Ibidem*, fol. 76rb–76va (§20.2–3).

<sup>78</sup> *Ibidem*, fol. 76rb-va. See further R. W. SOUTHERN, *Lanfranc of Bec and Berengar of Tours*, «Studies in Medieval History Presented to Maurice Powicke», ed. R. W. HUNT, Oxford 1948, p. 27-48.

reasonable [*resipiscere*], and that [the *simplices*] should do so can be proven to them thus: “You have to love all your neighbours as yourselves and their souls beyond compare with your bodies, therefore you have to labour by every means for [your neighbours’] correction and they cannot be corrected except by your accusation. Therefore you have to accept this responsibility [*onus*] as a remedy for all your sins, and, as you have to do this and accuse heretics, by the same reason you have to accuse such people who thus devastate the church today as if they were heretics, for just as little foxes eat the whole vine from the root to the top, so too did Samson’s foxes burn the foreigners’ harvest, so the usurers’ poisons will pour onto people of every condition”.<sup>79</sup>

Important questions should be asked of such a precept. Is this ‘divide and rule’? Is this co-option and exploitation? Is this a responsibility (*onus*) being given to *simplices*? Is this a licence to speak out and a power ostensibly given outside of the formal pattern of hierarchy and status?<sup>80</sup> Is it both? It seems too limited to see it simply as exploitation and penetration.<sup>81</sup> These *simplices* are not only held accountable; they are also licensed to hold others responsible. They are free of the distorting power of clerical office that perverts and prevents the rural deans from and bishops from acting as they should. From Courson’s perspective that, presumably, is the reason for empowering them. Clearly such a licence could be appropriated to legitimize local score-settling but that may simply be a necessary cost in the absence of better alternatives. A more complex view of role of expertise and simplicity certainly seems on view here.

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<sup>79</sup> ‘Solutio. Ut confutentur rurales decani et episcopi, hoc nobis uidetur saluberrimum consilium, ut sacerdos simplices in ecclesia parrochianos modis omnibus inducat ad hoc ut accusent quos nouerint esse tales, et si nolunt, loco omnium ieiuniorum et satisfactionum penitentialium quas ei iniungere solet hoc eis iniungat, scilicet ut omnes tales accusent ut sic excommunicentur et tandem corrigantur, uel precipiantur si nolunt resipiscere, et quod istud debeant facere potest eis sic probare. “Uos tenemini diligere omnes proximos uestros sicut uos ipsos, et animas eorum plus incomparabiliter quam corpora uestra, ergo tenemini modis omnibus laborare ad correctionem illorum et non possunt corrigi nisi per accusationem uestram. Ergo tenemini hoc onus suscipere pro remedio omnium peccatorum uestrorum, quia hoc tenemini facere in accusationem hereticorum, eadem ratione in talium accusationem qui sic deuant hodie ecclesiam ac si essent heretici nam tanquam uulpecule uineam totam comedunt in radice et in summitate et tanquam uulpes Samsonis incendiunt messes alienigenarum et uenena suorum fenorum omni hominum conditioni infundunt”. BNF MS lat. 14524, fol. 58rab. Comment in BALDWIN, *Masters, Princes, and Merchants*, I p. 302. This example does pertain to accusation rather than a *fama*-based inquest, but it is the issue of responsibility that is important. On the rural dean: J. GOERING, *The Internal Forum and the Literature of Penance and Confession*, «*Traditio*» 59 (2004), p. 175–227 at 185-186; also re-ed. in W. HARTMANN – K. PENNINGTON at 389.

<sup>80</sup> On the important political semantics of licensing speaking out (versus silencing) see B. LEMESLE, *Viva Voce. Voice and Voicelessness Among Twelfth-Century Clerics*, «Voice and Voicelessness in Medieval Europe» ed. I. R. KLEIMAN, Basingstoke 2015, p. 65–81, esp. 70–75.

<sup>81</sup> See further Given’s argument that lordship, kinship and neighbourhood helped inquisitors break into communities, but ‘it is hard to point to concrete instances where such strains played directly into the hands of the inquisitors’ (‘Inquisitors of Medieval Languedoc’, p. 76, also 82; also e.g. Wickham, *Gossip*, p. 15 on colluding in one’s own exploitation.

