

WITCHCRAFT AND THE LEGAL EVOLUTION OF RELIGIOUS PERSECUTION¹

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1. MEDIEVAL WITCHCRAFT

One of the most fascinating aspects of the Middle Ages is witchcraft developing into a social and legal phenomenon. Part of this fascination, which is still alive among researchers and History enthusiasts, may be the degree of certainty about the existence of witchcraft that medieval society had in contrast to the certainty they had about other manifestations of supernatural phenomena. Most part of men and women from that time believed witches existed, though in a generic way since people did not consider they were present on their own vital reality², as Osting declares: “Witches differ from unicorns in one crucial respect: real women and men can be imagined to really possess the imaginary powers of witches.”³ There is another crucial difference that separates the medieval belief in witchcraft from other supernatural ideas: its tragic consequences. In the words of one of the greatest specialists in studying supernatural phenomena and their legal and social effects in medieval thought, Jeffrey B. Russel:

“To understand witchcraft we must descend into the darkness of the deepest oceans of the mind [...]. We can convince our children³ and ourselves⁴ that ‘there is no such thing as a witch.’ But there is, or at least there was. A phenomenon that for centuries gripped the minds of men from the most illiterate peasant to the most skilled philoso-

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² KIECKHEFER, R., “Avenging the Blood of Children: Anxiety over Child Victims and the Origins of the European witch trials”, in FERRERIO, A., (ed.), *The Devil, Heresy and Witchcraft*. Leiden, 1998, p. 92.

³ OSTLING, M., *Between the Devil and the Host. Imagining witchcraft in Early Modern Poland*. Oxford, 2011, p. VII.

pher or scientist, leading to torture and death for hundreds of thousands, is neither joke nor illusion”⁴.

The development of medieval witchcraft has close ties with heresy (there was barely Christian religion, there were heresies too”)⁵ because both of them are expression models of the transcendental feelings beyond the limits that Church tolerates. Therefore, legally, they are part of the same danger for maintaining the *status quo*. Challenging the authority of the Church is, in medieval terms, challenging the order of society and the majesty of the Lord himself, and it is judicially indifferent if it comes from a heresy originated in an unorthodox interpretation of Christianity or from the field of witchcraft. As Erika Prado Rubio remarked:

“Las brujas han formado uno de los grupos sociales más asociado por el imaginario popular a las persecuciones inquisitoriales. Aunque la Inquisición nació con el fin de exterminar la herejía, el término fue ampliado para abarcar, además de creencias y prácticas heterodoxas, otras conductas mal vistas por la moral de la época y que contradecían dogmas o creencias de la fe cristiana”⁶.

Popular imaginary has always considered the social group of witches as one of the most persecuted by the Inquisition. Although this institution was created to wipe out heresy, the term was extended in order to cover, in addition to unorthodox beliefs and practices, other conducts that were negative according to the morals of the age and that contradicted dogmas or beliefs of Christian faith.

As a phenomenon, witchcraft is connected to other two ways of transcendental thinking, religion and the magical world view, since the three of them provide transcendental explanations ³/₄beyond what is rationally cognoscible and experienceable through senses³/₄ to the world people live in⁷.

Regarding the magical world view, it must be highlighted that it is common to find a distinction between white magic and black magic, two ideas full of implied meanings that, furthermore, were not frequently used in the medieval world but they are a later construct. In the Middle Ages, the most common distinction was between high magic and low magic (this one had a more direct connection with witchcraft). While the first one was focused on achieving an occult knowledge that allowed to manipulate the universe in general terms, the second one was more practical and used to produce immediate effects. According to the theologian Alejandro de Hales, the *divinatio* or divination was

⁴ RUSSELL, J. B., *The witchcraft in the Middle Ages*. London, 1972, p. 1.

⁵ LLORENTE, J. A., *Historia crítica de la Inquisición en España*. Madrid, 1981, 4 vols.; vol. I, p. 31.

⁶ PRADO RUBIO, E., “La inclusión de la brujería en el ámbito competencial inquisitorial”, in *Revista de la Inquisición (Intolerancia y Derechos Humanos)*, No. 22, 2018, p. 394. On the same lines: PINTO, V., “Sobre el delito de la herejía (siglos XIII-XVI)” in ESCUDERO, J.A. (Ed.) *Perfiles jurídicos de la Inquisición española*, Madrid, 1989, p. 198-199.

⁷ RUSSELL, *The witchcraft in the Middle Ages*, p. 4.

the main part of high magic⁸, since the basis is the idea of the world being governed by the forces of Fate, and nothing is accidental in the scheme the world itself has formed, which explains not only the importance of knowing these plans beforehand, but also the mere fact of them being able to be glimpsed and known⁹. On the contrary, the *maleficium* was the main aspect of low magic; it was the ability of executing rituals or spells that direct and practically affected the cognoscible reality in which the magician lived.

If magic tries to control the powers of the universe, religion begs it. Contrary to the element of ascension and self-glorification of the magic practicante, the follower of a religion performs the role of the supplicant in the face of divine powers in such a way that the human being acknowledges his own impotence in the face of the universe, what does not happen in magic since it is based on the idea that man can get to know and control the cosmic forces¹⁰. William J. Goode established the characteristics that differentiate both ways of transcendental thinking:

- Magic emphasises the professional-client relationship rather than prophet-follower, as it happens in religion.
- Magic emphasises individual ends, while religion emphasises social ends.
- Magic practices are usually private and individual, but religious ones are prone to collective and public demonstrations.
- Magic accepts changes of techniques in case of failure, while religions are based on dogmatic and immovable notions.
- Magic has a lesser degree of emotion, but religion directly appeals to the deepest feelings of the human being.
- Magic intends to change or control the universe, while religion wants that the believers accept it.
- Magic is instrumental because it is used for reaching a specific goal, but religion is final itself since it is accepted because it is the reality and not something used to get an achievement¹¹.

Regarding the attitude of authorities towards magic, the Church forbade it in all its forms since, as magic is based on controlling the forces of the universe (something the ecclesiastic doctrine could not conceive), how would a magician be able to control

⁸ Another tendency of high magic is alchemy, meaning the ambition of being able to change the nature of things through disrupting its physical/chemical composition. A third orientation of high magic was aiming for achieving the concentration of the force of the cosmos in a space defined by magic, as, for example, a pentacle. (RUSSELL, *The witchcraft in the Middle Ages*, p. 9).

