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Andrew P. ROACH

University of Glasgow

Maja ANGELOVSKA-
PANOVA

Institute of National History
- Skopje

**PUNISHMENT OF
HERETICS: COMPARISONS
AND CONTRASTS
BETWEEN WESTERN AND
EASTERN CHRISTIANITY
IN THE MIDDLE AGES***

There is much to be learned from the way in which a society seeks to limit the choices of its members, particularly in the contentious field of religion. Medieval Europe is a good case in point, because at first sight the ideological blanket of 'Christendom' thrown over the continent disguises both the diversity of belief and the responses to that diversity. Theoretically the medieval Christian Church was a monopoly based on exclusive interpretation of the Bible through the works of the Church fathers and the legislation of Councils. On the ground the Church was a patchwork of competing monasteries, parish churches and shrines, while the defining moment which seemed to guarantee its monopolistic status, its adoption as state religion by the Roman empire had evolved into a number of fluctuating relationships with a variety of secular entities from city communes to kings and emperors. Given that there has been much study of the treatment of religious dissidents in the West, stemming from its eventual institutionalization as 'the Inquisition', there has been surprisingly little comparison of the punishment of heretics across the continent, all the more so considering that the divide between 'Catholic' and 'Orthodox' was by no means

decisive for much of the period and that both confessions drew from a common heritage.¹

That heritage was both religious and legal: the Church in late Antiquity faced significant challenges from Manichaeans and Donatists and against them was assembled a body of Roman law dependant on the codes issued by Theodosius (408-50) and Justinian (527-65).² It was only at this point that eastern and western traditions diverged. Whereas the relatively strong centralized government in Constantinople continued to enforce a degree of religious uniformity, notably during the ebb and flow of the iconoclast controversy, in the West the relative decline of centralized institutions allowed a degree of local autonomy. In Byzantium and the West however, there were few signs of organized heresy possibly because in both regions the Church remained relatively distant from the laity. This situation changed between the tenth and fourteenth centuries with the emergence of the Bogomil heresy in the East and the Cathars and other dissidents in the West. The aim of this article is a comparison of the ways in which diversity was turned into deviance and how the material and spiritual consequences of individuals' and communities' religious choices were better defined. Two rather different models of religious authority emerge in the process.

The first relevant source on punishing heretics within the period is the letter by Patriarch Theophylact from Constantinople (933-956) sent to the Bulgarian Tsar Peter (927-969). The letter contains data pertaining to the specific request made by Tsar Peter regarding how to

*The authors wish to thank Dr. Jonathan Shepard, Prof. Dr. Antonio Rigo and Dr. Stuart Airlie for their helpful suggestions and comments on earlier drafts of this article.

¹ For the West see below nn. 33, 64. For the East see Averil Cameron, 'Enforcing Orthodoxy in Byzantium', *Discipline and Diversity*, eds. Kate Cooper and Jeremy Gregory (Woodbridge: Boydell, 2007) Dimitar G. Angelov, 'Power and Subversion in Byzantium: approaches and frameworks' in Dimitar G. Angelov (ed.), *Subversion in Byzantium* (forthcoming 2012); Andrew P. Roach, 'Bogomils' in D. Jones, *Censorship: a world encyclopedia* (London: Fitzroy, Dearborn, 2001), 3 vols. Vol. 1, 258-9. One recent comparative study is Angeliki Konstantakopoulou, 'Repentant or dead: East and West attitudes towards late-medieval heretics', *Средновековна християнска Европа: Изток и Запад ценностни, традиции, общување* (Гутенберг, 2002), 456-74.

² For measures against heresy in late Antiquity see Elizabeth A. Clark, *Reading Renunciation: Asceticism and Scripture in Early Christianity* (Princeton University Press, 1999); Averil Cameron, 'The violence of orthodoxy' in *Heresy and Identity in Late Antiquity*, ed. Eduard Iricinschi and Holger M. Zellentin (Tübingen: Mohr Siebeck, 2008), 112.

treat the heretics, which scholars have usually identified as Bogomils, when punishing them. Patriarch Theophylact lists three categories to be used in determining the appropriate treatment for repentant heretics: firstly, those who taught doctrines alien to those of the church, if they repented could be rebaptized in accordance with Canon 19 of the Council of Nicaea (325).³ Secondly, those who were led astray by the former and were seduced, not by weakness, but by their own simplicity and guilelessness, were to be confirmed like children. Those in the third rank, who neither taught nor learnt nor participated, but in ignorance had unsuspectingly united with the heretics because they appeared ascetics and good and religious men, and who perhaps had spent some time with them to hear more completely about the heresy, were to be taken back into the Church after 'separating' (*ἀφορισθέντες*) them for four months to ensure their conversion was genuine, which perhaps implies a formal penitential procedure.⁴ Taken as a whole, two features clearly stand out from Theophylact's advice: firstly, he implies that a significant number of the heretics are from within the Church: priests who taught heretical doctrine are to lose their status, but other priests who showed an interest in the heretics are not. Secondly, Theophylact distinguished what Peter could do, from what he ought to do and in doing so revealed much about the initial Byzantine mindset in dealing with heresy. The patriarch stated that the laws of a Christian state prescribed death for the unrepentant, but that it was not right, nor fitting for the Church's reputation, nor for the patriarch's that they should be enforced and that the chance of repentance should be given. As Wazo of Liège was to do in the West a century later (see below), he advocated spiritual penalties.

The chief of these was the anathema, the most severe form of excommunication, but not irreversible. Theophylact tempered his punishment to the situation. Even more importantly from a Byzantine point of view, Bulgaria was distant and the heretics described had low social status and presented no serious danger for the Empire; Theophylact could afford a relaxed stance in accordance with the current

³ Norman P. Tanner, *Decrees of the Ecumenical Councils*, 2 vols. (Georgetown: University Press, 1990), vol. 1, 15.

⁴ Ivan Dujčev, 'L'epistola sui Bogomili del patriarca Costantinopolitano Teofilato' in his *Medioevo Bizantino-Slavo*, 3 vols. (Rome: Storia e Letteratura, 1965), vol. 1, 311-15. It is translated in *Christian Dualist Heresies in the Byzantine World*, ed. Janet Hamilton and Bernard Hamilton (Manchester University Press), 98-102.

policy of *oikonomia*.⁵ The anathema as a form of punishment was more spiritual in character and it was intended to have a psychological and didactic influence on the individual. It was used in both East and West: Theophylact's words find echoes in canon 3 of the Fourth Lateran Council of 1215. But whereas in the East it was left as a warning to the recipient that they were beyond the law and that potentially any coercive action from any source was licit, in the West it was increasingly the prelude to a defined procedure.

Matters were different when heresy was identified closer to home, as it was in the reign of Alexios Komnenos (1081-1118). Two illustrative examples are the case of John Italos⁶, a leading intellectual and founder of the study of dialectics and history of philosophy in Constantinople who believed in metempsychosis, but ridiculed icons, and the case of Patriarch Eustathios Garidas (1081-84), who was intrigued by Italos's philosophical theology and exegesis. Italos's teaching was anathematized at the synod of 1082 and Eustathios was forced to resign two years later when a mob arrived at the Church of Hagia Sophia.⁷ The emperor took a personal interest in the prosecution of the first by appointing his brother to investigate and may have also have been behind the fall of the second who was seen as too close to his political rivals. These early actions may have been as much about announcing a change of political climate as about eliminating threats to the faith.⁸ A far more potent threat was identified in the early years of the twelfth century. Anna Komnena stated that "word of Bogomilism was spreading everywhere and the evil like a fire destroyed many souls." The monk Basil, who had "12 students he calls Apostles" was the dominant personality in spreading the "Bogomil atheism."⁹ It was no coincidence that Alexios I Komnenos "put aside a great deal of his

⁵ Konstantakopoulou, 'Repentant or dead', 458; Maja Ангеловска-Панова, *Богомилството во духовната култура на Македонија* (Аз-Буки, Институт за старословенска култура, 2004), 26.