Similar things can be said concerning the power of the inquisitor ‘versus’ the solidarity of public opinion. Here one needs to stress the role of ‘the people’ in creating *fama* and legalizing or institutionalizing it.<sup>82</sup> In the lengthy quote from R. I. Moore which I offered earlier it was argued that the machinery of inquisition necessarily strips power from communities. Here again Courson might give pause for thought. A small instance is his example of St Brice, Bishop of Tours (d. 444). Brice, who had a difficult relation with his parishioners, provides an instance of both communal solidarity and the use of *infamia* against the clerical order. Courson gives it as an instance of *infamia facti* – the social projection of *infamia* onto individual, rather than the demonstration of *infamia* in law (*infamia iuris*).

But *infamia facti* is when out of suspicion of some crime that he did not commit someone is rendered *infamis* by slanderers and detractors, as we read in the case of St Brice of whom it was supposed that he knew [carnally] his washerwoman since she would often go to him. Whence he was infamed by the entire people of Tours...<sup>83</sup>

What is interesting about this example is (a) the community here has the power to make somebody *infamis*; (b) *fama*-based inquests rely on this; (c) the community in this instance is wrong. Yet community solidarity is the mechanism needed to make such inquests work. The corollary is that communities are both a necessary and a fallible means of overcoming the *omertà* otherwise surrounding a known or perceived crime, as with the case of the abusive *prepotens*. The issue was how to make use of communities’ own weight for their own good – as Courson would see it.

*Scandalum* then itself is interesting in terms of whose voice it privileges since its existence is often stressed as a function of a community’s perception of it. What is illicit and inexpedient is, partly, a function of the negative moral effects of a community’s scandalization back on itself. The logic here is somewhat circular: ‘whatever I perceive as scandalous is scandalous because thereby my soul is imperilled’. That circularity is nicely captured by Courson:

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<sup>82</sup> ‘[*Infamia*] was a condition in which public opinion and the law met and agreed, the former aiding the latter, and the latter recognising and legitimizing the former’: E. PETERS, *Wounded Names: The Medieval Doctrine of Infamy*, in E. B. KING and S. J. RIDYARD (eds.), «Sewanee Mediaeval Studies», 5 *Law in Medieval Life and Thought*, (1990), p. 43–89 at 86. Moore stresses the active seeking by élites of crimes (*The Formation*, p. 158). This is present, but so too is lay initiative.

<sup>83</sup> ‘Sed infamia facti est quando de suspitione alicuius criminis quod non commisit quis efficitur infamis per maledicos confictores, uel detractores, sicut legitur de beato bricio cui impositum est quod cognouerit quandam lotricem suam, quia consuevit accedere sepe ad ipsum. Unde et coram toto populo turonensi infamatus est...’, BNF MS lat 14524, fols 114vb-115ra (§33.2).

‘The apostolic authority “All things are permitted to me but not all things are expedient” (1 Cor. 6:12) requires discussion. That authority is discussed here for three cases. The first case is on eating food dedicated to idols. The second on the requisition of spoils. The third, accepting expenses from subjects. In these cases the Apostle says “All things [...]” and those things are licit that are without sin, and whatever is without sin is not inexpedient and if it is not inexpedient it is expedient, therefore everything that is licit is expedient. For if you say things are licit and not expedient I then ask how they are not expedient, unless it is in so far as they generate scandal; therefore what generates mortal sin is not expedient, but if they generate or effect mortal sin they are not licit – therefore as they are not expedient so they are not licit.’<sup>84</sup>

Theology empowers communities’ ‘public opinion’ by validating the danger of perceived communal scandalization in relation to clerical (mis)conduct. Courson goes on to discuss at length such cases where communal scandalization affects a cleric’s actions. Here – and elsewhere in the *Summa* – the image is of an isolated clerical figure having to make decisions in the face of a potentially hostile, volatile community.