⁹ RUSSELL, *The witchcraft in the Middle Ages*, p. 8.

¹⁰ RUSSELL, *The witchcraft in the Middle Ages*, p. 10.

¹¹ These ideas are developed in GOODE, W. J., "Magic and religion: a continuum", in *Ethnos. Journal of Anthropology*, No. 14, 1940.

the angels or the divine will itself? Moreover, since angels cannot be controlled, if one supernatural entity was, by default it had to be a demon, so it was concluded there was not a magic that could be described as good or acceptable¹². However, in several moments or specific geographical scenes, authorities took an attitude of tacit permissiveness over the forms of most benevolent magic¹³. From the point of view of Church, magic presented a grave risk: its connection to witchcraft.

At first, the connection between high magic and witchcraft was low, unless a specific manifestation from the first one that related it to the second one was produced: the magician tried to invoke a demon in order to get some knowledge. This demon invocation would be part of, in most cases, witchcraft, what happened more often in low magic; in this magic, this kind of invocations was recurrent because the magician intended that the supernatural entity was whom he could use as an instrument to achieve his purposes¹⁴. This meant that, as Lea noted, the distinction between low magic and witchcraft was a both thin and blurred line¹⁵.

There were three archetypes of spirits that appear during these invocations: minor demons, who usually take the form of relatives and are derived from elves, kobolds, and other creatures from the European folklore¹⁶; major demons as Beelzebub, Ashtaroth or Asmodeus, mostly derived from Christian demonology; and, lastly, the Devil himself, the Adversary in person. Depending on the nature of the bond created between the invoker and the invoked creature, there are five degrees:

- Incantation: when the practicante forces the demon to do something but it does not get anything in return.
- Implicit pact: when the demon is given the unspoken idea that it will get a compensation if it accepts the invoker's wishes.
- Explicit pact: when the invoker makes a promise in exchange for the aid the demon will give him¹⁷.

¹² PRADO RUBIO, "La inclusión de la brujería en el ámbito competencial inquisitorial", p. 397; on the same line GARCÍA MARÍN, J.M., "Magia e Inquisición: Derecho Penal y proceso inquisitorial en el siglo XVII" in ESCUDERO, J.A. (edit.) *Perfiles jurídicos de la Inquisición española*. Madrid, 1989, p. 214.

¹³ For example, later, the Inquisition would only worry about divination when this included invoking demons, and the rest of cases were under the civil jurisdiction. (LLORENTE, *Historia crítica de la Inquisición en España*, vol. I, p. 97).

¹⁴ RUSSELL, *The witchcraft in the Middle Ages*, p. 12.

¹⁵ LEA, H. Ch., *A history of the Inquisition in the Middle Ages*. New York, 1901, p. 493.

¹⁶ A lot of them have become part of the bestiary of cultural fantastic contemporary manifestations, although they have been changed a lot since elves from Tolkien or Rowling, or kobolds from *Dungeons and Dragons* have nothing to do with their folkloric predecessors.

¹⁷ Regarding this subject, you can consult: DE LEÓN, F. J., "Los pactos faústicos", en *En-claves del pensamiento*, No. 10, 2011, pp. 11-19; and PALMA ROLDÁN, M. J., *La estirpe de Fausto. Los pactos con el Diablo a lo largo de la Historia*. Madrid, 2017.

- Sacrifice, homage, or other ways of submission: when the invoker makes a symbolic action in front of the demonic entity in order to gain its good will so it accepts his intentions. The difference between this degree and the explicit pact is that this is offered from a position of equality, while sacrifice or homage happens from the inferiority of the invoker.
- Working at the service of the demonic spirit¹⁸.

Of all ideas, the one about making a pact with demons took root more firmly in theologians and inquisitors' thinking, being supported by the strong belief in demons that the Judeo-Christian tradition influenced, a belief Church has never condemned nor declared as wrong. The pact and every prior way of having dealings with demons must differ from possession as it does not imply willingness, what separates it from witchcraft, except for those specific cases it was voluntarily looked for. For example, this happened when a seer agreed to be possessed by a supernatural entity in order to predict the future.

Christian tradition also contributed to create another archetypical idea about witchcraft: Sabbath or gathering of witches. It was usually led by the Devil, who is worshipped at the same time the assistants are rejecting God¹⁹. The idea of Sabbath comes from understanding witchcraft as an organized cult, an evil form of religion, instead of conceiving it as an individual practice of powers. It would be about a lack of a mirrored image that is distorted by the Christianity itself, its dark alter ego, because it is used a cinematographic but perfectly suitable to the idea expression.

Nevertheless, the Sabbath is a late incorporation to the iconography of witchcraft, and it was not included in most trials until the end of the Middle Ages. During the medieval period, the components that formed witchcraft could be divided into four groups:

- Derived from the traditional view of pagan sorcery: shapeshifting, flying, riding animals²⁰, cannibalism, child murders, familiars, invocation of demons, the night as the time for their activities...
- Derived from traditions or folklore: dances, incubi, the ability of passing through doors or walls...
- Derived from heresy: the conceptualization of witchcraft as a sect, the celebration of secret meeting, the desecration of the cross or the sacraments, the formal repudiation of the Church...

¹⁸ RUSSELL, *The witchcraft in the Middle Ages*, p. 18.

¹⁹ The main academic studies about the figure of the Devil in History are from Jeffrey B. Russel: *Lucifer: The devil in the Middle Ages*. Ithaca, 1984; *Mephistopheles: The Devil in the Modern Age*. Ithaca, 1986; *The Devil: Perceptions of evil from Antiquity to the Primitive Christianity*. Ithaca, 1977; and *Satán: The Early Christian Tradition*. Ithaca 1981.

²⁰ Or, sometimes, inanimate objects. (PRADO RUBIO, E., "Estereotipos referidos a la persecución inquisitorial de la brujería", in *Aequitas*, No. 13, 2019, p. 36).

- Added by theologians in charge of persecuting heresy: the satanic pact; the alleged presence of a Devil's mark in a witch's body (the *stigma diabolicum*²¹); working, making sacrifices, or worshipping the Devil, etc.²².