⁶ Николай Цв. Кочев, *Християнски философи във Византия V-XI век* (София 2005), 167-181.

⁷ Maja Angelovska-Panova, "Food, Drink and Heresy", *Proceeding of the International Congress on Traditional Culture-Link in the Integration of the Region* (Mostar, 2011), 26.

⁸ Angelov, 'Power and Subversion'.

⁹ Annae Comnenae, *Alexiades*, lib. XV, 8 ed. J. Schopen-A. Reifferscheid (Bonn, 1839), 351-352. Trans. as *The Alexiad of Anna Comnena* by E. R. A. Sewter (London: Penguin, 1969), 496-99.

concerns in the East and West, and directed his attention towards spiritual concerns".¹⁰ As Jonathan Shepard has pointed out: "The role of guardian of religious orthodoxy was axiomatic of any *basileus*. Yet Alexios went to extraordinary lengths to establish a personal reputation for himself as the castigator of religious error".¹¹

Alexios's strategy involved the pretence that he was inclining to heresy and eventually persuading Basil to explain his full teaching. It is not clear whether Alexios's ruse was accompanied by repressive measures with the aim of identifying other leaders and annihilating the heresy completely. It is safe to say only that the actions undertaken by Alexios I Komnenos were considered part of his imperial duty to protect his subjects from religious deviance. Alexios's tactics which lacked recent precedent in Byzantine experience do suggest that he was influenced by older penalties laid down for treason. Anna Komnena stresses that Alexios was dealing with the enemy within by reference to Basil's influence 'in the greatest houses' and in some ways there are similarities with the treatment of Arnold of Brescia in Rome by Adrian IV some fifty years later, not least because in both cases the heresiarch was personally known to the emperor and pope respectively. In both cases the secular and religious arms of government moved in close cooperation to deal with an intimate enemy. Anna relates how Alexios called an assembly of leading secular and religious officials to condemn Basil's teaching and he then employed both burning and imprisonment as a penalty for Basil and his supporters. It would be useful to know more details about the 'prison of maximum security' in which the heretics languished for a long time until their death, to gauge Byzantine commitment to long term punitive imprisonment which does seem to prefigure inquisition practice in the West.¹² Before Alexios's final decision to send them to the stake, he offered Basil and the rest of the heretics the chance to convert to Orthodoxy. As the *Alexiad* put it: "To-day two pyres shall be built, and by one a cross will be fixed in the ground. Then you are given a choice. All those who want to die today in the Christian faith should separate themselves from the others and approach the pyre with the cross, while those who adhere to the Bogomil

¹⁰ *Ibidem*.

¹¹ Jonathan Shepard, "Hard on heretics, light on Latins: the balancing-act of Alexios I Komnenos" *Travaux et Mémoires* 16, *Mélanges Cécile Morrison*. (Paris: Association des Amis du Centre d'Histoire et Civilisation de Byzance 2010) 765.

¹² *Alex. lib. XV, 8*; Sewter, 500, 502, 504.

heresy shall be thrown on the other. It is better for those who are Christians to die than to live and be persecuted as if they were Bogomils, and outrage the consciences of many. Go then, and let each of you approach which pyre he chooses"¹³.

Basil displayed conspicuous bravery and spiritual strength, a man "ready to step into fire and die a thousand times over, and not renounce his faith". Despite her antagonism towards Bogomilism, Anna Komnena could not remain indifferent to Basil's heroism. "He," she wrote, "could not be made to waver, he was a true Bogomil." These dramatic events culminated with the act of execution itself. The decision to burn Basil's cloak first may be attributable to the executioners' nervousness at creating a potential martyr. What is not in doubt is that compared with previous heretics, Basil was treated not just as a dangerous religious preacher but also as a conspirator against the emperor and state security.¹⁴

By actually burning heretics Alexios employed the powers which Theophylact had advised were available to rulers faced with heresy, but that they should not use. Burning had a long history by the twelfth century and was a punishment used for crimes against the social order. In the classical age it still had associations with sacrificial offerings to the gods. It was used as a punishment for a range of crimes including homosexuality, slaves plotting against their masters, sacrilege, military desertion, arson, coin forgery and particularly, treason.¹⁵ By contrast, heresy was not an offence specifically punishable by burning, although it

¹³ Alex., lib. XV, 9; Hamilton, *Christian Dualist Heresies*, 178.

¹⁴ Димитар Ангелов, *Богомилството* (София, 1993), 320.

¹⁵ Eva Cantarella, *I supplizi capitali in Grecia e a Roma* (Milan: Rizzoli, 1991), 223 (homosexuality), 236-7 (expiatory sacrifice). *Corpus Iuris Civile: Digesta* ed. Theodor Mommsen, 16th edn. (Berlin: Weidmann, 1954). The following are from Lib.48. Sacrilege 13,7 (page 858); deserters 19 [De Poenis], 8, 2 (865); slaves [petty treason] 19, 28, 11 (868); arsonists 19, 28, 12 (868); Title 4 (844) (treason; no specific penalty, but equated with sacrilege). *Theodosiani Libri XVI cum constitutionibus sirmondianis*, ed. Theodor Mommsen and Paulus Krueger, 2 vols. (Berlin: Weidmann, 1954). Coin forgers, vol. 1², Lib. 9, 21, 5 (431); Heretics Lib. 16, 5 (the main penalties are fines, exile and confiscation of property. More extreme was branding and for slaves, forced labour). See also M. Bévenot, 'The inquisition and its antecedents, III', *Heythrop Journal*, 8 (1967), 60. However, the *Codex Iustinianus*, ed. Paulus Krueger (Berlin: Weidmann, 1959), 1, 5, 8 (52) citing a decree of 455 urges an unspecified death penalty for teachers of heresy and then adds that their books should be burnt 'ut facinorosae perversitatis vestigia ipsa flammis ambusta depereant,' which would seem suggestive at the least.

was a capital crime. By burning Basil and his followers Alexios seems to have achieved that conflation of heresy with treason achieved in the West by Pope Innocent III in 1199 through *Vergentis in senium*.¹⁶

Alexios did not confine himself to repression. He also undertook didactic measures. He mobilised priests from the church of Hagia Sophia in Constantinople who were to teach the people about the true faith and warn them of the repercussions of involvement in heresy.¹⁷ His actions can be summarized as being effective and occasionally militant – he exercised his authority through the patriarchs and bishops, and used the synod for sentencing people to prison and, when the crisis demanded, to burning at the stake.

Discoveries of alleged Bogomils continued throughout the following century, especially during the reign of the Emperor Manuel I Komnenos (1143–1180) who was himself intrigued by the teaching. However, after he overcame the temptation and returned to Orthodoxy, he gave an order "to purge the whole flock of all that Bogomil heresy and those that abide by the holy dogmatists from their heart, let them be a part of the chosen flock, and those that do not ... let them be driven far away from the Orthodox flock".¹⁸ The excommunication of individuals from the society was not the only punishment that Manuel had undertaken against the heretics. Theodore Balsamon, the canon lawyer, reported that a number of Bogomils were burned at the stake.¹⁹ He also stated that "whole villages and fortresses" were inhabited by heretic Bogomils.²⁰ However, Hugh Eteriano, the Italian theologian based in Constantinople, thought that Manuel was not doing enough and his *Contra Patarenos* included a plea to the emperor to root heretics out by hanging and fire, punishments

¹⁶ Walter Ullmann, 'The significance of Innocent III's decretal "Vergentis" in *Etudes d'histoire du droit canonique dédiées à Gabriel le Bras*, 2 vols. (Paris: Sirey, 1965), vol.1, 729-41.