A pauper from far away comes here before you to hear you pass sentence for him against many rich locals, who will kill you straightaway if you pass sentence forthwith. I ask in such a case whether you as judge should postpone sentencing at the pauper’s expense, since you have come to a clear verdict. For you are confused, since if you sentence you will bring about a scandal amongst many and your own death. If you postpone you will scandalize the pauper and act unjustly towards him. Solution. We say that on no account should you favour someone in judgement and relinquish the truth of justice out of fear of death, but at once you should pass to sentence, especially where you cannot justifiably delay, just as John the Baptist did not delay in speaking the truth though threatened with death, where he said [to Herod], “It is not lawful for you to have your brother’s wife”[Mark 6:18].<sup>85</sup>

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<sup>84</sup> ‘Item disquisitius de illa auctoritate apostolici, ‘Omnia mihi licent sed non omnia expediunt’. Auctoritas illa loquitur in tribus casibus. Primus casus est de comestione ydolorum, secundus est de repetitione spoliatorum, tertius est de acceptione sumptuum a subditis. In hiis casibus dicit apostolus, ‘Omnia mihi licent [...]’ et quecumque sunt licita sunt sine peccato, et quecumque sunt sine peccato, non sunt inexpedientia, et si non sunt inexpedientia, expediunt, ergo hec omnia qui licent expediunt. Si enim dicas quod licent et inexpediunt quero in quo non expediunt, non nisi in hoc quod generant scandalum, ergo quia generant peccatum mortale non expediunt; sed si generant uel efficiunt peccatum mortale, non sunt licita et non licent; ergo sicut non expediunt, ita non licent...’, *ibidem*, fol. 88va (§25.15).

<sup>85</sup> ‘Item aliquis pauper a remotis partibus uenit huc ante te auditurus sententiam pro se contra multos diuites indigenas, qui statim interficient te si incontinenti sententias. Quero hic utrum tu iudex debeas protelare sententiam in dispendium pauperis, cum iam perueneris ad diffinitiuum calculum; quia perplexus es; nam si sententias, scandalum multis et tibi mortem paris; si differs, scandalizas pauperum, et cum eo inuste agis. Solutio. Dicimus quod nullatenus debes accipere personam in iudicio et relinquere ueritatem iusticie pro periculum mortis, sed statim sententiare debes precipue ubi iuste dilationem ferre non potes, sicut iohannes



The solution is unsurprising. More notable is the strong impression not of weak communities and imposing external forces, but of the opposite. The judge hesitates to pass sentence as the public gallery strop their knives. He is the isolated one who disregards community values at his peril. (Below one will indeed see the weakness of Courson's position in the reception granted to some of his conciliar rulings.)

One may imagine some objections. In so far as communities are scandalized it indicates merely that they have already internalized the reformers' normative grid. But in the above example scandalization arises from 'erroneous' community values whose real moral effects on that community still need to be taken into account. The point for Courson was how to minimize that scandalization and whether any absolute considerations should trump that pragmatic concern. In the case of the meat-eating monks the considerations were similar. The stance seems more concerned with theological and pastoral triage than persecution. This is not to suggest Courson, or others, lacked a set of norms they are seeking to institutionalize, but that what is going on is ill-captured by the indiscriminating language of persecution.<sup>86</sup>

Another objection might be that, naturally, reformers such as Courson wish to present themselves as besieged, since this functionally strengthens their sense of group identity and purpose. This may be so, but in the case of the *Summa* strengthening group *Stimmung* was not its purpose; providing practical advice for priests on the ground was. As such Courson would presumably be most interested in worked examples that spoke to experience, rather than merely encouraging a sense of priests under siege.

A further objection might be that such disputes can be read simply and solely in terms of rivalry between reformers and traditionalists: the new ruling ecclesiastical culture seeking to displace its unreformed predecessor. There are no implications for any wider empowering or enabling of the laity, however problematic that may be. The *Chronicle of Laon* might justify such a reading. It describes how Courson 'having been sent by Pope Innocent to preach for a subsidy to the Holy Land through the kingdom of France' held councils where he undertook [*attemptavit*] 'much against the dignity of prelates and the customs of ecclesiastical chapters' (*contra dignitatem prelatorum et consuetudines capitalium ecclesiarum attemptavit*). 'Finally, at

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baptista non distulit uera dicere sub discrimine mortis, ubi ait, 'Non licet tibi habere uxorem fratris tuis.', *ibidem*, fol. 87va (§25.7), corr. with BNF MS lat 3259, fol. 108va-b.