Russel magnificently synthesised the eight possible degrees of the witchcraft phenomenon during the Middle Ages, which can be extended to the one of the following centuries when the persecutions of witches got much worse:

- Virtually nobody believed in witchcraft since it was a malicious fabrication the Church made in order to win power and wealth, and to fight their enemies, so one could say it was a malevolent fraud.
- A lot of people, inquisitors and theologians included, believed in witchcraft, which was inspired by the superstitious atmosphere of its time; however, no one thought oneself a witch or a sorcerer.
- Some people had the illusion of being a witch, but they did not do anything related to such assumption.
- Some people thought themselves witches and they performed practices as if witchcraft was real by doing rites derived from folklore, pagan cults prior to Christianity, and even heresies derived from this religion.
- Witches did actually exist and they are the fruit of Devil's work, who is always involved in their activities to one degree or another.
- Witchcraft not only existed but an organized cult of witches has existed from time immemorial.
- Not only witchcraft and the organized cult related to it exist but the phenomena linked to it that break up with the knowledge of ordinary (for example, when it is said that witches fly) are real too.
- The belief in everything that has just been said, and the fact these abilities that break up with ordinary have their origins in supernatural causes²³.

²¹ LEA, H. Ch., *A history of the Inquisition in the Middle Ages*. New York, 1901, vol. III, p. 497.

²² RUSSELL, *The witchcraft in the Middle Ages*, p. 23. The Devil's mark, a common element in late witchcraft as it barely appears with theorists prior to the 16th Century, and even some of them, like Jordanes of Bergamo, reject its existence (p. 242). "Podía ser un pequeño lunar o una marca de nacimiento que era encontrado en el cuerpo de la bruja. La prueba para descubrir si era o no una señal del demonio constituía en pinchar dicha marca. La creencia popular explica que, si la bruja no siente dolor, sin duda se trata de la huella del demonio". In English it would mean: It could be a small mole, or a birth mark found in a witch's body. To find out if it was or was not a Devil's mark, they pricked it. The popular belief explains that, if the witch does not feel pain, then it definitely is the Devil's trace. (PRADO RUBIO, E., "La inclusión de la brujería en el ámbito competencial inquisitorial", p. 414).

²³ RUSSELL, *The witchcraft in the Middle Ages*, pp. 20-21. Russel ventures that, on the basis of historical and available evidence, probably the reality of the phenomenon was among the third, fourth and fifth hypoth-

For Russel himself, witchcraft is real historical phenomenon to the effect that, regardless of whether witches, organized cults or the intervention of supernatural forces existed, a lot of people thought they did, which caused social, legal, institutional, and cultural effects²⁴. In other words, it is possible to differentiate between the existence of witchcraft as a factual phenomenon (although people might disagree with its veracity, and it would be not part of what History of Law is responsible of²⁵), and witchcraft as a historical phenomenon, which cannot be denied.

2. HISTORICAL EVOLUTION OF THE PHENOMENON

The background that allowed the blooming of medieval witchcraft can be placed in cults, religions, and traditions deriving from cultural sources of West: the former Middle East (specially the Judaism), the Greco-Roman tradition, the Christianity of early days, and cultural elements of Celtic and German people. As Rome and Christianity caused a series of processes of assimilation in several people and communities throughout the continent, these traditions were relegated to a more underground level so they seeped over the centuries and came back in modified ways that gave cause for beliefs connected to the witching phenomenon²⁶.

There were two important changes in the conception of witchcraft during the 7th Century. The first one was the new idea of the demonic pact being a consubstantial part of witchcraft in the wake of the dissemination it got due to the story of Theophilus, a theologian from the 7th Century that, according to tradition, made a pact with the Devil by which he would reject Christ and worship the Prince of Darkness if he got him named bishop. According to the tale, Theophilus, being already a bishop, manages to save his soul in the last breath thanks to the intervention of the Virgin Mary, who the Devil cannot do anything against because not in vain the Mother of Christ is usually portrayed squashing a snake with his heel. The second newness included in the witchcraft heritage was the spreading of considering a witch as someone who casts spells on other people; it reached a point where an assimilation between the term *witch* and the term *maleficent* (a person who uses maleficent arts) happens, which turns the last one into the most common nomenclature to allude to witches during the Middle Ages²⁷. Before that century, the spell was a type of general crimes that almost anyone could carry out with the necessary

esis: there were people who thought themselves witches, there were people who acted like they were witches, or there were witches, but not an organized cult. (p. 22).

²⁴ RUSSELL, *The witchcraft in the Middle Ages*, p. 19.

²⁵ “Como las ciencias naturales, por definición, la Historia no puede lidiar con lo sobrenatural” (RUSSELL, *The witchcraft in the Middle Ages*, p. 21).

²⁶ PRADO RUBIO, E., “Estereotipos referidos a la persecución inquisitorial de la brujería”, in *Aequitas*, No. 13, 2019, p. 35; RUSSELL, *The witchcraft in the Middle Ages*, p. 45.

²⁷ This term’s origins are Latin as it is one of the two words (together with *striga*) Romans used to define women who made spells.

knowledges, but, from the 7th century on, it became an element indissolubly linked to practicing witchcraft.

The first relevant text referring the persecution of witchcraft was the *Canon Episcopi*, published in 906 and written by Regino of Prüm²⁸. It was planned to be the guide for the visits the bishops did to their dioceses, where it is compiled the applicable legislation: the regulation of the synods, capitular, and other rules. In a short form it was known as the *Episcopi*, and it was replicated in later works, such as the *Corrector Burchardi*, the 19th book of the *Decretum* of Burchard of Worms²⁹, and it enjoyed the support of the canonical lawyers and theologians of his day. Actually, Prüm's text has three versions: the first and briefest is the original work of Regino, which he himself enlarged on a second version, and the third one would be the one that Burchard included in his *Corrector Burchardi* together with the parts the priest of Worms added to the already extended text of Prüm. The versions of the last one are focused on the crimes each bishop must persecute in his diocese by suggesting them a series of questions the prelates must effect during the process of their visit. Of these issues, some of them are clearly directed towards rites related to witchcraft. For example, the bishop was recommended to ask if there were women who made love, hate or hurtful spells, and if they went out in the nights together with beasts. Prüm's work collects almost every witching element derived from folklore, such as riding beasts (an idea that seems to have its origins in the union of Valkyries German myths, who rode animals, with Christian tradition). Issues related to witchcraft are specifically focused on women.