¹⁷ Hamilton, *Christian Dualist Heresies*, 39; Andrew P. Roach, *The Devil's World. Heresy and Society, 1100-1300* (Harlow: Longman, 2005), 64.

¹⁸ Добрила Миловска, Јован Таковски, *Македонската живијна литература IX-XVIII*, (Скопје, 1996), 137.

¹⁹ Milan Loos, *Dualist Heresy in the Middle Ages*, (Praha, 1974), 98-99.

²⁰ Dimitri Obolensky, *The Bogomils: a study in Balkan neo-manichaeism* (Cambridge: University Press, 1948), 229. See also Peter Petkoff, 'Heresy, Orthodoxy and the interaction between canon and civil law in Theodore Balsamon's canon and civil law in Theodore Balsamon's Commentaries in Andrew P. Roach and James R. Simpson (eds.), *Heresy and the limits of Orthodoxy in medieval and modern perspectives* (forthcoming 2013).

reminiscent of those inflicted on Arnold of Brescia.²¹ The beginning of the thirteenth century saw action taken against the Bogomils in Bulgaria. In a synod held in 1211 in Trnovo on the initiative of the Bulgarian Tsar Boril (1207–1218), presented himself as “incited by divine motives” in his fight against the heretics. However, Boril confined himself to the use of anathemas such as: “And to all those who support that heresy, to their customs, their nightly gatherings and sacraments and their useless teaching, as well as to those who accompany them, anathema,” or: “To those who reject and mock the Communion with the holy body of our Lord Jesus Christ, and also reject the entire Sacrament done by Jesus Christ our Lord for our own salvation, anathema.”²² Boril’s aim was a comprehensive statement of who was and was not part of his political community. Besides heretics, he anathematized those who aided thieves, robbers and murderers and those who made spells and picked fruit on midsummer day, reminiscent of pagan ritual.²³

In the Western Balkans in Serbia, Stefan Nemanja also legislated rigorous action to suppress heresy. Around 1180 he convened a synod in which the heretics were accused of “blaspheming the Holy Spirit”, of “dividing the indivisible divinity, as the mindless Arius used to speak” and of “serving the apostate from the glory of God, the very Satan himself”.²⁴ The leader of the group of heretics, generally taken to be Bogomils, had his tongue cut out. His followers were executed or exiled and their books were publicly burnt.²⁵ There are strands of imperial thought in the way that the ruler safeguarded the spiritual welfare of his subjects and also an awareness of the methods of propagation of heresy through speech and writing. Although powerful enough to order executions Nemanja also made the symbolic gesture, using burning, but not of people, probably a conscious imitation of Justinian’s legislation against heretics.²⁶ His son, Sava, the archbishop of Peć, changed tactics

²¹ Hugh Eteriano, *Contra Patarenos*, eds. Bernard Hamilton, Janet Hamilton and Sarah Hamilton, (Leiden: Brill, 2004), 155,177. Yuri Stoyanov, *The Other God*, (Yale University Press, 2000), 182.

²² *Борилев Синодик* издание и превод Ивац. Божилов,, Ашиа-Мария Тотоманова, Иван Биларски, (София, 2010); (English translation, 337-377). 122, 125, 344, 345.

²³ *Борилев Синодик*, 122,146, 344, 351.

²⁴ Драголџуб Драгојловић, Вера Аптик, *Богомилството во средновековната изворна граѓа*. (Скопје, 1978), 117.

²⁵ Andrew P.Roach, "The Competition for Souls: Sava of Serbia and Consumer Choice in Religion in the Thirteenth Century Balkans". *Гласник на ИНИ*, год.50, бр.1 (2006), 152.

²⁶ See above n.14.

completely at the synod in Žiča in 1221. Penitent heretics, both Bogomil and Latin were to be enticed back into the Church through baptism and confirmation respectively, even through gifts for the nobility. Sava’s “exarchs” preached the Orthodox faith and only obstinate heretics were to be driven from their lands (and the lands presumably confiscated). In its leniency it provides a distinctive approach to heresy, perhaps even harking back to Theophylact, but the structure of action being taken at the behest and under the control of a churchman looks to have Western precedents, notably Fourth Lateran itself, while expulsion and confiscation of lands resembles the tactics used in the Albigensian Crusade in southern France. Sava’s role as a charismatic preacher to mixed audiences also resembles the approach of his contemporaries, Dominic or Francis of Assisi in the West.²⁷

There is relatively little further evidence for almost a hundred years until the legislation of Stefan Dušan (1331-1355), who ruled over Serbia and much of the Western Balkans. In order to strengthen his rule, Stefan Dušan summoned an assembly in Skopje in 1349 where the law Code which bears his name was adopted. It represented a synthesis of Byzantine legal experience and Serbian common law and several clauses dealt with penalties for heretics: “If any heretic be found to live among the Christians, let him be branded on the face...” or, “who so utters (perhaps only in the sense of discussing) a heretical (‘babun’) word, if he be noble, let him pay 100 perpers, and if he be a commoner, let him pay twelve perpers and be beaten with sticks.”²⁸ As so often, Dušan innovated even as he sought imperial precedents. Fines for heresy had little precedent in the Byzantine world and those that Dušan set out were considerable. The quasi-imperial nature of the penalties is entirely in keeping with Dušan’s ambitions and has clear Roman precedents from Theodosius and Justinian.²⁹ As ever with Dušan’s code, questions remain as to whether his measures were enforceable or whether that was even his intention. There are no further records of him taking action against heresy.

Bogomil religious ideas may also have infiltrated Mount Athos - the cradle of monasticism within the Orthodox world in the fourteenth

²⁷ Roach, ‘Competition’, 152-3.

²⁸ *Законик цара Сефана Душана, књ.1 Струшки и атонски рукопис*. уредник Мехмед Беговић (Београд 1975), 184. English translation. Malcolm Burr, ‘The Code of Stephan Dushan’, *Slavonic and east European Review*, 28 (1949), 198-217, 516-39. Arts. 10, 85. Cf. Fines, *Codex*, 1, 5, 8 (52).

²⁹ *Libri Theodosiani*, 16,5,21 (862); *Codex*, 1, 5, 8 (52).

century. Church authorities reported to the Holy Synod that there were Bogomils who repudiated the cults of the icons, baptism and the Eucharist.³⁰ Their presence may have been due to the nun Irina of Salonica, whose preaching attracted a number of monks from Mount Athos according to the Life of Saint Theodosius of Trnovo. Bogomilism is said to have been present on the holy mountain for three years, and the monk heretics were discovered, anathematized and exiled, and so most of them went to Constantinople, Salonica and Ber.³¹

The analysis of the relevant source materials suggests that the actions of the Orthodox church aimed at a number of goals which were not always compatible. There seems real confusion in dealing with a systematic challenge to Church doctrine and organization, so that Theophylact's strategy seemed inadequate and that of Alexios Komnenos and Stefan Nemanja heavy handed and perhaps counter-productive. Unlike the West, the Byzantine world did not have to "re-discover" Roman law it was in force throughout the period, yet it was in fact relatively little used and gave rise to nothing like the elaborate machinery of enforcement which evolved within Catholicism. Another way of looking at the strategy is that Orthodox rulers and churchmen sought to deny influence to heresy. They maintained the purity of the centre, whether it was Constantinople, Athos or Skopje and took action when dissent was discovered there, but they were relatively relaxed about enforcement of conformity in more remote regions.

In the legislation which has come down to us from the Orthodox sphere punishment is more prominent than penance, but that may be related to the sources. Clerics who followed Theophylact's advice to reconcile heretics may not have left records. What has survived is usually legislation with all its unanswered questions of enforcement and compliance. Rulers could, of course, issue decrees against heresy to enhance their reputations whether or not it was an actual threat, however the pattern of activity against the Bogomils may reflect the history of the sect itself, originating in the tenth century reaching a peak in the twelfth and then dying back, in a way typical of many monastic movements in the middle ages.³²

³⁰ *Christian Dualist Heresies in the Byzantine World*, 52, 283

³¹ Obolensky, *Bogomils*, 256.