<sup>86</sup> I am grateful to Lesley Smith for pushing me on these points.

Bourges, since they felt themselves to be threatened, they made an appeal and thus they invalidated the statutes and council that he had appointed to be celebrated there (*cum se sensissent gravari, interposuerunt appellacionem et sic statuta cum concilio, quod ibidem celebrare ordinaverat, irritaverunt*).<sup>87</sup> This, we know, prompted a papal jerk on Courson's leash since a rubric for Innocent III's lost Register XVIII indicates that the 1215 letters included 'a certain agreement made through the Lord Pope between R. of St Stephen in Celiomonte on the one side and the prelates and subjects of the Gallican church concerning certain questions between the said parties, those being overturned on account of one side'.<sup>88</sup> A strong aspect of this antagonism clearly resulted from resistance to Courson's reforming agenda. One can go further. Offence at Courson's undermining of prelates' status is clear in the chronicles. A specific criticism, however, was Courson's perceived tendency to privilege the *pauperes* over and above the *potentes*. William the Breton's account of the dispute between Courson and the French prelates is worth stressing here. In William's account, the rich (*divites*) declined to take up the cross because Courson and his preaching team had crossed so many people of lesser status people *indifferenter* – 'the small, the old, women, the lame, the blind, the deaf, the leprous' (whom we might especially note).<sup>89</sup> Courson's group's sermons

seemed to want to please the people [*populo*] rather than to be necessary, they defamed [*diffamabant*] the clergy, calling them shameful, and misrepresenting them before the people for their way of life, and thus sowing the basis for scandal and schism between the clergy and the

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<sup>87</sup> A. CARTELLIERI – W. STECHELE (ed.), *Chronicon universale anonymi Laudunensis vom 1154 bis zum Schluss (1219)*, Leipzig – Paris 1909, p. 78-79. Cf. the *Chronicle of Auxerre* continuation for 1215, where because of Courson's temerity [*temeritatem*] 'he had made himself hateful to everyone until finally he called a Council at Bourges. Then the bishops of France appealed, fearing the zeal [*impetum*] of this immoderate [*improbi*] man – who afterwards returned in returned to Rome for the general council in exceeding confusion, so that the lord Pope asked the prelates of France to moderate [*relaxari*] the many excesses [*multiplikes excessus*] of the said Cardinal', O. HOLDER-EGGER (ed.), *Roberti canonici S. Mariani Autissiodorensis Chronicon*, Monumenta Germaniae Historica, Scriptorum, XXVI, p. 280. Cf. also J. STEVENSON (ed.), *Radulphi de Coggeshall Chronicon anglicanum*, Rerum Britannicarum medii aevi scriptores (Rolls Series), LXVI, London 1875, p. 170 for Courson's insolent (*insolentius*) conduct in France and his sharp reproof by Innocent III.

<sup>88</sup> '...quedam ordinatio facta per dominum papam inter R. tituli sancti Stephani in Celiomonte ex parte una, et prelatos et subditos ecclesie Gallicane super quibusdam questionibus inter dictas partes vertentibus ex altera', A. THEINER (ed.), *Vetera monumenta slavorum meridionalium historiam illustrantia*, I, Rome 1863, p. 65 #51.

<sup>89</sup> '...et multos cruce signabant indifferenter, parvulos, senes, mulieres, claudos, cecos, surdos, leprosos', H. F. DELABORDE (ed.), *Oeuvres de Rigord et de Guillaume le Breton. Historiens de Philippe-Auguste*, Société de l'histoire de France, CCX and CCXXIV, 2 vols, Paris 1882–1885, I p. 303.

people. Because of this and because of other complaints both the King and the whole clergy appealed to the apostolic see against this legate.<sup>90</sup>

The negative perception of Courson as favouring people against clergy is consonant at least with the stance Courson took, I suggest, to *fama*-based inquests necessitating the participation and involvement of the populace rather than simply coercing and penetrating them.