The version that appears on the *Corrector Burchardi* is specially relevant for the matter this text addresses since, for the first time in a legislative work, it includes links between practicing witchcraft and heresy by connecting both of them through Devil's action. For Bruchard, not only these practices are condemnable but also the simple fact they are possible, which is nevertheless a very contradictory idea. It also includes two elements that either did not exist or they had not been used for a while in the previous literature that addressed this topic: the cannibalism (which had disappeared from legal texts about heresy and witchcraft since Charlemagne included it during the 8th Century in the regulations that were meant to repress the paganism in the newly conquered Saxon lands) and the tradition that said witches are capable of walking through doors, a view that would be one of the most common and repeated matters in the later processes. Furthermore, it is the first text in which the image of the witch who is able to fly by herself appears, instead of flying on the back of some kind of winged creatures³⁰.

From the theological point of view, it was the *Corrector Burchardi* what started to shape the connection between witchcraft and heresy because, in order to invoke a demon, you need to believe in them, what implies you have to be Christian since the existence

²⁸ On those days, the idea that said the work actually collected very prior texts, notions, and ideas, which could even go back to the 4th Century, contributed to give more credibility to the work. (PRADO RUBIO, "La inclusión de la brujería en el ámbito competencial inquisitorial", p. 400).

²⁹ It is common to use the German spelling of his first name, Bruckhard, while in Spain he is called *Bucardo*.

³⁰ RUSSELL, *The witchcraft in the Middle Ages*, pp. 71-81.

of those beings is part of the theological design of Christianity. In this way, persecuting witchcraft and heresy crimes began to slowly converge towards same criminal regulations and a same institutionalization of persecution on the basis of the witchcraft model that implied heresy: the *haeretica facta*³¹witchcraft. Up until the 11th Century, the spell was considered a secular crime Church did not take care of because the punishable effect was not the spell itself but the damages caused through it³². During the same period of time, punishments due to heresy lacked the severity they would achieve later, and it was normal to reprimand many times the heretics even before imposing them the mildest punishment. Partly, it can be explained by the fact that, between the 9th and the 12th Centuries, the heretical models that shook the Church were mainly reformists who asked for a return to the early Church and the faith model that apostles represented, and who also added value to the notion that matters of that world lacked importance, so the believer had to focus their acts on getting access to God's world, to the afterlife. These heretical trends can be understood not only as a spiritual power but also as an earthly and important entity, changes that brought back rejection or mistrust of essential Christian believers' communities³³. Rightly it has been said that, in several moments of the history of Church, the line between reformism and heresy was extremely thin³⁴, and processes due to witchcraft became more and more common in the areas that had bigger heretical activity³⁵.

The aggravation of persecuting both phenomena (witchcraft and heresy) and the increase of the harshness of their sentences in the legal system started when it was established certain convergence and correlation between them in legal ecclesiastical texts. As has been said, the convergence is stated for the first time in the Corrector Burchardi, whose date of publication can be placed between the years 1000 and 1025 (Bruchard was born in the year 965 and died in the year 1025), while the first official execution that had concrete documentation of an heresy crime was in 1022, in Orleans, followed by another one in 1028, in Monfort³⁶. In Orleans, the French monarch Robert II tried several heretic reformists by sentencing them to death. In spite of how hard theologically talking the incardination on the same level of reforming heresies was, that intended the return to the essential purity of the apostles' message (in a theological movement very similar to the Islamic Salafism), with the Devil's action that is characteristic of witchcraft, Orleans

³¹ PRADO RUBIO, "La inclusión de la brujería en el ámbito competencial inquisitorial", p. 407.

³² Up to the 11th Century, Church fathers used the Roman words of penal Law, such as crime or felony in sense of sins that had to be purged and reconsecrated, but, from the 11th Century on, this changed, and sins were said to be punished in this world as if they were penal crimes. (PETERS, "Destruction of the flesh, salvation of the spirit", p. 140).

³³ RUSSELL, *The witchcraft in the Middle Ages*, p. 63.

³⁴ TOLAN, J., "Peter the Venerable: on the Diabolical Heresy of the Saracens", in FERREIRO, A., (ed.), *The Devil, Heresy and Witchcraft*. Leiden, 1998, p. 348.

³⁵ PRADO RUBIO, "Stereotypes about the inquisitorial persecution of witchcraft", in *International Journal of Legal History and Institutions*, No. 2, 2018, p. 148.

³⁶ Apparently, the first person burnt due to heresy was Vilgardo de Rávena, more or less in the year 1000, but his process is not documented. (RUSSELL, *The witchcraft in the Middle Ages*, p. 151).

defendants were attributed during their processes some actions that better fitted with the witchcraft spectrum than with heresy.

Therefore, executed people during the process of Orleans, according to the accusation certificates, had orgies in a secret location that rather happened underground or in an abandoned place; they invoked demons' names until an evil spirit appeared and then they turned off the torches they carried. This element of lights turning off when the demonic being arrived would be constantly part of later stories in such a way that darkness protected the fulfilment of sexual activities no matter who you had them with. According to the process of Orleans, children conceived during these orgies were burnt eight days after their birth in a parody of the Christian baptism because, in the medieval Christian tradition, baptism was celebrated eight days after the baby was born³⁷; then, with the ashes of the child, it was celebrated a macabre parody of the communion. The defendants had visions of the Holy Spirit and angels, and they could be immediately moved from one place to another by demons in what turns into the first judicial reference to the demonic transportation linked to heresy and witchcraft. Heretics worshipped the Devil, who appeared in the form of a beast, the angel of light (let's remember Lucifer was the Morning Star, the Light Bearer), or of a black man, a figure that was also mentioned for the first time in Orleans, which would be repeated endlessly during the later processes.

The four key posts related to witchcraft that the criminals of Orleans, not forgetting it was a generic process about heresy, were the celebration of orgies, human sacrifices (specially newborn babies sacrifices), the burning of children during demonic rites, and cannibalism (a normal accusation usually focused on infants³⁸.) Therefore, processes of Orleans are essential in the evolution of the phenomena of heresy and witchcraft, and their persecution. On the first and most important place, it happens an association between both phenomena, establishing as probable facts that heresy implies witching practices, and that practicing witchcraft is a heretical act. On the second place, it introduces new elements to the presentation of witchcraft, which would later turn into regular during later processes, such as the Devil incarnated in a black man, or the disappearance of lights when it came the decisive moment of the conventicle or gathering of witches. In addition, Orleans moved ideas related to witchcraft, such as the orgy (that had permeated through the Christian facade of the medieval society from pre-Christian rites of several

³⁷ In many times, newborn babies' murder is proved through the idea witches having no power over those who have been baptized. (HUFFORD, D. J., *The terror that comes in the Night: an experience-centered study of supernatural assault traditions*. Philadelphia, 1982, p. 92). Other authors, on the basis of medieval ideas, justify it saying that, as they were unbaptized kids, they were smeared by the original sin, so, once they die, their souls did not go to Heaven. (LEA, H. Ch., *A history of the Inquisition in the Middle Ages*. New York, 1901, vol. III, p. 504).