³² Konstantakopoulou, 'Repentant or dead', 472.

There is a noticeable similarity in the treatment of heretics in East and West in the centuries before 1215.³³ Although, both sections of Christendom inherited some precedents from Roman measures against heresy there was considerable room for improvisation. At first, the initiative for punishment was taken up by the secular authority. Contemporary with the request for how to treat Bogomils in Bulgaria, was the episode of the learned grammarian, Vilgardus of Ravenna. The sole report is from Rodulfus Glaber who states that Vilgard was condemned by Peter, archbishop of Ravenna (927-71). Having been rather vague about the sentence and who carried it out, Glaber emphasizes that there were others throughout Italy who also perished by swords or fires. He adds that others emerged from Sardinia to corrupt some in Spain, but that they were also exterminated by 'catholic men.' The strong temptation from the evasiveness of the chronicler and the prominence of Italian bishops is to conclude that violent punishments were ordered by the bishops themselves.³⁴

Some fifty years later in the late 1020s, an Italian archbishop once again played an important part in the suppression of heresy. Both Glaber and Landulf report the heretics of Monforte in the district of Turin. They too were burnt: Glaber stated that this was the work of Ulric-Manfred, marquess of Turin and his brother, Alric, bishop of Asti in conjunction with other nobles and bishops after they had failed to recall the heretics from their madness. Landulf Senior, the chronicler of Milan, put the emphasis on Aribert, archbishop of Milan, who discovered the heretics while checking up on his suffragans. Again there is an attempt by Aribert and his clergy to reason the heretics out of their beliefs. Stronger measures were taken by the leading laity of the city, probably prominent nobles. In a move which foreshadowed Alexios' treatment of Basil in that burning was used as an incentive to repent, they erected a large pyre opposite a cross and gave the heretics the choice of embracing the faith 'which the whole world believes' or being burnt. Some took up the offer, others leapt into the flames. Here the chronicler carefully distances the archbishop from this action, saying that he was unwilling. However, the

³³ For early punishments for heresy in the West see Henry C. Lea, *A History of the Inquisition of the Middle Ages*, 3 vols. (London: Sampson, 1887) vol.1, ch.2; Henri Maisonneuve, *Etudes sur les origines de l'inquisition* (2nd edn., Paris: Vrin, 1960); Robert I. Moore, *The Formation of a Persecuting Society* (Oxford: Blackwell, 2nd edn. 2007), 11-26.

³⁴ *Rodulfi Glabri Historiarum Libri Quinque*, ed. and trans. John France (Oxford: Clarendon, 1989), 92-3.

warrior archbishop was not a squeamish man and there is no clue as to what alternative strategy he might have had in mind.³⁵ Scholarly opinion on the death penalty for heretics is still broadly that of G.G. Coulton who proposed that 'the first executions for heresy were more or less informal, inflicted either by lynch-law or by some zealous king or noble who took the matter into his own hand...in fact we sometimes find clerics moderating the zeal of others.'³⁶ Given the prominence of bishops in Italian civil society clerics this judgment is worth re-examination.

North of the Alps the state looks to have taken a more assertive stance. In the notorious Orléans case of 1022 Robert the Pious of France burnt a number of clerics for heresy. The bishop, Odalric, played his part by exhuming and throwing away to somewhere inaccessible the body of another who had been dead for three years. Research has shown that the case was as much about political rivalry as about religious belief, yet it was the first time heretics had been burnt by the state in the West since the days of the Roman empire. The "state" was capable of more impulsive vengeance and the queen put out the eye of her former confessor, Stephen.³⁷

The obvious way to explain why burning was the most appropriate punishment is with reference to Roman law in which there was growing interest in the eleventh century. It took its place among a number of factors influencing the choice of punishments. Glaber

³⁵ 'Quod cum civitatis huius maiores laici comperissent, rogo mirabili accenso, cruce Domini ab altera parte erecta, Heriberto nolente, illis omnibus eductis lex talis est data, ut si vellent omni perfidia abiecta crucem adorarent, et fidem quam universus orbis tenet confiterentur, salvi essent; sin autem, vivi flammaram globos arsuri intrarent. Et factum est, ut aliqui ad crucem Domini venientes et ipsam confitentes fidem catholicam, salvi facti sunt: et multi manibus ante vultus missis inter flammas exilierunt, et misere morientes in miseros cineres redacti sunt.' *Landulphi Senioris Mediolanensis Historiae*, ed. Alessandro Cutolo: *Rerum Italicarum Scriptorum*, vol. IV pt.2 (Bologna: Nicola Zanichelli, 1942), 69.

³⁶ George G. Coulton, *The Death-Penalty for Heresy from 1184 to 1921 A.D.* (London: Simpkin, Marshall, Hamilton, Kent and Co., 1924), 2. Unfortunately, the authors were not able to consult S. Ragg, *Ketzer und Recht* (Hannover: Hahnsche, 2006).

³⁷ *Rodulfi Glabri*, ed. France, 138-51; Adhémar of Chabannes, *Chronicon*, ed. Jules Chavanon, (Paris: A. Picard, 1897), 184-5; *Cartulaire de l'abbaye de Saint-Père de Chartres*, ed. M. Guérard (Paris: Crapelet, 1840), I, 109-15. See also Malcolm Lambert, *Medieval Heresy: popular movements from the Gregorian Reform to the Reformation* (Oxford: Blackwell, 3rd edn., 2002), 14-21 with full bibliography and Robert I. Moore, *The War on Heresy: faith and power in medieval Europe* (London: Profile, 2012), 13-36.

recorded other examples of burning, notably in the famine of 1032. A man who had sold cooked human flesh in the centre of Tournus in Burgundy suffered this fate as did another man desperate enough to dig up and eat the flesh after it had been buried. In the same year the Count of Macon burnt the man who had killed and eaten forty-eight travelers not far from the city of Macon itself.³⁸ There is the impression that crimes against the natural order, not necessarily well defined, were also punishable by fire. Far from regularizing the crime of heresy, burning exoticised it.³⁹

Eleventh century society seems to have had reservations about this punishment. Chroniclers go to some lengths to avoid admitting that churchmen had authorized the practice. The only other case of burning for heresy in the eleventh century, that of Ramihrd of Esquerchin, burnt at Cambrai in late 1076 or early 1077 was attributed to 'certain officials of the bishop and many others.' Pope Gregory VII, though furious with the town and also the bishop for persecuting a supposed preacher against simony went no further than blaming the 'Cameracenses'. Again it is tempting to conclude that this may well have been the action of the bishop himself and, insofar as he was an imperial appointment at the height of the Emperor Henry IV's conflict with the pope, the bishop or his officials may have had treason in mind when they burnt Ramihrd, but neither Gregory or the chronicler from whom we have the story, writing in the 1130s, wanted to admit it.⁴⁰ Even the cases at Orléans had chroniclers looking for reasons why these heretics might be exceptional. Adhémar had included a series of fires in churches and monasteries in his entry previous to the discussions of heresy at Orléans. They were linked to a sword shaped comet which had appeared one summer and one fire at least was followed by the deposition of an abbot for simony.⁴¹

³⁸ *Rodulfi Glabri*, ed. France, 188-91.

³⁹ Compare this with a century later. Chrétien de Troyes had a servant threatened with burning for betraying her mistress. This seems to have far more of the overtones of treason or petty treason used in the later middle ages and which encompassed heresy 'Yvain' in *Arthurian Romances*, trans. W.W. Comfort (London: Dent, 1914), 227-8, 237.