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What implications might any of this have? One answer is very little. Courson is a single individual whose positions were plainly not accepted by French ecclesiastics generally whose resistance prompted Innocent to pull rank on his crusading cardinal. The *Summa* is a theoretical text. If one looks at Courson's legislative actions or his involvement in the Albigensian crusade the picture is far more straightforward. No clearer demonstration of Courson's commitment to a persecuting society is needed, one might argue, than his personal instructions to destroy Morlhon in May 1214 after its surrender, or his July 1214 letter confirming Simon de Monfort's ownership of land in Cahors, Agen, Rodez, and Albi, at Raymond VI's expense.<sup>91</sup> One might even argue that Courson's interest in community opinion was part of his same 'unreconstructed' attitude that declined to reject the ordeal's community judgement as unacceptable.

A second answer might suggest that this is to go too far too fast. Courson's practical influence and that of his theologian collaborators is clear enough on numerous aspects of Lateran IV.<sup>92</sup> That he stirred up debate and anger indicates not that he was an irrelevant hardliner, but that there were important issues here that different groups disagreed about. Further, his attitude towards *fama*-based inquests cannot be unreconstructed if these themselves are a novel development. Importantly the regulation itself is wary of the box it is opening. The ambivalent nature of *fama*-based inquests as they (re-)appeared in Lateran IV canon eight points to a quality of thought regarding *inquisitiones* that runs parallel to Courson's own attitude. Dependence on *public* perception of scandal was a clear part of canon eight where it remained both necessary and a source of anxious discomfort. Its qualifying clauses about how to handle allegations against

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<sup>90</sup> 'quibus videbantur velle placere populo plusquam necesse esset, diffamabant clerum, turpia dicentes et confingentes coram populo de vita eorum, et ita inter clerum et populum materiam scandali et schismatis seminabant; propter que et propter quedam alia gravamina tam rex quam clerus universus, contra ipsum legatum, sedem apostolicam appelaverant', *ibidem*, I p. 303–304. None of Courson's sermons have been identified.

<sup>91</sup> SIBLY – SIBLY, *History of the Albigensian Crusade*, p. 213 (§513), 234–5 (§523) and note.

<sup>92</sup> BALDWIN, *Masters, Princes and Merchants*, I p. 315–343; BIRD, *Wheat and the Tares*.

clerics are notable. When a repeated rumour of clerical *excessus* has reached an ecclesiastical superior's ears from reliable sources, then he should seek out the truth. But proceeding against suspected prelates requires exceptional care – 'lest with the columns being shaken the building itself collapses' – since prelates' obligation to reprimand may spark revenge rumours against them. In general in proceeding against clerics, 'in all things let scrupulous care be taken, lest somehow a serious loss comes about for a trivial gain'.<sup>93</sup> There is a strong sense of both the necessity and the risk of this method of proceeding. This tension seems to me to be a far wider concern in a period when any extension of authority necessarily entailed a delegation of control over it.<sup>94</sup>

So without discounting the hard, sharp, attitude of Courson in relation to heresy in the Languedoc or elsewhere, we may ask whether the shorthand of the formation of a persecuting society sufficiently captures the complexity of what was at work here. There are a number of things one might want to think further about in extending such an exercise.<sup>95</sup>

One would be the very complex kinds of pragmatic compromise between heretical elites and inquisitors that Jörg Feuchter has shown at work in Montauban.<sup>96</sup> One would to extend this and perhaps think with Ian Forrest's suggestions regarding how ecclesiastical authority and local (lay) élites interacted to produce a codependent evolution of their power and status.<sup>97</sup> Forrest's dialectical model of the complementary self-interest of lords' and leading tenants' assertion of power in localities seems distinct from but interesting in relation to the approach Courson, it is suggested, developed.<sup>98</sup> Here Forrest has developed a highly granular picture of the 'communities' that in this essay have remained somewhat schematic. One might also want to

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<sup>93</sup> '...ne concussis columnis corruat edificium' (cf. Judges 16:30); '...in omnibus diligens adhibeatur cautela, ne forte per leve compendium ad grave dispendium veniatur', *Conciliorum oecumenicorum generaliumque decreta*, II/1 p. 171, 172.