³⁸ The myth of witches being children annihilators lasted for centuries. The fact that from the first witchcraft trials witches were charged of torturing kids is one of its main elements. This responds to cultural elements, such as the universal anxiety regarding children's insecurity given the high rate of child mortality during the historic periods when witchcraft was persecuted, because the medical causes of their deaths was unknown. (KIECKHEFER, "Avenging the Blood of Children", p. 93).

cultures), to the heresy phenomenon, what reinforced the association between both phenomena³⁹.

The foundations of the heretical phenomenon from the medieval Europe were shaken since 1140 on when the Catharism or Albigensian heresy appeared, a movement that had nothing to do with the reforming proposals from previous centuries. The Cathar dualism, “the heresy par excellence”⁴⁰, meant directly breaking with the dogmas of Church, an irreconcilable challenge to its deepest basis⁴¹. The crusades that the papacy and the king of France unleashed against the Cathar bastions from Languedoc and Provence caused a bloodbath in Southern France, and they raised the religious persecution in defense of the orthodoxy of faith to a level that, up to that moment, had not been seen in Europe. Despite this, the Catharism survived the crusade, but they were few the isolated focal points that lasted during the 14th and 15th Centuries. Those who outlasted were bitterly persecuted by the Inquisition, which, in addition to consider them heretics, repeatedly associated them to the practice of witchcraft.

This association between Catharism and witchcraft had been early. Since the Albigensian movement began, the Church linked its practices to witchcraft and the influence of this identification process is obvious in processes against witches between the years 1140 and 1230, the leading period of the Cathar problem⁴². In this era, elements that belonged to Cathar practices appeared for the first time in witchcraft processes attributed to witches’ ritual. Although Cathars with their purity obsession rejected the Devil even more than Christian people did, the inquisitors made the same accusations to witches that Cathars made. The number of accusations included in processes to wizards was high and they were present in Cathars’ processes too: the desecration of the cross, the reject towards the sacraments, the secret conventicles in the middle of the night, the cannibalism⁴³, the formal resignation to Church, the celebration of orgies. The century of persecuting the Catharism moved to witchcraft accusations like the obscene kiss to cats or animals while showing the permeable limit between both phenomena from the point of view of those who persecuted them⁴⁴.

The persecution of the Cathars ultimately contributed to consolidate the relationship between witchcraft and heresy in the medieval mind, what would become evident when the Waldensian heresy appeared: they were accused by religious people, such as David of Augsburg, of multiple rites related to witchcraft, like the nocturnality in their meetings and parties. Another effect of the Cathar conflict was the de-theologization of

³⁹ RUSSELL, *The witchcraft in the Middle Ages*, pp. 86-91.

⁴⁰ DONDAINE, A., “Aux origenes du valdeisme. Une profession de foi de Valdes”, in *Archivum Fratrum Praedicatorum*, n° XVI, 1946, p. 197.

⁴¹ RUSSELL, *The witchcraft in the Middle Ages*, p. 85.

⁴² About the Cathar problem within the international medieval context, you can consult the related title in MARTÍNEZ PEÑAS, L., *El invierno. Visión jurídico institucional de las relaciones internacionales en la Edad Media*. Valladolid, 2019.

⁴³ About the cannibalism in witchcraft accusations and their connection to heretical tradition, you can consult: COHN, N., *Europe’s inner demons: an enquiry inspired by the Great Wicht-Hunt*. Londres, 1975.

⁴⁴ RUSSELL, *The witchcraft in the Middle Ages*, pp. 123-132.

heresy when the public debates, the persuasion, and the intellectual polemics between orthodox and heretical people stopped, so the violent coercion was implemented first and the judicialization of heresy later, both being the only means to face the matter. Although the last idea of converting the heretic to the orthodoxy was never completely gone and the “inquisitors always preferred a converted penitent than an obstinate martyr”, the heretics began to be less and less seen as theological dissenters and more and more as a legal phenomenon affiliated to the procedural field of the Inquisition⁴⁵.

3. WITCHCRAFT, HERESY, AND INQUISITION

Some renowned authors, such as Hansen or Henry Charles Lea, have defended that witchcraft as a legal phenomenon was an invention of the Inquisition, thus it was born in the 18th Century with the Inquisition itself⁴⁶. This idea is based on the fact that no other court accomplished witchcraft trials up to the 15th Century⁴⁷, so it is half true: there were not concrete courts whose task was exclusively persecuting witchcraft, but there was already a legal apparatus within Church, even supported by doctrines such as the Prüm or the Bluchard of Worms ones (the last one carried out hundreds if not thousands witchcraft processes). It was all about episcopal courts (not forgetting secular courts, which also persecuted witches and wizards through the criminal system of the Crowns); in fact, based on the number of records that are still preserved, episcopal and secular courts definitely tried more witchcraft cases than the Inquisition itself. This does not prevent from acknowledging the highest number of witchcraft processes happened in regions where the Inquisition was active (France, Germany, the Netherlands, and Lombardy), but

⁴⁵ VÄLIMÄKI, R., *The awakaner of sleeping men. Inquisitor Petrus Zwicker, the Waldenses and the Rethelologisation of Heresy in Late Medieval Germany*. Turku, 2016, pp. 18-19.