⁴⁰ 'Quidam...de ministris episcopi et alii multi deducentes eum in quoddam tugurium inducunt, et non reluctantem...admoto igne cum tugurio combusserunt.' *Chronicon S. Andreae castri cameracensi*, ed. L.C. Bethmann, *MGH, Scriptores*, VII (Hannover: Hahn, 1846), 540.

⁴¹ 'His temporibus cometes velut ensis latior et longior contra septentrionem apparuit pluribus aestivis noctibus, et per Galliam et Italiam e vestigio civitates, castella et monasteria igne cremate sunt plura.'

Fires from heaven as punishment for sins were followed by earthly fires consuming heretics. Another source for the Orléans burnings alleged that the heretics burnt the babies born of their immoral liaisons, using the ashes of them as a sacrament. The author, writing in the 1070s and building on a hint of immoral practice given by Adhémar, implicitly justified burning the heretics on the grounds that they had burnt children, although he admitted that the allegation had been made against ancient pagans.⁴²

The most considered response to the threat of heresy came from Wazo, bishop of Liège, who was consulted about "Manichaeans" in the diocese of Châlons in the mid 1040s. Wazo specifically argued against the death penalty for heresy, both on the basis that it was for God to judge (using the analogy of the parable of the wheat and the tares, Matthew 13: 29-30) and because bishops had not received secular authority and therefore were enjoined by God, 'not to do unto death, but to quicken unto life.' He also recognized the possibility of indiscriminate slaughter that could result. Instead, spiritual penalties were to be applied. The heretics should be deprived of Catholic communion and it was 'officially and publicly announced' to all others to shun the sect for 'He that toucheth pitch shall be defiled with it' Sirach/Ecclesiasticus 13:1. Elsewhere in the letter Wazo perhaps hints at stronger measures. The one manifest characteristic of the heretics is their vegetarianism. Wazo proposed offering them a choice of concurring with the Catholic interpretation that the prohibition, 'Thou shalt not kill' refers only to mankind, or be deprived of the use of bread, vegetables and other things of this sort. Wazo could be proposing a penitential fast or starvation into submission. However, it is clear by implication that some of the bishops who were consulting him were in favour of stronger action and that the intervention of the emperor, a notable religious reformer, was a possibility actively considered.⁴³

Relations were not good between Wazo and Henry III, but there is possibly a trace of the bishop's influence in the dealings with heretics at Goslar in 1051. There are also signs of a procedure. The heretics were

Adhémar, *Chronicon*, 184

⁴² Ex quo spurcissimo concubitu infans generatus, octava die, in medio eorum copioso igne accenso, piabatur per ignem, more antiquorum paganorum, et sic in igne cremabatur. *Cartulaire de Saint-Père*, 112.

⁴³ *Herigeri et Anselmi gesta episcoporum Leodiensium*, II, 62-4 *MGH SS VII*, 226-8. Translated in Walter Wakefield and Austin P. Evans, *Heresies of the High Middle Ages* (New York: Columbia University Press, 1969), 89-93.

presented to the emperor by Godfrey, the duke of Lorraine, having also had an audience with an unnamed bishop who asked them to kill a chicken, possibly in line with Wazo's advice on defining attitudes to meat. After excommunication, the emperor sentenced them to hang. The choice of sentence may have been the result of the heretics' low social status, but it could also be a downgrading of heresy as a crime. The hanged man was left for all to see, an example to others, but it did not symbolise an offence any worse than murder or robbery. The body was not annihilated as with burning and perhaps the punishment was not automatically accompanied by disinheritance of family.⁴⁴

In the early decades of the twelfth century there are few cases of heretics being burnt. Travellers to Constantinople would have been aware of Alexios Komnenos's use of the stake against Basil and his followers and the more educated may have noticed the imperial commissioned trained priests attached to the cathedral of Hagia Sophia in 1107 to preach to the population. By contrast, action against dissenters in the West really did take on an *ad hoc* and unofficial character. Tanchelm of Antwerp was hit over the head by a priest, Peter of Bruys was pushed into his own bonfire of crosses by an enraged mob and Henry of Le Mans was vainly pursued into Languedoc by Bernard of Clairvaux after a succession of arrangements had failed to keep him within the embrace of the Church.⁴⁵ The exception is reported by Guibert of Nogent at Soissons in 1114 and there is the familiar embarrassment at the burning itself. As the clerics dither, the *populus* drag the heretics out of gaol and burn them. Guibert already has his justification ready; not only is the heresy, a 'cancer' which must be stopped from spreading, but the heretics also burn live children whose ashes are turned into a sacrament.⁴⁶

There were good reasons why judicial burning was often felt to be inappropriate. In terms of public order even the more choreographed

⁴⁴ *MGH SS*, VII, 228. Florike Egmond, 'Execution, dissection, pain and infamy - a morphological investigation' in *Bodily Extremities: preoccupations with the Human Body in early modern European Culture*, eds. Florike Egmond and Rob Zwijnenberg (Aldershot: Ashgate, 2003), 100, 103-07. Herimannus Augiensis reports that, '*consensu cunctorum*, ne heretica scabies latius serpens plures inficeret, in patibulo suspendi iussit.' (my italics). This suggests some further assembly or at least consultation. *Chronicon*, ed. G. Pertz, *MGH SS V* (Hannover: Hahn, 1844), 130.

⁴⁵ Lambert, *Medieval Heresy*, 57-9 (Tanchelm), 54-6 (Peter of Bruys) and 52-4 (Henry of Le Mans).

⁴⁶ Paul Archambault, *A Monk's Confession: the memoirs of Guibert de Nogent* (Pennsylvania: State University Press, 1996), 196, 198.

punishments of the thirteenth century had the potential to go wrong. In most eleventh century accounts, the tension is almost palpable when the writer starts to mention 'the people'. In this way Alexios's treatment of heretics in Constantinople seems more sophisticated with the emperor's mercy shown to Basil's followers defusing the difficult problem of the penitent heretic who has earned the crowd's sympathy.

On other levels too, burning was an awkward solution to the problem of religious dissent. Churchmen were forbidden to shed blood and as has been seen, in both East and West there was still an important body of opinion which saw the heretic as a soul to be saved by penance, rather than a criminal to be expunged. The last issue was only resolved by Western theologians gradually drawing a distinction between the penance levied for the good of the individual's soul, that is the penitential forum, and the punishment due for damage to the Church, the judicial forum. In this latter sphere preventing the spread of sinful behavior was of great importance. The distinction was not made until quite late in the twelfth century and does not refer to heresy as such, but it must have been in the minds of Peter the Chanter and the other inventive Paris masters who developed the idea.⁴⁷

By the mid-twelfth century there is also evidence that some were following the emphasis drawn from Roman law which concentrated on punishing enablers and protectors of heretics, thereby avoiding burning charismatic preachers. When a group of 'Publicani' entered England in the first half of the 1160s the government took action by imprisoning them, calling an episcopal synod at Oxford and then when they refused to repent, branding them, publicly flogging them, driving them out of the city and forbidding anyone to give them shelter. According to one report at least, they all died in the cold of an English winter.⁴⁸ The council's actions were enshrined in statute in the Assize of Clarendon clause 21 of which also forbade anyone from receiving any of the sect of renegades ('aliquem de secta illorum renegatorum') excommunicated and branded at Oxford. The penalty was that the receiver would be at the king's mercy and then departed from Roman precedent in that 'the house in which they dwelt would be carried outside the village and

⁴⁷ Raphael Eckert, 'Peine judiciaire, penitence et salut entre droit canonique et théologie (xii^e s.- début du xiii^e s.)', *Revue de l'histoire des religions*, 4 (2011), 504-08.