<sup>94</sup> For some aspects see SABAPATHY, *Officers and Accountability*.

<sup>95</sup> See the call for more work also in MOORE, *The Formation*, p. 186–187.

<sup>96</sup> FEUCHTER, *Ketzer, Konsuln und Büßer*.

<sup>97</sup> I. FORREST, *Power and the People in Thirteenth-century England*, «Thirteenth Century England XV. Authority and Resistance in the Age of Magna Carta. Proceedings of the Aberystwyth and Lampeter Conference, 2013» ed. J. BURTON – P. SCHOFIELD – B. WEILER, Woodbridge 2015, p. 17–34 at 30–33.

<sup>98</sup> *Ibidem*, p. 27; and on visitation I. FORREST, *The Transformation of Visitation in Thirteenth-Century England*, «Past and Present» 221 (2013) p. 3–38. Though are particular aspects of the latter one would want to explore: the model is bottom-up as much as top-down; learning is less important; and intrusiveness is principally by the state, with the church following on behind (p. 14–16). The role of intellectuals and the church by contrast seem important aspects of the Courson story offered here.

think hard more generally about the role of intellectuals *qua* intellectuals in this process in potentially mediating perspectives from *de bas en haut*. This mediation from lower social levels to higher social levels is of course the model Antonio Gramsci suggested that ‘organic’ intellectuals adopted: those intellectuals who themselves have come from outside an established, traditional intellectual cadre but who assimilate ideas from their own lower status groups upwards into the emerging dominant models that they themselves form.<sup>99</sup> It may well be time to think again about Gramsci in this light, as a number of scholars of intellectuals, religion and heresy have recently suggested.<sup>100</sup> James Scott’s more recent work would also be useful to think further with. Could Courson’s *Summa* be usefully thought of as an attempt to see like a state? Might it be usefully thought of as an example of that ‘imperial knowledge’ which seeks to socially engineer through universalizing generalization, or rather as a species of that ‘practical knowledge’ (*mētis*) that Scott thinks typifies non-state groups producing their own vernacular solutions to social or political problems?<sup>101</sup> Some historiography might suggest the former; this essay might appear to suggest the latter. Courson’s *Summa* in fact might better be seen as collapsing some of the boundaries between those two polarized types. Here we need harder thought too about how the patterns and self-legitimations of such applied thought established themselves as legitimate; how they routinized themselves. On this there has been provocative work on how other parallel sources of practical (governmental) thought have created their own self-legitimizing *habitus* in the Middle Ages.<sup>102</sup> Can equivalent analyses be conducted for how practical pastoral literature like Courson’s works; or how inquisitorial *habitus* develops?<sup>103</sup>

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<sup>99</sup> Q. HOARE and G. NOWELL SMITH (ed.), *Selections from the Prison Notebooks of Antonio Gramsci*, New York 1971, p. 5–23.

<sup>100</sup> J. L. NELSON, *Organic Intellectuals in the Dark Ages?*, «History Workshop Journal» 66 (2008), p. 1-17; BILLER, *Intellectuals and the Masses* at p. 335–336.

<sup>101</sup> J. C. SCOTT, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven 1998, esp. p. 309–341.

<sup>102</sup> U. KYPTA, *Die Autonomie der Routine. Wie im 12. Jahrhundert das englische Schatzamt entstand*, Göttingen 2014 makes the most interesting maximalist case for the autonomous agency of unplanned institutional practice (as oppose to intentional human agency) that I know of. She argues that low-level scribal and bureaucratic practice drove the Exchequer’s own evolution incrementally and that royal/ministerial policy had nothing to do with it. Cf. J. SABAPATHY, ‘Book Review: Ulla Kypta, *Die Autonomie der Routine. Wie im 12. Jahrhundert das englische Schatzamt entstand*, Göttingen 2014’, «German Historical Institute London Bulletin», 38/1 (2016), p. 24–30, forthcoming.