⁴⁶ It should be noted that Kieckhefer rejects the existence of the Inquisition in an institutional sense, stating that there were inquisitors, but not Inquisition. By synthesising his statements, he marks that there was not a monolithic institution known as the Inquisition during the Middle Ages, there was not an institution that persecuted heretics all over Europe. The real question for Kieckhefer was the degree of connection between local and regional inquisitors, and if that connection would allow to talk about a Florentine, Bohemian or French Inquisition. Was there an interaction between the inquisitors? Did they keep archives? Did they keep records? Did they hire subordinates? Were their actions stable and permanent? Did the inquisitors keep a staff throughout long periods and multiple trials? Was there an agency around the Inquisitor to make it easier for him? Was there, in short, means to get a constant and stable functioning of its bureaucratic tasks? Kieckhefer concludes that the answer to all of these questions must be a *no*. (KIECKHEFER, R., “The office of Inquisition and Medieval Heresy: the transition from personal to institutional jurisdiction”, in *Journal of Ecclesiastical History*, No. 46, 1995, p. 38). For this author, there was not an institutionalization until the Spanish Inquisition, which would last until the troubled first years of the 19th Century, analysed in FERNÁNDEZ RODRÍGUEZ, M., *Hombres desleales cercaron mi lecho*. Valladolid, 2018, and FERNÁNDEZ RODRÍGUEZ, M., *Delitos y orden público en el Estado constitucional: fenomenología, normas e instituciones*, Madrid, 2023.

⁴⁷ On that date the medieval decentralization was getting over in favour of a reconstruction of the State all over Europe, as it is written in FERNÁNDEZ RODRÍGUEZ, M., y MARTÍNEZ PEÑAS, L., *La guerra y el nacimiento del Estado Moderno*. Valladolid, 2014.

it is also necessary to note that those very same areas were also the most affected zones by processes of social changes and by heretical phenomena⁴⁸.

Between the 12th and 15th Centuries, the most important heresies were the antinomian ones, new-fangled heretical phenomena that spread very fast by the periphery of Church, and which were based on faith being the central element of religion that was enough recognised to, by itself, guarantee the salvation of the believer. The main heretical movement was the Amalrician one, which began in Paris from the hand of Amalric of Bena (or Amaury de Bène), and it was a pantheist heresy mixed with the millenarianism of Joachim of Fiore⁴⁹. Even though their leader was a doctor, most part of their followers were from the most humble and illiterate layers of the society, named as Brethren of the Free Spirit. Other unorthodox phenomena that became strong were the Beguines (women) and the Beghards (men), who gathered in communities inside cities, and the Fratricelli, heretics who came from those Franciscans annoyed by the loss of harshness of the Order who stood for returning to the asceticism and the initial humility of the Franciscan friars. Since these movements blasted the established Church, the institution considered them all heretics on the same level⁵⁰.

Between the 11th Century and half of the 13th Century, the main source of pressure over witches was the popular hysteria, in its two aspects (influence over the law and violence outside the law), with lynchings and extrajudicial executions of people thought to be witches by the community. This kind of events did not keep within witchcraft and were not the exception during Middle Ages but they were the rule, because the vital phenomenon in the history of public order from the Medieval period is the *infrajustice*, meaning the resolution of the conflict or the sanction of the criminals outside of institutions formally trained to do so, or at least outside of processes regulated to accomplish it. This has complicated a lot the study of criminal phenomena during the period, causing what the English speakers have named *dark figure*: the real rate of existing criminality in the medieval world is impossible to be precisely calculated since the phenomenon of *infrajustice* did not leave many tracks that allowed to make a historical analysis⁵¹. What happened with witches, happened with heretics too: the first executions of heretics were extrajudicial, which were carried out by mobs of lynchers or nobles, or by kings that were jealous of faith, so they acted on their own even before the Church officially adopted the position of death being the sanction to heresy; in fact, in those very first moments, priests often moderated the sanctions other social segments drove⁵².

⁴⁸ RUSSELL, *The witchcraft in the Middle Ages*, p. 133.

⁴⁹ The Pantheism meant the idea of God being the essence of everything, both Creator and creature. (GARCÍA TORZA, J., *Las herejías medievales*. Logroño, 2014, p. 25).

⁵⁰ RUSSELL, *The witchcraft in the Middle Ages*, pp. 138-139.

⁵¹ A synthetic view in MARTÍNEZ PEÑAS, L., *Historia de la criminalidad y el orden público*. Valladolid, 2015.

⁵² COULTON, G. G., "The death-penalty for heresy from 1184 to 1921 A. D.", in *Medieval Studies*, No. 18, 1924, p. 2.

The persecution of witches was more based on their connection to heresy than on witchcraft itself. A demonstration of it was including in witchcraft processes the stake as a method of execution. Jewish, Greeks, Romans, and Germans used the stake to punish some specially serious crimes⁵³, and, in the Middle Ages, dying like this was something employed by the secular justice as a sanction to relapsing heretics since the beginning of the 11th Century, long before Church turned to it⁵⁴. Its use during that century was usual, but not legal, meaning it did not appear in the legislation as a sanction until Peter II of Aragon, in 1197, commanded to burn the relapsing heretics, what the Pope Innocent III supported one year later when he decreed that those whom excommunication had not been effective had to die in the stake⁵⁵. Therefore, Church adopted the burning at the stake after the secular powers did, connected to the renounce of the ecclesiastical courts to the ordeal of fire as a resource of evidence (a regular method in medieval jurisdiction up to that moment, but forbidden by the Fourth Council of the Lateran in 1215 because of the increasing influence of the Roman law, which was extremely sceptic regarding the legal usage of ordeals⁵⁶. Innocent III, within his regulations of 1197, not only added the burning at the stake for the heretics (which would mean its usages in many witchcraft cases) but also achieved that a lot of cities forbade them to aim for municipal offices, and introduced another essential element of the legislation in order to fight heresy: confiscation of property⁵⁷. This happened because it was an usual practice in crimes of *lèse-Majesté*, meaning those who were a direct offense against the king, and, since heresy was considered a crime of *lèsé-Majesté* divine (a direct offense against God), the sanction for betraying Christ could not be less rigorous than the sanction for betraying an earthly monarch. Thus, heresy turns into a crime that damages both the ecclesiastical and the civil spheres⁵⁸, because, if the king is king by divine will or plan, denying the deity indirectly deprives the monarch of legitimacy.

“The tradition of burning heretics was of course turned against witches to the degree that witchcraft was assimilated to heresy⁵⁹.” Not only the burning at the stake was introduced as a sanction but the torture was more often used both in secular and ecclesiastical courts, playing a huge role in trials because of witchcraft from the 11th Century on⁶⁰. The origins of torture as part of the legal process are in Rome, where the code allowed foreigners and slaves to be tortured under some circumstances. German law,

⁵³ See PRADO RUBIO, E., *Hijos de la patria*, Madrid, 2022.