⁴⁸ P. Biller, 'William of Newburgh and the Cathar mission to England' in *Life and Thought in the Northern Church, c.1100-c.1700; essays in Honour of Claire Cross*, ed. D. Wood (Woodbridge: Boydell, 1999), 11-30.

burnt.⁴⁹ There are obvious overtones of purification after disease and also a very public act of condemnation. Henry II's government was insecure in the midst of the Becket crisis, but could stand comparison with Byzantium in terms of centralized power and it looked for a comprehensive solution. The prohibition against giving shelter echoes the treatment of any 'stranger' 'wanderer' or 'unknown person' in clause 15 of the assize and there is an attempt at enforcement through individual oath swearing by both royal and baronial officials. Although there is no evidence this was ever carried out, the arrangements had been put in place should the crisis recur.

The punishment of the heretics themselves, while not lenient, again avoided the outright confrontation of the flaming pyre. Public flogging was a feature of formal penance as well as a punishment. Branding was more punitive and had precedents both in Anglo-Saxon law as well as also being included in Roman legislation.⁵⁰

The influences on Henry's government may have come from across the Channel. Gilbert Foliot, who was bishop of London by 1166, had attended the 1148 Council of Reims which imprisoned, rather than executed, the heretical preacher, Eon de l'Etoile, but burnt several of his 'followers', probably those who had protected him initially.⁵¹ Nine years later a further Council of Reims urged expulsion and branding for the followers of heresiarchs and perpetual imprisonment for leaders as well as seizure of goods.⁵²

There is a contrast with the letter of Everwin of Steinfeld recording the presence and punishment of heretics at Cologne in 1145. The account is significant for a number of reasons, not least because one group claimed connections with "Greece", generally interpreted as a link to the Byzantine Bogomils. However, the procedure outlined harked back to earlier Western precedents. An arrest was followed by an initial audience with the archbishop and (presumably secular) nobles. A further

⁴⁹ *Chronica Magistri Rogeri de Houedene*, ed. William Stubbs, 4 vols. (London: Longmans, 1869), vol.2, cv.

⁵⁰ Charles. P. Jones, 'Stigma: Tattooing and branding in Graeco-Roman antiquity', *Journal of Roman Studies*, 77 (1987), 139-55 and see above n.14. For confiscation of property see, for example, *Codex Iustinianus*, 1, 5, 8.

⁵¹ Wakefield and Evans, *Heresies*, 143, 145-6, 685 n.11. William of Newburgh, *The History of English Affairs*, ed. and trans. P. G. Walsh and M. J. Kennedy (Warminster: Aris & Phillips, 1988), 92-3.

⁵² Jovani D.Mansi, *Sacrorum Conciliorum Nova et amplissima collectio*, vol. 21 (Venice: Zatta, 1776), col.843. Henceforth 'Mansi, *Concilia*'

audience with clerics, who tried to reason them out of their beliefs was brought to an end after three days by 'the people' who seized them and carried them off to be burned. As usual, it is tempting to believe that the zeal shown was not as spontaneous as Everwin would like us to believe.⁵³ There is no such hesitancy in the account of the burning of Arnold of Brescia in 1155 in Otto of Freising's *Deeds of Frederick Barbarossa*. The bishop of Freising briskly records the just condemnation of Arnold in his absence by his fellow churchmen and his arrest in Tuscany. 'He was held for trial by the prince [presumably Frederick himself] and finally was brought to the pyre by the prefect of the City [Rome].' In fact, Arnold seems to have been hanged then burnt, reinforcing the idea that despite the fact that Arnold's ashes were scattered on the Tiber to prevent veneration by the people, Arnold seems to have been punished for treason as much as heresy.⁵⁴ His fate was the result of a deal between Barbarossa and Pope Adrian IV. Barbarossa was to be crowned emperor by the pope; in return Adrian IV was to receive imperial help against his enemies in Rome. This was the historical moment where western practices resembled those of the East. The brief alliance of Adrian and Barbarossa created something like the caesaropapist state in Constantinople. Combined with the legal knowledge of advisers like Roland Bandinelli, the master of Bologna and future pope Alexander III it is highly likely that there was an influential change in the attitude to the Church's sanction of burning heretics. Indeed, the moment was prolonged just enough to allow some possible exchange of notes on how to deal with heretics with ambassadors from Manuel Komnenos, who was briefly on good terms with both emperor and pope.⁵⁵

Certainly the change in atmosphere was felt in Cologne. Writing in the early thirteenth century, Caesarius of Heisterbach describes a smooth procedure when giving his account of how further heretics were arrested there in 1163:

'The heretics who were seized, having been examined and convicted by literate men, were condemned by secular judgment.'

⁵³ Wakefield and Evans, *Heresies*, 129 (Bernard of Clairvaux, *Epistolae*, no.472, *Patrologia Latina*, vol. 182, cols.676-80).

⁵⁴ Brenda Bolton and Anne Duggan (eds.), *Adrian IV, the English Pope (1154-59)*, (Aldershot: Ashgate, 2003), 238-9. Greenaway, *Arnold of Brescia*, (Cambridge: University Press, 1931), 157, 219-20.

⁵⁵ Bolton and Duggan, *Adrian IV*, 240-1

The result of this was the burning of several heretics together, outside the town, near the cemetery of the Jews.⁵⁶ In areas without strong central government, ecclesiastical authorities were more hesitant. Heretics arrested at Vézelay in France in 1167 were detained for over two months. They were questioned by clerics before two of them ended up undergoing trial by water in front of an assembly in the local monastery. The abbot took the trouble to write to the English legal scholar Herbert of Bosham, asking for advice as to what was the correct punishment. Herbert was no friend of monarchy, as he was currently in exile with his master, Thomas Becket, but in this matter his advice was that because churchmen could not take life or limb, the matter was for the local authority or better still, the king of France and 'public powers', even if the heretics were (as Herbert implied) clerics. However, the abbot preferred the advice of the assembly of leading churchmen and unnamed laity. The unequivocal answer came, 'comburantur, comburantur'. Seven were burnt, but one, after the abbot's intervention, was banished after a public flogging, reminiscent of the procedure at Oxford the previous year. From Hugh of Poitiers' account it would appear that the abbot burnt the heretics on his own authority.⁵⁷ The conclusion must be that Louis VII's government was not considered strong enough to undertake such responsibilities.

In both East and West by the mid twelfth century the authorities reacted to the perceived threat of heresy with growing confidence. Certainly action against heresy could only take place in conditions of political security which was present in both Byzantium and the West in the middle decades of the century and which declined in the eastern Empire after the death of Manuel Komnenos. Where there was a difficult relationship between religious and secular powers ecclesiastical authorities had to be more cautious, and rely on preaching, as is evidenced by archbishop Galdino in Milan in the 1160s.⁵⁸ The presence of Frederick Barbarossa at the Council of Verona in 1184 was therefore a resumption of the relationship of 1155, albeit in very changed political circumstances. Both Pope and emperor were happy to impose

⁵⁶ 'Haeretici sunt comprehensi qui a literatis viris examinati et vidi per iudicium seculare damnati sunt.' Caesarius Heisterbacensis, *Dialogus Miraculorum*, ed. J. Strange (Cologne: Heberle, 1851), vol.1, 299.

⁵⁷ *Monumenta Vezeliacensia* ed. R.B.C. Huygens (Turnhout: Brepols, 1976), 606-07 and see Wakefield and Evans, *Heresies*, 248-9, 725 n.9. *Patrologia Latina*, vol. 190 (Paris: Garnier, 1893), col. 1463. Herbert rejects exile as a penalty.

⁵⁸ Wakefield and Evans, *Heresies*, 151.

punishments based on the interlocking of heresy with treason and this was quite similar to the position of the emperors and patriarchs of the East. The divergence came in the thirteenth century with the development of measurable penances for heresy in the West. The Orthodox Church was also interested in reconciling heretics short of burning, but chose quite a different route.