<sup>103</sup> On the latter see e.g. L. SACKVILLE, *Heresy and Heretics in the Thirteenth Century: The Textual Representations*, Woodbridge 2011.

This emphasis on changing intellectual practices raises the need for better chronologies of such developments. If we cannot recover the *homo academicus* of Paris 1215 or before in the way that sociological anthropologists have been able to for Paris 1968, it is plain enough from Courson's *Summa* alone that this cadre was not a unified and monolithic category.<sup>104</sup> We need to think harder about how multiple groups of intellectuals developed agendas of lay agency over time; and how their agendas did or did not gain purchase in practice, and where. Jean-Claude Schmitt has suggested that a Dominican of a later generation, Humbert of Romans (d. 1277) saw clerical *majores* and lay *minores* as two biologically different species. Humbert, and others, had low expectations of his laity's capabilities.<sup>105</sup> Courson seems not to have thought like this. An important question then is how far did this low threshold become fixed; how was any transition made from one style to another – or others? A greater sense of intellectuals' differentiated positions is needed – organic, traditional, or otherwise; and a greater sense of granularity in trying to understand how positions rose, fell or were transformed. On the adjacent question of visitation, for instance, Forrest has suggested that it was only relatively late, *c.* 1250–1300 or 1275–1300 that ecclesiastical concern with *lay* morality as oppose to clerical morality became articulate in England, with the laity's voice being similarly heard in such contexts only quite late.<sup>106</sup> In all these particular cases we need to think more about this. It is not enough to invoke a persecuting society as a 'somewhat mystical reference to *représentations collectives*', a risk that the model now seems to run.<sup>107</sup>

I set aside those wider considerations to reiterate my main points. Theology and canon law, as used by Courson and in Lateran IV canon eight, do seem to enable lay communal groups and individuals within *fama*-based inquests – however problematically, however circumscribed – because of the need to circumvent absent accusers through use of *infamia*. The risk of communities' perception of *scandalum* likewise empowers communities. It acknowledges

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<sup>104</sup> For 1968, P. BOURDIEU, *Homo Academicus*, tr. P. COLLIER, Cambridge 1988.

<sup>105</sup> For Humbert, J.-C. SCHMITT, *Le Corps, les rites, les rêves, le temps. Essais d'anthropologie médiévale*, Paris 2001, p. 126 and 115, 124–126 more generally and also A. MURRAY, *Religion Among the Poor in Thirteenth-century France: The Testimony of Humbert de Romans*, «Traditio», 30 (1974), p. 285–324 esp. 295–300, 317, 320 on expectations of the laity. For the earlier thirteenth century J. BIRD, *The Construction of Orthodoxy and the (De)construction of Heretical Attacks on the Eucharist in Pastoralia from Peter the Chanter's Circle in Paris*, «Trials and Treatises: Texts and the Repression of Heresy in the Middle Ages», (ed.) P. BILLER and C. BRUSCHI, Woodbridge 2002, p. 45–61.

<sup>106</sup> FORREST, *Transformation of Visitation*, p. 12, 21–22, 25–26, 27–9, 34–35.

<sup>107</sup> MOORE, *The Formation*, p. 101 also 142, *pace* 186.

variation, custom and some degree of relativity in relation to what most risks damaging a particular community on Courson's account (though absolute values may always trump such considerations). Courson illustrates the practicalities and limitations of this approach just as ideas of *fama*-based inquests were being experimented with in practice, sometimes with Courson's direct involvement. Lateran IV canon eight explicitly acknowledges the role of *infamia* and *scandalum*, and the risks of licensing criticism against prelates and clerics. Communities, on this account, are not simply objects that are coerced to be accountable, but are also licensed with a responsibility, one which could be directed against clerics. *Inquisitio* then did not *simply* give the clergy the power to hold to account; it *had* to license responsible speech and action by the laity to work at all. It could, of course, be used coeively by clerics, but it is too 'optimistic' to assume that *as a technique* it gave to secular or ecclesiastical powers the wide-ranging and untrammelled powers that some historians have argued. Inquisition enabled power from the bottom to meet power from the top and for both to appropriate the openings the other afforded.