⁵⁴ PETERS, “Destruction of the flesh, salvation of the spirit”, p. 145.

⁵⁵ COULTON, “The death-penalty for heresy from 1184 to 1921 A. D.”, p. 2.

⁵⁶ About the ordeals, you can consult: BARTLETT, R., *Trial by fire and wáter. The medieval judicial ordeal*. Oxford, 1986. In many cases, the execution at the stake was not a sanction to practicing witchcraft itself but to the damages this caused to the neighbours, such as murders, infanticides, etc. (LEA, H. Ch., *A history of the Inquisition in the Middle Ages*. New York, 1901, vol. III, p. 533).

⁵⁷ “Innocent may have been the greatest pope in a long time, and heresy was one of his main concerns.” (COULTON, “The death-penalty for heresy from 1184 to 1921 A. D.”, p. 3).

⁵⁸ PETERS, “Destruction of the flesh, salvation of the spirit”, p. 146.

⁵⁹ RUSSELL, *The witchcraft in the Middle Ages*, p. 151.

⁶⁰ Henry Charles Lea describe the use of torture in medieval criminal courts as “universal”. (LEA, H. Ch., *A history of the Inquisition in the Middle Ages*. New York, 1901, vol. III, p. 505).

for its part, did not allow it, except in late codes that were influenced by Roman law, and it was always limited to very specific presuppositions and normally limited to slaves⁶¹. In the Early Middle Ages, its procedural use was very restricted and mostly illegal until the rediscovery of the Roman law in the 11th Century turned it into a resource more of the instruction of processes against several crimes.

However, its use always caused mistrust, even from the theological point of view. The notion that justified it stated that the body could be destroyed in order to save the soul, but it had a lot of doctrinal chiaroscuros despite the support given by several pontiffs. It mainly challenged the notion of freedom of choice, which was necessary for the salvation. By then, many authors considered that torture and extended confinement eliminated the person's ability to decide freely⁶², so the acts motivated by the pressure that derived from torment and imprisonment not only were bad for the body but, by depriving the person of option, he/she was also deprived of freedom of choice, therefore his/her options did not have the possibility of resulting in the salvation of the soul. In other words: according to these theologians, it was not possible to achieve the salvation by confessing through torture.

Through the 12th Century, the judicial torture was utilized with many restrictions, but in the 13th its use was spread among secular powers such as France, the Crusader Kingdom of Jerusalem, and most part of Italian cities, and it even increased through the later centuries. The first theologians, like Saint Augustine, and popes like Saint Gregory the Great and Pope Nicholas I universally condemned its use, but in the 13th Century it got the ecclesiastical approval in general⁶³. Russel suggests some reasons for this change in the position of Church, such as a sort of imitation of the secular courts, the influence of the Roman Law in the Digest, the concern of the ecclesiastical hierarchy against the increasing number of digressions regarding the orthodoxies and the disappearance of the trial by ordeal as a means of proof, although the torment had some elements of ordeal since the idea of God being able to protect the innocent from making a false confession remained⁶⁴.

In the use of torture, it also influenced the introduction of the inquisitorial process, directed towards the means that led to the defendant's confession, which generally could only be accomplished by pressuring him⁶⁵. This procedural model extremely disrupted

⁶¹ PRADO RUBIO, "La inclusión de la brujería en el ámbito competencial inquisitorial", p. 411.

⁶² PETERS, "Destruction of the flesh, salvation of the spirit", p. 147.

⁶³ In addition, Nicholas tried to introduce a new procedural model in the ecclesiastical institutions, the *acusatio*, taken from the Roman procedural processes. (PETERS, "Destruction of the flesh, salvation of the spirit", p. 135).

⁶⁴ RUSSELL, *The witchcraft in the Middle Ages*, pp. 152-153.

⁶⁵ "El procedimiento inquisitivo es una creación del derecho canónico surgida y consolidada a lo largo de un periodo comprendido entre los siglos XII y XIV, al ir aumentando progresivamente la iniciativa del juez a la hora de iniciar e impulsar el procedimiento en las causas criminales". The inquisitorial procedure is a creation of the canonical Law that appeared and became established through the period between the 12th and 14th Centuries, as it gradually increased the initiative of the judge when it came to start and inspire the procedure for criminal cases. (MAR-

the way in which the canonical processes were managed. In principle, the canonical legislation forbade that the same person could be judge and investigating official of a process, in tune with the legal thought of Gratian, but the Pope Innocent III gave a series of papal bulls that eliminated this prohibition, and the measure was confirmed by the Fourth Council of the Lateran. Therefore, the person who was charged with major crimes, such as heresy and witchcraft, was forced to answer under oath to the questions of the judge (*inquisito*, from which it derives the name of the procedural model⁶⁶), and that became the standard model of the canonical legislation. It could be used against any ecclesiastical crime, such as simony, but it was utilized against heresy, and, by extension, against witchcraft⁶⁷.

The new model of inquisitorial process definitely became the official model of the Church in the Fourth Council of the Lateran, in 1215, and it had such a huge and immediate success that it did not only ruled the ecclesiastical processes but it was also adopted as model of the secular processes in every European reign (England excluded), despite which, sometimes, the trials for heresy and witchcraft celebrated in Great Britain had a lot of inquisitorial elements, as it was evident during the procedure that was initiated against John Wyclif and his Oxford followers in 1382, which is very similar to the one after in 1415 against Jan Hus and his pupils, started by the Council of Constance⁶⁸.

While the repression of heretics was a minor threat, it was left to the bishops, as the Synod of Verona of 1184⁶⁹ ratified, but ordering them to visit once or twice a year, in person or by their officials and representatives, the parishes of their dioceses in which there were suspicions of heresy. This episcopal inquisition only was a version of the regular visit during which the bishop had to visit his parishes in search of deviations in the canonical law⁷⁰. The repression was in the hands of the bishops until the Cathar and Waldensian heresies took away from Church almost every area of the south of France⁷¹. The papacy sent preachers to the mendicant orders, but since they failed, the crusade of

TÍNEZ PEÑAS, L., "Brujería y procedimiento inquisitorial: aproximación a través de la causa de Logroño de 1610", in *Annali del Dipartimento Jonico in sistema giuridici economici del Mediterraneo: Società, ambiente, culture*, No. 1, 2014, p. 205).