The full majesty of imperial defence of the faith in the West was articulated more, but used less. Frederick I's participation at the Council of Verona in 1184 signalled the willingness of secular authority to intervene in what was until then seen as a largely spiritual crime. However, the legislation which resulted, *Ad abolendam* was produced by Pope Lucius III. In the anti-heresy clauses of his law code of 1231, the *Liber Augustalis* or *Constitutions of Melfi* Frederick II took direct responsibility for his subjects' spiritual welfare in a manner reminiscent of eastern emperors. Obstinate heretics were to be burnt alive, the goods of the condemned were to be confiscated and the memories of such heretics were to be condemned even after their death.⁵⁹ Turning to those who sheltered, believed in or were accomplices of the heretics or who favoured them in any way, Frederick ordered perpetual banishment and the confiscation of goods. Even their children were to suffer perpetual infamy unless they redeemed themselves by denouncing someone else, which went beyond Roman precedent as Justinian only required children to prove their orthodoxy to recover their inheritance.⁶⁰ Just how far Frederick meant this legislation to reach is uncertain. He had the *Constitutions* translated into Greek, probably to reach Greek

⁵⁹ *Die Konstitutionen Friedrichs II für das Königreich Sizilien*, ed. Wolfgang Stürner (Hannover: Hahnsche Buchhandlung, 1996), 151-2. Trans. James M. Powell, *The 'Liber Augustalis'* (New York, Syracuse University Press, 1971), 9.

⁶⁰ Patrenorum receptatores, credentes et complices et quocumque modo fautores, qui, ut a pena alios possint eximere, de se velut improvidi non formidant, publicatis bonis omnibus relegandos in perpetuum esse censemus. Ipsorum filii ad honores aliquos nullatenus admittantur, sed infamie perpetue nota laborent, ut nec in testes in causis, a quibus repelluntur infames, aliquatenus admittantur. Si tamen aliquis de filiis fautorum vel receptatorum huiusmodi detexerit aliquem Patrenum, de cuius perfidia manifeste probatur, in fidei premium, quam agnovit, fame pristina de imperiali clementia restitutionis in integrum beneficium consequatur. *Die Konstitutionen*, 151-2, Powell, *Liber*, 10.

speaking subjects in Calabria.⁶¹ While the *Constitutions* brilliantly stated the point of view of imperial authority there is no evidence that the strictures on heresy were ever enforced.

The driving force in eliminating competition for souls in the West was the Church itself. It achieved its goals through a combination of better education of the laity, penances designed to reconcile the sinner to the community and punishments designed to exclude the perpetrator and act as an example to others. Inquisitorial procedure was first outlined at Fourth Lateran Council in 1215 (canon 3), but Innocent III was more circumspect about punishments. While the handing over of condemned heretics to the secular authorities implied that burning was the expected punishment, even for clerics who were to be degraded first, Innocent was more precise than his predecessors about ancillary punishments, such as that the goods of condemned laymen be confiscated and that the churches of convicted clerics should lose the heretic's stipend. Innocent also addressed the problem of those only suspected of heresy. They were to be anathematized unless they proved their innocence by purgation, having regard for the reasons of suspicion and the character of the person. Branding or a mark of infamy was to be applied. The force of the punishment was clear: 'until they have made appropriate satisfaction, let them be avoided by all'.⁶² Innocent went noticeably further than Boril, Sava or even Dušan and decreed that rulers who neglected to help in the extirpation of heresy could be deposed by his own vassals and the land settled by those who would keep it 'in the purity of the faith', and he had already enacted this policy in respect of the lands of the Count of Toulouse through the Albigensian Crusade. Remarkably, given the emphasis on confession in the council's legislation, Fourth Lateran says little about penance in general and nothing about penance for heretics.

A system of penance for heresy was established in the thirteenth century drawing on a variety of sources. Firstly there was the spiritual example of respected men such as Francis of Assisi and particularly Dominic of Calaruega who was active in the heretical stronghold of southern France, secondly there was the example of monastic life, especially the rule of Benedict as interpreted by the Cistercians which both contained disciplinary penances and could be seen as a work of

⁶¹ *Codex Iustinianus*, 1,5,4 for confiscation of goods, 1,5,8 for exile. Mario Ascheri, *I diritti del medioevo italiano: secoli xi-xv* (Rome: Carocci, 2005), 182.

⁶² Tanner, *Decrees*, vol.1, 233.

penance in itself. Finally, there was Roman law with its wide array of punishments which fell short of taking lives. These three sources overlapped, forming a common heritage for the churchmen designated to carry out the inquiries or *inquisitiones* prescribed at the Fourth Lateran Council. In the first instance these were bishops, but after 1231 they were predominantly Dominican friars, often highly educated and trained preachers and they became the first inquisitors.⁶³

Early attempts at burning on a larger scale than had been attempted thus far in the West proved counter-productive. The accused were often seen sympathetically by the crowd and the lay power was often alienated by the resulting violence. When operations resumed in the 1240s a more calibrated approach was taken with inquisitors imposing a series of penances, often quite punitive in nature, but designed to reintegrate eventually the penitent into the community.⁶⁴

The major difference between East and West in terms of sources is the existence of the western inquisitors' administrative records, comprising the statements of heretical believers or *credentes* and less commonly the penances assigned to them. Although these documents must be read cautiously, they offer the invaluable opportunity to get away from chronicles and legislation and look at how alleged supporters of heretical groups were dealt with on a routine level.⁶⁵ Inquisitors took the major themes of the punitive legislation of the twelfth century and produced penitential variants. Instead of banishment and exile there was now pilgrimage, either to local shrines or more distant ones, such as Rome, Canterbury, Jerusalem or Compostella. Timetables were imposed and documents had to be produced as proof of completion. Local pilgrimages were considered especially suitable for women.⁶⁶ Another

⁶³ Recent influential work on the inquisition includes C. C. Ames, *Righteous Persecution: Inquisition, Dominicans and Christianity in the Middle Ages* (Pennsylvania: University Press, 2009) Karen Sullivan, *The Inner Lives of medieval Inquisitors* (Chicago: University Press, 2011).

⁶⁴ All these are examined in more detail in Andrew Roach, 'Penance and the making of the inquisition in Languedoc', *Journal of Ecclesiastical History*, 52:3 (2001), 409-33 where there is a survey of older literature. Sarah Hamilton, *The Practice of Penance, 900-1050* (Woodbridge: Boydell & Brewer, 2001) is the most important subsequent publication.

⁶⁵ The best guide to the production of these documents and the resultant difficulties for the historian is John H. Arnold, *Inquisition and Power: Catharism and the confessing subject in medieval Languedoc* (Pennsylvania: University Press, 2001)

⁶⁶ Roach, 'Penance', 417. In terms of severity it is comparable to the seven years of penitential pilgrimage enjoined on a clerk who has fathered a child; Penitential of

common penance, exclusively assigned to men was to be sent to Constantinople for a period of time to aid the ailing Latin Empire, presumably with military service. There is plenty of evidence of western heretics based in Constantinople, but it was clearly not an issue for the inquisitors of the early 1240s.⁶⁷ There was a clear danger that the penitent would lose his life and the sentence ranked followers of heresy with fire raisers who had been assigned similar sentences in Jerusalem or Spain in the legislation of the Council of Reims of 1148.⁶⁸

Exile was also behind the expansion of judicial imprisonment initiated by the inquisitors. Imprisonment was thought peculiarly appropriate for heretics in that it enjoined upon them a quasi-monastic life, while preventing them from spreading their infectious beliefs.⁶⁹ It is tempting to see a possible link with eastern believers in the spiritual benefits of prison like John Climacus, but recent research has shown that a far stronger influence was enthusiasm for the newly rediscovered Novels of Justinian, especially *Nov.* 131.14 which condemned clerical administrators who sold or gave church goods to heretics. This corresponded with the lay supporters of heresy who gave food and hospitality to Cathar *perfecti*. Justinian's legislation from 545 ordered deprivation of Holy Communion for a year and imprisonment in a monastery. Its place within a series of measures designed to tackle moral issues such as lay adultery and clerical corruption (gambling, false testimony etc) suggests that the emperor saw such imprisonment as a penitential act. This hypothesis is corroborated by the emperor's enthusiasm for monasticism as an opportunity for correction, having legislated earlier on monastic discipline. It was rare in late Roman times, but Gregory the Great had used it for some penitents in sixth century Byzantine Italy.⁷⁰ However, it is important to emphasize that

Columban in *Medieval Handbooks of Penance*, ed. and trans. John T. McNeill and Helena M. Gamer (New York: Columbia University Press, 1938), 252.

⁶⁷ Rainerius Saccone, 'Summa', trans. in Wakefield and Evans, *Heresies*, 337.

⁶⁸ Mansi, *Concilia*, vol.21, col.711, canon XV.

⁶⁹ Roach, 'Penance', 425-31

⁷⁰ Julia Hillner, 'Monastic Imprisonment in Justinian's Novels', *Journal of Early Christian Studies*, 15:2 (2007), 209-10, 226-7. R. Schoell (ed.) *Corpus Iuris Civilis: vol.3 Novellae*, CXXXI: 14 (662-3) (Berlin, 1895). Julia Hillner, 'Gregory the Great's "prisons": monastic confinement in early Byzantine Italy', *Journal of Early Christian Studies*, 19:3 (2011), 433-71. See also Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe* (Basingstoke: Palgrave, 2002)

inquisition prisons were innovative in that they were purpose built and were primarily places of punishment.

The other principle was that of the branding or stigmatizing of heretics seen at Oxford and in the legislation of Fourth Lateran. It found its parallel in cross-wearing which again had penitential connections (notably crusaders), but was adapted by inquisitors in both France and Italy. There was an attempt to enforce a kind of social ostracism through the wearing of bright yellow crosses on the breast and shoulders. Anyone seen consorting with such a penitent automatically became suspect themselves. Yet there was also an inclusive element to this in that an extensive programme of church attendance and listening to preaching was also enjoined. The cross wearing was generally for a relatively short time, from one to three years.⁷¹

In practice, the power of the inquisitors was nothing like so systematic and each inquisition had to negotiate its way to its goals. Given has identified individual and collective resistance to inquisitors as well as the structural constraints of the society in which they moved.⁷² Dossat has shown how competing jurisdictions and papal interference could change or annul penances imposed by inquisitors, especially imprisonment and cross wearing.⁷³ In his study of penances imposed at Montauban in 1241 Jörg Feuchter has shown how many sentenced to cross wearing removed them after a few months or completed only a few of their penitential pilgrimages. His analysis of civic archival sources shows that most of the penitents were drawn from fifteen consular families and his very plausible hypothesis is that the penances were commuted because of the instigation of an act of collective piety, namely the construction of a proper parish church for the town.⁷⁴ Even prison was relatively unstructured and very susceptible to corruption, with relatively free communication between prisoners and a steady stream of outside visitors.⁷⁵

One penance which was treated with suspicion by inquisitors was the fine or monetary penance. As has been seen, this is in contrast to the

⁷¹ Roach, 'Penance', 422-5.

⁷² James Given, *Inquisition and Medieval Society* (New York, 1997)

⁷³ Yves Dossat, 'Université et inquisition à Toulouse: la fondation du collège Saint-Raimond (1250)', in his *Eglise et hérésie en France au XIIIe siècle*, (London, 1982), XXVII, 231-2.

⁷⁴ Jörg Feuchter, 'Le pouvoir de l'inquisition à travers ses peines; le cas de Montauban (1241)' in G. Audisio (ed.) *Inquisition et pouvoir*, (Aix-en-Provence, 2004), 235-56.

⁷⁵ Given, *Inquisition*, 79-84.

monetary tariffs for heresy expounded in Dušan's Serbian law code of the mid fourteenth century. Western thought was against 'money penances' (*pecuniariis paenitentis*) because inquisitors could be compromised by demanding money and also that to fine heretics looked too much like a policy of 'tax and tolerate'. There was a clear departure from Roman legal precedent here. However, sums levied for 'the upkeep of the poor' or 'upkeep of a priest' had a long pedigree. Where the charity was not assigned the suspicion is that this was one way of defraying the considerable expenses of investigating heresy, as was the confiscation of goods and land that accompanied the more severe penalties.⁷⁶

Finally, there were burnings. These were carried out by the secular government at the behest of churchmen. Bernard Gui, the monstrous inquisitor portrayed in Umberto Eco's *Name of the Rose* burnt just thirty of the 471 Cathars he sentenced in his fifteen year career or 6.4%. Between 1249 and 1257 just 21 heretics in southern France were handed over to the secular arm. The sentence was used sparingly and pyres were heavily policed. This did not mean that burning had no impact when it was used with regularity in relatively small communities with a network of contacts. Occasionally, there was the theatrical horror of a mass punishment; Bernard Gui consigned seventeen to the flames together on 5 April 1310. Reminders of the threat came through the conviction and ceremonial burning of the bones of already deceased heretics. However, such punishments were always volatile events. When one convicted heretic in Bologna repented at the stake, but was refused communion, a riot ensued, similar to those early in the Inquisition's history at Toulouse and Albi.⁷⁷

In conclusion, a comparison of eastern and western punishments and penances for heretics displays a degree of common ground. On both sides of Europe churches faced the dilemma of how to deal with direct challenges to their religious authority while fulfilling their duty to care for souls. At first, both sides turned to the secular state following Roman precedents, but in the early decades of the thirteenth century the Roman Church developed its own independent measures by treating the interiority of heresy through penance. Rulers and churchmen in the East

⁷⁶ Roach, 'Penance', 419-22. Roach, *Devil's World*, 133. Cf. penalties for thieves in Penitential of Columban. *Medieval Handbooks*, Gamer and McNeill, 255.

⁷⁷ Roach, *Devil's World*, 138-9, 211. Given, *Inquisition*, 70-1.

went some way down that road, but in the end preferred to stress heresy as a matter for policing rather than pastoral care.

Andrew P. ROACH
Maja ANGELOVSKA-PANOVA

PUNISHMENT OF HERETICS: COMPARISONS AND CONTRASTS BETWEEN WESTERN AND EASTERN CHRISTIANITY IN THE MIDDLE AGES

- summary -

This paper, as the title suggests, examines the penalties church authorities imposed on heretics (mainly Bogomils and Cathars) in the 'Orthodox' and 'Catholic' spheres of Christendom from the tenth to the thirteenth century.

In Western Europe and the Byzantine empire organised religious dissent was something of a novelty and both sides had to improvise. A common body of Roman law existed in both east and west, enjoining enforcement of religious orthodoxy on the secular power. However, there was also significant body of ecclesiastical opinion which held that spiritual penalties were the best treatment for heretics depending on the level of commitment to the sect and burning was a punishment used for exotic crimes. The use of the pyre by Alexios Komnenos in Constantinople in the early twelfth century marked the start of a relatively short period when imperial defence of orthodoxy was strictly enforced.

Subsequent rulers in both the Byzantine empire and its successor states in the Balkans deployed severe legislation, but in practice tended to allow churchmen to deal with religious dissent. By contrast in the West, although churchmen were uneasy with state's interference in spiritual matters, by the thirteenth century they had managed to secure the state's co-operation in identifying, arresting and punishing heretics as well as devising a system of variegated penances for heresy as a component of pastoral care. The real contrast between east and west is the scope of ambition. Whereas eastern rulers and churchmen sought to keep major sources of spirituality unpolluted with heresy, the western church had policies to eradicate unorthodox belief and practice completely.