⁶⁶ Therefore, it is necessary to remind that there is a difference between using the term *inquisition* as an inquisitorial procedural model and the term *Inquisition*, referring to the institution that persecutes heretics. (KIECKHEFER, R., "The office of Inquisition and Medieval Heresy: the transition from personal to institutional jurisdiction", en *Journal of Ecclesiastical History*, nº 46, 1995, p. 5).

⁶⁷ RUSSELL, *The witchcraft in the Middle Ages*, p. 154.

⁶⁸ KELLY, H. A., "Lollard inquisitions: due and undue process", en FERREIRO, A., (ed.), *The Devil, Heresy and Witchcraft*. Leiden, 1998, p. 279.

⁶⁹ This council was the one that officially condemned the Waldensians as heretics. (DONDAINE, A., "Aux origenes du valdeisme. Une profession de foi de Valdes", in *Archivum Fratrum Praedicatorum*, No. XVI, 1946).

⁷⁰ RUSSELL, *The witchcraft in the Middle Ages*, p. 154.

⁷¹ The expansion of these last ones through French territory had begun when the authorities of Lyon forced them to leave the city in the decade of 1180. (KIENZLE, B. M., "Holiness and obedience: denouncement of twelfth-century waldensian lay preaching", in FERREIRO, A., (ed.), *The Devil, Heresy and Witchcraft*. Leiden, 1998, p. 259).

Languedoc was decreed, in the year 1204, the first crusade proclaimed against a Christian territory⁷².

The first steps to create the Inquisition happened in the Fourth Council of the Lateran, in 1215, which named papal legacies with special commissions in order to investigate heresy, but the real appearance of the inquisitorial machine would occur in the second half of the later decade. Being terrified by the fact the heresies were improving, the Pope Gregory IX took the necessary steps to create an institutionalised Inquisition⁷³. In 1227, he sent Konrad von Marburg to research the heresy in the Southern France, according to what it was allowed in Lateran in 1215, and later, in 1229, when the Albigensian war had finished, the pope was decided to take action so what had happened in the Languedoc would not occur again in the future anywhere in the Christianness⁷⁴.

While the pontifical Inquisition became institutionalised, the process of convergence between witchcraft and heresy kept intensified. In 1240, the statutes of the Cistercians established that witchcraft was a type of heretical depravity. In the same period, the manuals of inquisitors warned to proceed with witchcraft just as with heresy⁷⁵. In what would be a rule instead of an exception in the existence of different inquisitions, the matter of witchcraft caused a conflict of jurisdiction when the inquisitors requested the Pope Innocent IV to take the jurisdiction about witchcraft cases away from bishops and then to deliver it to the Inquisition. Innocent opposed by indicating that the inquisitors had to focus on another subjects, but, in time, he opened the door to the inquisitorial persecution of witchcraft by authorising the Inquisition to intervene and hear those witchcraft cases that definitely implied heresy. In practice, this proved to be a *carte blanche* since some defining elements of witchcraft just like it was considered back them (for example, the pact with the Devil) were easily explainable as heresy, and they were systematically used by the Inquisition in order to also take charge of persecuting wizards and witches⁷⁶.

The appearance of the inquisitors in the fight against heresy was the beginning of the real hysteria about the phenomenon because of the inclusion of methods and proceedings typical of the Inquisition. The institution adopted torture as a procedural method of systematic use with the support of the canonical law, which demanded that the defendant made a confession, but it was very difficult to obtain without resorting to torment. All the conditions that had led to the rise of the witching phenomenon in the 13th Century accentuated in the 14th Century. The persecution of witchcraft kept being subject to jurisdictional conflict among the different authorities. The secular and episcopal courts

⁷² COULTON, "The death-penalty for heresy from 1184 to 1921 A. D.", p. 5.

⁷³ About this question, see PRADO RUBIO, E., "Aproximación a las Inquisiciones en el cine", en PRADO RUBIO, E., MARTÍNEZ PEÑAS, L., y FERNÁNDEZ RODRÍGUEZ, M., (coord.), *Análisis sobre jurisdicciones especiales*, Valladolid, 2017; PRADO RUBIO, E., "Narrativa audiovisual de ficción y docencia: la inquisición como ejemplo para la enseñanza histórico-jurídica", in *International Journal of Legal History and Institutions*, nº 1, 2017.

⁷⁴ COULTON, "The death-penalty for heresy from 1184 to 1921 A. D.", p. 7.

⁷⁵ RUSSELL, *The witchcraft in the Middle Ages*, p. 155.

⁷⁶ RUSSELL, *The witchcraft in the Middle Ages*, p. 167.

were still more active against witches than the Inquisition, and Philip IV of France even forbade in 1303 that the Inquisition tried witchcraft inside the territories of the king of France; it was a measure that apparently intended to ensure the domineering role of the Crown regarding confiscations derived from those processes. The 22nd of August 1320, the Pope John XXII wrote to the inquisitors of Toulouse and Carcassonne in order to authorise them persecuting witches as if they were heretics, although in 1330 he wrote again to his legates so they resolved the open cases and abstained from opening new processes due to witchcraft without the agreement of the bishops of the affected diocese (it was a measure thought for the prelates and inquisitors to act together, not divided). The instructions of later popes like Benedict XII and Gregory XI would be similar.

During the great witch persecutions of the 15th Century and the following decades, the assimilation of witchcraft and heresy was complete. When the persecutions and the hysteria that witchcraft caused in much of Europe reached their highest level and the pontifical Inquisition was about to substitute the Hispanic Monarchy in the Holy Office that became institutionalised by the Catholic Monarchs, the witchcraft was already considered a way of heresy, both in its conceptualization and in the way of procedurally addressing it⁷⁷.

⁷⁷ Fortunately, the Spanish Inquisition never showed the obsession for the witch hunt that other inquisitions, ecclesiastical authorities and civil powers did show throughout Europe, and processes such as the ones from Logroño in 1610 (which can be consulted in HENNIGSEN, G., *El abogado de las brujas*. Madrid, 1986; and MARTÍNEZ PEÑAS, L., “Brujería y procedimiento inquisitorial: aproximación a través de la causa de Logroño de 1610”, in *Annali del Dipartimento Jonico in sistema giuridici economici del Mediterraneo: Società, ambiente, culture*, No. 1, 2014) that far from being the rule, were the very significant exception.